

CALIFORNIA STATE LANDS COMMISSION

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Established in 1938

OCT 14 2019

October 14, 2019

STATE CLEARINGHOUSE

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File Ref: SCH #2019099043

Ave Brown
Contra Costa County Flood Control and
Water Conservation District
30 Muir Road
Martinez, CA 94553

VIA REGULAR & ELECTRONIC MAIL (ave.brown@pw.cccounty.us)

Subject: Initial Study/Mitigated Negative Declaration (IS/MND) for the Lower Walnut Creek Restoration Project, Martinez, Contra Costa County

Dear Ms. Brown:

The California State Lands Commission (Commission) staff has reviewed the subject IS/MND for the Lower Walnut Creek Restoration Project (Project), which is being prepared by Contra Costa County Flood Control and Water Conservation District's (District). The District, as the public agency proposing to carry out the Project, is the lead agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.). The Commission is a trustee agency for projects that could directly or indirectly affect sovereign land and their accompanying Public Trust resources or uses. Additionally, because the Project involves work on sovereign land, the Commission will act as a responsible agency.

Commission Jurisdiction and Public Trust Lands

The Commission has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways. The Commission also has certain residual and review authority for tidelands and submerged lands legislatively granted in trust to local jurisdictions (Pub. Resources Code, §§ 6009, subd. (c); 6009.1; 6301; 6306). All tidelands and submerged lands granted or ungranted, as well as navigable lakes and waterways, are subject to the protections of the common law Public Trust Doctrine.

As general background, the State of California acquired sovereign ownership of all tidelands and submerged lands and beds of navigable lakes and waterways upon its

admission to the United States in 1850. The state holds these lands for the benefit of all people of the state for statewide Public Trust purposes, which include but are not limited to waterborne commerce, navigation, fisheries, water-related recreation, habitat preservation, and open space. On tidal waterways, the State's sovereign fee ownership extends landward to the mean high tide line, except for areas of fill or artificial accretion or where the boundary has been fixed by agreement or a court. On navigable non-tidal waterways, including lakes, the state holds fee ownership of the bed of the waterway landward to the ordinary low-water mark and a Public Trust easement landward to the ordinary high-water mark, except where the boundary has been fixed by agreement or a court. Such boundaries may not be readily apparent from present day site inspections.

At the location of the proposed Project, Walnut Creek and Suisun Bay are State-owned sovereign land, and the identified areas of the proposed Project will also include upland areas of the North Reach. Based upon the information provided and a preliminary review of Commission records, Commission staff has determined that the proposed Project will require submission of a lease application for issuance of a new lease. The application can be found at our website at www.slc.ca.gov. Please contact Joanne Holt for jurisdiction and leasing requirements for the Project (see contact information at end of letter).

This determination is made without prejudice to any future assertion of State ownership or public rights, should circumstances change, or should additional information come to the Commission's attention. This letter is not intended, nor should it be construed as, a waiver or limitation of any right, title, or interest of the State of California in any lands under its jurisdiction.

Project Description

The District proposes to restore and enhance wetlands and associated habitats in Lower Walnut Creek and provide sustainable flood management, while allowing opportunities for public access and recreation to meet the agency's objectives and needs as follows:

- Restore wetlands to improve ecological function and habitat quantity, quality, and connectivity (including upland transition zones) in the Lower Walnut Creek area for native, resident plant and animal species including special status species.
- Maintain appropriate levels of flood protection along Lower Walnut and Pacheco Creeks, as warranted by the land use.
- Allow for future public access, education, and recreational opportunities.
- Create sustainable benefits that consider future environmental changes such as sea-level rise and sedimentation.

From the Project Description, Commission staff understands that the Project would include the following components that have potential to affect State sovereign land:

- Restoration and enhancement of tidal and seasonal wetlands, lowland grasslands, and upland grasslands and scrub in all reaches through invasive plant species control, excavation and grading, and revegetation in all reaches.

- Creation of new setback levees in the South and Middle reaches to provide sustainable flood protection.
- Creation of new public access opportunities including trails and boardwalks, recreational water access points, and an interpretive center in the North Reach.
- Opportunities for the future extension of the Iron Horse Trail in the South Reach.
- Protection of existing water and wastewater infrastructure in the South and North Reaches and landfill infrastructure in the Middle Reach.

