

**CALIFORNIA STATE LANDS
COMMISSION**

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Established in 1938

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July 12, 2024

File Ref: SCH #2020060655

Capitol Corridor Joint Powers Authority
Attn: South Bay Connect DEIR
2150 Webster St, 3rd Floor
Oakland, CA 94612

VIA ELECTRONIC MAIL ONLY (info@southbayconnect.com)

**Subject: Draft Environmental Impact Report for South Bay Connect, Alameda
County**

Dear Shirley Qian:

The California State Lands Commission (Commission) staff has reviewed the Draft Environmental Impact Report (EIR) for the South Bay Connect (Project), which is being prepared by the Capitol Corridor Joint Powers Authority (Authority). The Authority, 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 involves work on State sovereign land under the Commission's jurisdiction, 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.

As proposed, the Project will require Commission authorization and a lease for all areas where the new route will occupy sovereign lands. Please contact the Commission's Land Management Division staff identified at the end of this letter for more information on the Commission's jurisdiction and lease application process.

Project Description

The Authority proposes to relocate Capitol Corridor passenger rail service to a more efficient and reliable passenger rail (Union Pacific Railroad Coast Subdivision) between Oakland and Newark. The relocation will facilitate the separation of passenger and freight rail, improving rail operations, efficiency, and reliability while minimizing rail congestion within the corridor. The Project would include constructing a new passenger rail station at the existing Ardenwood Park-and-Ride on the Coast Subdivision to serve southern Alameda County passengers and create new transbay transit connections to the San Francisco Peninsula.

The EIR identifies the proposed Project as the Environmentally Superior Alternative.

Environmental Review

Commission staff requests that the Authority consider the following comments on the Project's EIR to ensure that impacts to State sovereign land are adequately analyzed for the Commission's use of the EIR when considering a future lease application for the Project.

General Comments

1. Lease from State Lands Commission: Please note that a lease, not an easement as stated in Table ES-1 on page ES-5, would be required from the Commission to temporarily or permanently cross any State sovereign lands. The Commission is prohibited by law from permanently alienating public trust land. To keep the Project on schedule, staff highly encourages the Authority to contact Commission staff about the Commission's leasing jurisdiction as

soon as possible to identify lease areas where the new route will occupy sovereign lands.

2. Project Description: The project proposes temporary and permanent occupation and improvements over a large linear area. This is difficult to visualize in the EIR based on existing text and figures. For example, Segment G in Figure 2-8 illustrates project activities in and near Alameda Creek, the details of which appear in the Project Description section under structures (bridges on page 2-27), retaining walls (page 2-12), and milepost 27 (pages 2-22). A one- or two-paragraph text description accompanying each "Segment" figure would help agency staff and the public better understand the Project scope and potential environmental impacts.
3. Best Management Practices (BMPs) and Mitigation Measures (MMs): Once the Authority applies for a lease from the Commission and Commission staff has gathered all necessary information for analysis of the application, staff will rely on both the BMPs (Table ES-4) and MMs (Table ES-5) when preparing a recommendation for the Commission to consider at a public meeting. Staff would appreciate the Authority submitting, as part of its lease application, a combined accounting of those BMPs and MMs intended to reduce potential environmental impacts. In addition, staff recommends that the Authority adopt a Mitigation Monitoring (and/or Reporting) Program that includes both BMPs and MMs. This document would facilitate Commission and other CEQA responsible agency review.

Cultural and Tribal Cultural Resources

4. Submerged Resources: The EIR evaluates potential impacts to submerged cultural resources in the Project area. The Commission maintains a shipwrecks database that can assist with this analysis. Please send inquiries to Shipwreck.Database@slc.ca.gov 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 construction activities, Project personnel shall halt all activities in the immediate area and notify a qualified archaeologist to determine the appropriate course of action.
5. Title to Resources Within Commission Jurisdiction: The EIR should state 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 consultation with the Authority should any cultural resources on State lands be discovered during construction of the proposed Project. In addition, staff requests that the following statement be included in Mitigation Measure (MM) CUL-4 on page 3.6-26: "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."

6. Tribal Monitor: Staff recommends that the text for MM CUL-5 clarify that Tribal monitoring may occur, at a Tribe's request, outside of recorded precontact archaeological site locations.

Recreation

7. Public Recreation: The public has a right to recreational use of the State's waterways, including navigation and fishing. The Commission upholds these rights through its leasing practices. The Project proposes to replace or improve several crossings over waterways. Staff urges the Authority to consider the effects of the Project on public recreation. For instance, when a bridge is replaced, vertical clearance over the waterway should not be decreased and the waterway should not be blocked to navigation for any longer than necessary. Where feasible, the Project could provide or improve access to the waterway for fishing or launching small craft. Measures such as these may also promote environmental justice by providing access to state resources in underserved communities.
8. Water Recreation Mitigation: Staff recommends that the Authority propose mitigation to inform the public (e.g., posting signs at relevant parking areas and posting notice on commonly known recreational websites) of when and for how long Project activities will affect public recreational use of waterways.

Thank you for the opportunity to comment on the EIR for the Project. As a responsible and trustee agency, the Commission will rely on the Final EIR in any action that it takes on this Project. Staff requests that you consider these comments before certifying the Final EIR.

Please send electronic copies of the Final EIR, Mitigation Monitoring (and/or Reporting) Program, Notice of Determination, approving resolution, CEQA Findings, and, if applicable, Statement of Overriding Considerations when they are final. Please note that federal and State laws require all government entities to improve accessibility of information technology and content by complying

with established accessibility requirements. (29 U.S.C. § 794d; 36 C.F.R. § 1194.1 et seq.; Gov. Code, § 7405.) California State law prohibits State agencies from publishing on their websites content that does not comply with accessibility requirements. (Gov. Code, § 115467.) Therefore, any documents submitted to Commission staff during the processing of a lease or permit, including all CEQA documentation, must meet accessibility requirements for Commission staff to place the application on the Commission agenda.

Refer questions concerning environmental review to Afifa Awan, Senior Environmental Scientist, at Afifa.Awan@slc.ca.gov or (916) 574-1891. For questions concerning Commission leasing jurisdiction, please contact Marlene Schroeder, Public Land Management Specialist, at Marlene.Schroeder@slc.ca.gov or (916) 574-2320.

Sincerely,



Nicole Dobroski, Chief
Division of Environmental Science,
Planning, and Management

cc: Office of Planning and Research
A. Awan, Commission
M. Schroeder, Commission