

**CALIFORNIA STATE LANDS COMMISSION**

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*Established in 1938*

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Governor's Office of Planning & Research

**Jun 22 2020**

**STATE CLEARINGHOUSE**

June 22, 2020

File Ref: SCH # 2020050534

Alexander Prescott  
Regional Water Quality Control Board, Los Angeles Region  
320 West 4<sup>th</sup> Street, Suite 200  
Los Angeles, CA 90013

VIA ELECTRONIC MAIL ONLY ([alexander.prescott@waterboards.ca.gov](mailto:alexander.prescott@waterboards.ca.gov))

**Subject: Initial Study/Negative Declaration (IS/ND) for the Conditional Waiver of Waste Discharge Requirements for Discharges of Trash from Nonpoint Sources**

Dear Mr. Prescott:

The California State Lands Commission (Commission) staff has reviewed the subject IS/ND for the Conditional Waiver of Waste Discharge Requirements for Discharges of Trash from Nonpoint Sources (Waiver), which is being prepared by the Los Angeles Regional Water Quality Control Board (LARWQCB). The LARWQCB, 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. In addition, the Waiver may involve work on sovereign land, in which case the Commission would 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.

According to the tentative Waiver, the Commission is only named in the Santa Monica Bay Nearshore and Offshore Debris TMDL, under the category of "Non-Beach Open Space and Parks." Page 34 of the 2010 TMDL states that "The National Park Service, California Department of Parks and Recreation, County of Los Angeles, County of Ventura, and State Lands Commission, which have jurisdiction over non-beach open space and/or parks are assigned LAs (load allocations)." The Debris TMDL addresses nearshore and offshore Santa Monica Bay. Nearshore Santa Monica Bay is defined by the Ocean Plan as, within a zone bounded by the shoreline and a distance of 1,000 feet from the shoreline or the 30-foot contour, whichever is further from the shoreline. Table 10 of the same document indicates that the Commission is responsible for approximately 1.37 square miles of non-point source area in offshore Santa Monica Bay.

### **Description**

The LARWQCB proposes amendments to Chapter 7 of the Water Quality Control Plan – Los Angeles Region for multiple trash TMDLs. The LARWQCB states that the proposed Waiver for areas in the TMDLs would provide a better mechanism for trash and debris TMDLs to address discharges of trash from nonpoint sources and will not result in any potentially significant adverse effects on the environment.

Commission staff understands that the Waiver would include the following requirement on State lands within the TMDL:

- Preparation and adherence to a Minimum Frequency of Assessment and Collection (MFAC) and best management practices (BMP) program (MFAC/BMP Program), which would consist of regularly scheduled trash assessment, collection, and disposal, along with BMP implementation, to progressively reduce the amount of trash that accumulates between MFAC events.
- Preparation of an annual Trash Monitoring Reporting Program

### **Comments on Responsible Entity Designation**

Although the Commission was listed as a responsible entity in the 2010 TMDL, the Waiver should be revised to eliminate the Commission as a responsible entity, for multiple reasons. To begin with, the Commission was not notified when the 2010 TMDL was established, and so did not have an opportunity to comment on its inclusion when the program was first set up. Otherwise, Commission staff would have explained at that

time why it is inappropriate to include the Commission, considering the nature of its jurisdiction and the unique role it plays among the State's natural resources agencies.

The Commission is not a regulatory agency but instead is a land management agency chiefly concerned with leasing of State lands. Our staff structure and budget resources reflect that mandate, and the Commission has no monitoring, enforcement, or field staff who could carry out the TMDL and Waiver responsible entity tasks.<sup>1</sup>

In addition to not being a regulator, the Commission is not a member of the regulated community: the Commission as an agency has not undertaken development in Santa Monica Bay or undertaken any other activities as an agency that would contribute to debris and trash in the offshore or nearshore. The Commission's lessees are individually responsible for compliance with all environmental laws and regulatory permitting requirements as a condition of leasing State lands.

The Commission's budget is controlled by the Legislature and Governor, which have not designated funds for the Commission to participate in the tasks enumerated in the Waiver, and so the Commission lacks the necessary funding and staff to meaningfully contribute to these efforts. Moreover, the Legislature has not allocated funding to the Commission for specialized boats or other trash capture technologies that may be needed for removal of debris from offshore areas in Santa Monica Bay.

### **Environmental Review**

Although Commission staff agree that the removal of ocean debris is a positive endeavor, Commission staff requests that the LARWQCB consider the following comments on the IS/ND and Waiver.

#### Air Quality

The IS/ND states that there would be no impacts to Air Quality associated with the adoption of the Waiver, but responsible entities would likely be required to use boats or other trash capture technologies (e.g., skimmer vessels) on a regular basis for a long-term span of 5 years to comply with the Waiver, so an approximate calculation of the potential increase in air quality impacts (both onshore and offshore, worst case scenario) and the analysis of those impacts should have been included in the IS/ND and appropriate mitigation measures applied if analysis results in potential significant impacts.

#### Greenhouse Gas

The IS/ND states that "The greenhouse gas emissions from potential traffic for the implementation of the Waiver will be minor, localized, of short-term duration, and will

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<sup>1</sup> The Commission does administer very focused regulatory programs authorized by the Legislature in the areas of Marine Oil Terminal Engineering and Maintenance Standards and Marine Invasive Species, and has a small cadre of specialized staff associated with these regulatory programs. The Commission would not be able to assign these staff to TMDL compliance work. For more information, see <https://www.slc.ca.gov/motems/> and <https://www.slc.ca.gov/misp/>.

have less than significant impacts on the environment.” Commission staff disagree with this determination, and request that the increase in vehicle miles traveled due to increased workers collecting trash and/or monitoring, both onshore and offshore, be calculated and analyzed in the IS/ND. In addition, Commission staff do not consider 5 years to be a short-term duration.

A greenhouse gas (GHG) emissions analysis consistent with the California Global Warming Solutions Act (Assembly Bill [AB] 32) and required by the State CEQA Guidelines should be included in the IS/ND. This analysis should identify a threshold for significance for GHG emissions, quantify the operational GHG emissions from the Waiver requirements (both direct and indirect sources of emissions should be included in the calculations), determine the significance of the impacts of those emissions, and, if impacts are potentially significant, identify mitigation measures that would reduce them to the extent feasible.

### Biological Resources

As noted above, removal of debris from offshore areas in Santa Monica Bay may require the use of specialized boats or other trash capture technologies that may result in potential impacts to marine mammals. The IS/ND should analyze impacts related to various types of known large-scale ocean cleanup techniques and adopt measures to ensure impacts are less than significant.

Thank you for the opportunity to comment on the IS/ND for the Project. We request that you consider our comments prior to certification of the ND. Based on the comments above, the draft IS/ND does not include sufficient analysis of the potential impacts associated with an ongoing debris removal program to adequately inform our Commissioners and should be revised.

Please send copies of future Project-related documents, including electronic copies of the adopted ND 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](mailto:cynthia.herzog@slc.ca.gov). For questions regarding the Commission’s jurisdiction please contact Lucinda Calvo at (916) 574-1866 or [Lucinda.calvo@slc.ca.gov](mailto:Lucinda.calvo@slc.ca.gov).

Sincerely,



Eric Gillies, Acting Chief  
Division of Environmental Planning  
and Management

cc: Office of Planning and Research  
L. Calvo, Commission  
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