Environmental Review

Commission staff requests that the District consider the following comments on the Project's IS/MND, to ensure that impacts to State sovereign land are adequately analyzed for the Commission's use of the IS/MND to support a future lease approval for the Project.

Biological Resources

1. **Invasive Species**: One of the major stressors in California waterways is introduced species. Therefore, the IS/MND should consider the Project's potential to encourage the establishment or proliferation of aquatic invasive species (AIS) such as the quagga mussel, or other nonindigenous, invasive species including aquatic and terrestrial plants. For example, construction equipment brought in from long stays at distant projects may transport new species to the Project area via hull biofouling, or new species may be transported by soil in or on work and hauling vehicles. Marine and aquatic organisms attach to and accumulate on the hull and other submerged parts of a vessel. Plant invaders may disperse seeds from one area to another via dried mud and soils attached to vehicles from previous work areas. If the analysis in the IS/MND finds potentially significant AIS and plant impacts, possible mitigation could include contracting vessels from nearby, or requiring contractors to perform a certain degree of hull and vehicle cleaning. The CDFW's Invasive Species Program could assist with this analysis as well as with the development of appropriate mitigation (information at <https://www.wildlife.ca.gov/Conservation/Invasives>).

Cultural Resources

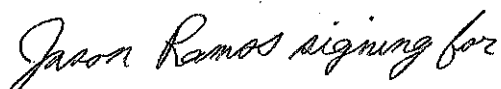
2. **Title to Resources**: The IS/MND should also mention that the title to all abandoned archaeological sites and historic or cultural resources on or in the tide and submerged lands of California is vested in the state and under the jurisdiction of the Commission (Pub. Resources Code, § 6313). Commission staff requests that the District consult with Staff Attorney Jamie Garrett, should any cultural resources on state lands be discovered during construction of the proposed Project. In addition, Commission staff requests that the following statement be included in the IS/MND's Mitigation and Monitoring Program (MMP), "The final disposition of archaeological, historical, and paleontological resources recovered on state lands under the jurisdiction of the California State Lands Commission must be approved by the Commission."

3. MMP: Adoption of an MMP is required as part of project approval (see State CEQA Guidelines, §§ 15074, subd. (d), and 15097). MMPs are commonly included in Draft MNDs to facilitate public review but are not required to be included; the IS/MND circulated for public review for this Project did not include an MMP. Although the IS/MND includes numerous mitigation measures, these do not appear to be incorporated into a MMP, which is typically organized in a table format. Commission staff recommends that an MMP be included as part of the Final MND to ensure transparency and public disclosure. Inclusion of an MMP will also facilitate the Commission's responsible agency review of the proposed Project.
4. Environmental Justice: The IS/MND does not state the District's intent to discuss and analyze potential environmental justice related issues, including an assessment of public access and equity implications and who would bear the burdens or benefits from the proposed Project. Commission staff believes the IS/MND, as an informational public document, is an appropriate vehicle to disclose and discuss how the proposed Project would attain or be consistent with any of the District or County's equity goals and statewide policy direction.

Thank you for the opportunity to comment on the Draft IS/MND for the Project. As a responsible and trustee agency, the Commission will need to rely on the adopted MND for the issuance of an amended or new lease as specified above and, therefore, we request that you consider our comments prior to adoption of the MND.

Please send copies of future Project-related documents, including electronic copies of the adopted MND, MMP, Notice of Determination, and approving resolution when they become available. Please refer questions concerning environmental review to Christopher Huitt, Senior Environmental Scientist, at (916) 574-2080 or christopher.huitt@slc.ca.gov. For questions concerning archaeological or historic resources under Commission jurisdiction, please contact Staff Attorney Jamie Garrett, at (916) 574-0398 or jamie.garrett@slc.ca.gov. For questions concerning Commission leasing jurisdiction and the lease application process required for this proposed Project, please contact Joanne Holt, Public Land Management Specialist, at (916) 574-1832 or joanne.holt@slc.ca.gov.

Sincerely,



Eric Gillies, Acting Chief
Division of Environmental Planning
and Management

cc: Office of Planning and Research
C. Huitt, Commission
J. Garrett, Commission
J. Holt, Commission