

**CALIFORNIA STATE LANDS COMMISSION**

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*Established in 1938*

June 22, 2020

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6/19/2020

Governor's Office of Planning & Research

**Jun 22 2020**

**STATE CLEARINGHOUSE**

File Ref: SCH # 2020050414

West Bay Sanitary District  
Attn: Phil Scott, District Manager  
500 Laurel Street  
Menlo Park, CA 94025

VIA ELECTRONIC MAIL ONLY ([Info@westbaysanitary.org](mailto:Info@westbaysanitary.org))

**Subject: Notice of Preparation (NOP) for an Environmental Impact Report (EIR) for the Flow Equalization and Resource Recovery Facility Levee Improvements and Recycled Water Facility Project, San Mateo and Santa Clara Counties**

Dear Mr. Scott:

The California State Lands Commission (Commission) staff has reviewed the subject NOP for an Environmental Impact Report (EIR) for the Flow Equalization and Resource Recovery Facility Levee Improvements and Recycled Water Facility Project (Project), which is being prepared by the West Bay Sanitary District (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, because the Project may involve work on State sovereign land, the Commission may act as a responsible agency. Commission staff requests that the District consult with us on preparation of the Draft EIR as required by CEQA section 21153, subdivision (a), and the State CEQA Guidelines section 15086, subdivisions (a)(1) and (a)(2).

**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.

Based on the information provided and a review of in-house records, the proposed project may extend onto the bed of Westpoint Slough which at this location is within Commission-owned lands conveyed to the State by Leslie Salt Co. According to the project description, the proposed ecotone levee on the northern perimeter of the site would recontour the existing levee with a 10:1 to 20:1 slope to the water line. At this time, we do not have detailed project plans and sufficient information to determine if the proposed ecotone levee will extend onto the bed of Westpoint Slough. Once more detailed plans are prepared, please submit them to Commission staff for further review. Should the proposed levee extend beyond Assessor Parcel Number 055-400-010 and onto the bed of Westpoint Slough, a lease from the Commission will be required.

### **Project Description**

The District proposes the proposed project to meet its objectives and needs as follows:

- Provide Federal Emergency Management Agency 100-year and anticipated sea level rise flood protection.
- Allow the District to provide recycled water to customers.

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

- Project Component 1. Installation of sheet pile walls around the northern and western perimeters of the facility.
- Project Component 2. Raising the grades of the perimeter access road within the property.
- Project Component 3. Construction of an ecotone levee.

### **Environmental Review**

Commission staff requests that the District consider the following comments when preparing the EIR, to ensure that impacts to State sovereign land are adequately

analyzed for the Commission's use of the EIR to support a future lease approval for the Project.

### General Comments

1. Project Description: A thorough and complete Project Description should be included in the EIR in order to facilitate meaningful environmental review of potential impacts, mitigation measures, and alternatives. The Project Description should be as precise as possible in describing the details of all allowable activities (e.g., types of equipment or methods that may be used, maximum area of impact or volume of sediment removed or disturbed, seasonal work windows, locations for material disposal, etc.), as well as the details of the timing and length of activities. In particular, show on figures and engineering plans and provide written description of activities occurring waterward of the mean high tide line for Project area waterways. Thorough descriptions will facilitate Commission staff's determination of the extent of the Commission's leasing jurisdiction, make for a more robust analysis of the work that may be performed, and minimize the potential for subsequent environmental analysis to be required.

