

CALIFORNIA STATE LANDS COMMISSION

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Established in 1938

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STATE CLEARINGHOUSE

File Ref: SCH #2020019085

Daniel Wilson
Reclamation District No. 3
P.O. BOX 1011
Walnut Grove, CA 95690

VIA REGULAR & ELECTRONIC MAIL (info@reclamationdistrict3.com)

Subject: Initial Study/ Mitigated Negative Declaration (IS/MND) for the Grand Island Levee Erosion Repair Project, Sacramento County

Dear Mr. Wilson:

The California State Lands Commission (Commission) staff has reviewed the subject IS/MND for the Grand Island Levee Erosion Repair Project (Project), which is being prepared by the Reclamation District No. 3 (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 State sovereign land and their accompanying Public Trust resources or uses. Additionally, since the Project involves work on State 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. Such boundaries may not be readily apparent from present day site inspections.

At the location of the proposed Project, Steamboat Slough is State-owned sovereign land. 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 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).

Project Description

The District proposes to implement the Project to reduce the risk of levee failure on the southwest corner of Grand Island along the south bank of Steamboat Slough by addressing:

- Current erosion
- Bank loss
- Waterside instability

From the Project Description (Section 1.3.5 of the IS/MND), Commission staff understands that the Project would include the following component that has the potential to affect State sovereign land:

- Waterside Berms. Planting and containment berms would be established approximately 0.5 feet above mean high water and extend 20 feet into the channel from the waterside levee toe. The base of the containment berms would be 3 to 5 feet below the mean lower low water line (MLLW).

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.

General Comments

1. Public Agency Approvals: As stated in the IS/MND Project Description, a portion of the rock protection for the waterside berms would be below the mean high-water line, and under the Commission's jurisdiction. Therefore, Commission staff request that the IS/MND identify the Commission as a public agency with discretionary approval over the Project.

2. Conservation Measures vs. Mitigation Measures. A list of Conservation Measures is listed in Section 1.4 of the IS/MND. The IS/MND states that these measures "...will be implemented as part of the Project," which indicates that the measures would reduce potential impacts prior to a significance determination. Therefore, when assessing environmental effects these measures would not be considered "mitigation." However, on some of the resource checklists the "less than significant with mitigation incorporated (LSWM)," box has been checked, even though the text indicates that the impacts are reduced to less than significant with incorporation of the Conservation Measures. For example, under Section 2.4, Biological Resources issue area (a), the impacts were found to be LSWM. Section 2.4.2 *Findings* handles the issue correctly; however, Commission staff suggest that the resource checklist be modified to reflect a less than significant determination. Other resource areas where this is an issue are Hazards and Hazardous Materials, Hydrology and Water Quality, and Mandatory Findings of Significance. In addition, Commission staff question why the document is not considered a Negative Declaration, as no mitigation is being applied. If the document remains an MND, please note that the Commission will require a Mitigation and Monitoring Plan from the District to facilitate processing of a new or amended lease.

Project Description:

3. Section 1.3.2. *Project Design*, says that the Project includes "reconstructing a section of the bank with a soil planting berm and rock containment berm." Section 1.3.3. *Site Preparation* then describes the removal of vegetation to facilitate equipment access. Although Figure 1-5 indicates where trees will be removed, Commission staff request that these access routes be more clearly defined in the Figure, or a separate figure provided. In addition, Commission staff request that additional information regarding the types of equipment that will be used on the riverbank be defined in Section 1.3.7 *Equipment and staging*. Also, please provide information on whether the barges will need to anchor in the river, and if so, provide details on this activity.
4. There is a statement in Section 1.3.3. that "Remnant defunct through-levee pipes (tide gates) associated with the Deep Water Shipping Channel project may need to be either removed or abandoned in place." However, no analysis of the impacts resulting from this activity is provided in the IS/MND. Since these facilities are likely within Commission jurisdiction, Commission staff strongly suggest that more detail be provided in the Project Design, and the impacts analyzed in the resource sections to provide a worst-case scenario. Otherwise additional CEQA documentation may be required for the Commission to issue a lease for these activities.
5. Section 1.3.6. *Erosion Control*, states that "Erosion control measures will be implemented in accordance with Caltrans Construction Site Best Management Practices (BMP) Manual." Commission staff requests that a link to an electronic copy of the manual be included to facilitate a clearer understanding of the measures by responsible agencies and the public.

Climate Change

6. A tremendous amount of State-owned lands and resources under the Commission's jurisdiction will be impacted by rising sea levels. With this in mind, the District should consider discussing in the IS/MND if and how various Project components might be affected by sea-level rise and whether "resilient" designs have been incorporated. The Steamboat Slough and its surroundings are generally in a low-lying, flood-prone area that will be affected by rising sea levels. Additionally, because of their nature and location, these lands and resources are already vulnerable to a range of natural events, such as storms and extreme high tides.

Attention should be given to sea-level rise projections to ensure the proposed structures' designs are sufficient to ensure function, safety, and protection of the environment over the expected life of the structure. Governor Brown issued Executive Order B-30-15 in April 2015, which directs state government to fully implement the Safeguarding Plan and factor in climate change preparedness in planning and decision making. Please note that when considering lease applications, Commission staff will (1) request information from applicants concerning the potential effects of sea-level rise on their proposed projects, (2) if applicable, require applicants to indicate how they plan to address sea-level rise and what adaptation strategies are planned during the projected life of their projects, and (3) where appropriate, recommend project modifications that would eliminate or reduce potentially adverse impacts from sea-level rise, including adverse impacts on public access. In addition, the State of California released the 2018 Update to the Safeguarding California Plan in January 2018, to provide policy guidance for state decision-makers as part of continuing efforts to prepare for climate risks.

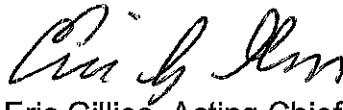
Cultural and Tribal Resources

7. Title to Resources: The IS/MND should mention that the title to all 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 EIR's Mitigation and Monitoring Plan: "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."

Thank you for the opportunity to comment on the 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 any 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, Mitigation Monitoring and Reporting Program, and Notice of Determination, when they become available. Please refer questions concerning environmental review to Cynthia Herzog, Senior Environmental Scientist, at (916) 574-1310 or cynthia.herzog@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, 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
J. Garrett, Commission
C. Herzog, Commission
J. Holt, Commission