### Biological Resources

2. For land under the Commission's jurisdiction, the EIR should disclose and analyze all potentially significant effects on sensitive species and habitats in and around the Project area, including special-status wildlife, fish, and plants, and if appropriate, identify feasible mitigation measures to reduce those impacts. The District should conduct queries of the California Department of Fish and Wildlife's (CDFW) California Natural Diversity Database and U.S. Fish and Wildlife Service's (USFWS) Special Status Species Database to identify any special-status plant or wildlife species that may occur in the Project area. The EIR should also include a discussion of consultation with the CDFW, USFWS, and National Marine Fisheries Service (NMFS) as applicable, including any recommended mitigation measures and potentially required permits identified by these agencies.
3. Invasive Species: One of the major stressors in California waterways is introduced species. Therefore, the EIR should consider the Project's potential to establish or proliferate aquatic invasive species (AIS) such as the quagga mussel, or other nonindigenous, invasive species including aquatic and terrestrial plants. For example, construction boats and barges brought in from long stays at distant projects may transport new species to the Project area via hull biofouling, wherein marine and aquatic organisms attach to and accumulate on the hull and other submerged parts of a vessel. If the analysis in the EIR finds potentially significant AIS impacts, possible mitigation could include contracting vessels and barges from nearby or requiring contractors to perform a certain degree of hull-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>).

4. Construction Noise: The EIR should also evaluate noise and vibration impacts on fish and birds from construction, restoration, and flood control activities in the water, on the levees, and for landside supporting structures. Mitigation measures could include species-specific work windows as defined by CDFW, USFWS, or NMFS. Again, staff recommends early consultation with these agencies to minimize the impacts of the Project on sensitive species.

#### Climate Change

5. Greenhouse Gas (GHG): A GHG emissions analysis consistent with the California Global Warming Solutions Act (Assembly Bill 32) and required by the State CEQA Guidelines should be included in the EIR. This analysis should identify a threshold for significance for GHG emissions, calculate the level of GHGs that will be emitted as a result of construction and ultimate build-out of the Project, determine the significance of the impacts of those emissions, and, if impacts are significant, identify mitigation measures that would reduce them to the extent feasible.

#### Cultural Resources

6. Submerged Resources: The EIR should evaluate potential impacts to submerged cultural resources in the Project area. The Commission maintains a shipwrecks database that can assist with this analysis. Commission staff requests that the District contact Staff Attorney Jamie Garrett (see contact information below) to obtain shipwrecks data from the database and Commission records for the Project site. The database includes known and potential vessels located on the State's tide and submerged lands; however, the locations of many shipwrecks remain unknown. Please note that any submerged archaeological site or submerged historic resource that has remained in state waters for more than 50 years is presumed to be significant. Because of this possibility, please add a mitigation measure requiring that in the event cultural resources are discovered during any construction activities, Project personnel shall halt all activities in the immediate area and notify a qualified archaeologist to determine the appropriate course of action.
7. Title to Resources: The EIR should also mention that the title to all abandoned shipwrecks, 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 California State Lands 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."

Mitigation and Alternatives

8. Deferred Mitigation: In order to avoid the improper deferral of mitigation, mitigation measures must be specific, feasible, and fully enforceable to minimize significant adverse impacts from a project, and “shall not be deferred until some future time.” (State CEQA Guidelines, §15126.4, subd. (a)). For example, references to the preparation of a permit from the State Water Resources Control Board to reduce an impact, without calling out the specific activities that will be included in the permit to reduce that particular impact to a less than significant level, is considered deferral. Commission staff requests that more specific information be provided in such mitigation measures (MMs) to demonstrate how the MM is going to mitigate potential significant impacts to less than significant.

Thank you for the opportunity to comment on the NOP for the Project. As a trustee and responsible agency, Commission staff requests that you consult with us on this Project and keep us advised of changes to the Project Description and all other important developments. Please send additional information on the Project to the Commission staff listed below as the EIR is being prepared.

Please refer questions concerning environmental review to Christine Day, Environmental Scientist, at (916) 562-0027 or [christine.day@slc.ca.gov](mailto:christine.day@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](mailto:jamie.garrett@slc.ca.gov). For questions concerning Commission leasing jurisdiction, please contact Dobri Tutov, Public Land Management Specialist, at (916) 574-0722 or [dobri.tutov@slc.ca.gov](mailto:dobri.tutov@slc.ca.gov).

Sincerely,



Eric Gillies, Acting Chief  
Division of Environmental Planning  
and Management

cc: Office of Planning and Research  
C. Day, Commission  
D. Tutov, Commission  
J. Garrett, Commission