

**CALIFORNIA STATE LANDS COMMISSION**

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*Established in 1938*

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September 21, 2020

File Ref: SCH # 2020080353  
9/21/2020

Joanna Dixon  
Marin County Flood Control and Water Conservation District  
c/o: Panorama Environmental, Inc.  
717 Market Street, Suite 650  
San Francisco, CA 94103

Governor's Office of Planning & Research

**Sep 21 2020**

**STATE CLEARINGHOUSE**

VIA ELECTRONIC MAIL ONLY ([cortemaderacreek@marincounty.org](mailto:cortemaderacreek@marincounty.org))

**Subject: Notice of Preparation (NOP) for an Environmental Impact Report (EIR)  
for Corte Madera Creek Flood Risk Management Project, Phase 1, Marin  
County**

Dear Ms. Dixon:

The California State Lands Commission (Commission) staff has reviewed the subject NOP for an EIR for the Corte Madera Creek Flood Risk Management Project, Phase 1 (Project), which is being prepared by the Marin County Flood Control and Water Conservation 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 involves work on State sovereign land, the Commission will 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. Such boundaries may not be readily apparent from present day site inspections.

After review of the information contained in the NOP, Commission staff has determined that the waterway, over which the proposed Project will extend, includes State-owned sovereign land, as specified above. On April 25, 1968, the Commission authorized Lease No. PRC 3926 to the Marin County Flood Control and Water Conservation District for the construction of a flood control channel northwesterly of the Bon Air Bridge. This lease expired in 2017. Therefore, a new lease application is required.

### **Project Description**

The District proposes this Project with the primary goal to reduce the frequency and severity of flooding in the communities of Ross and Kentfield. The objectives of the Project include:

1. Flood Risk Reduction. Reduce overall flood inundation extent and depth in the Town of Ross and Kentfield areas.
2. Environmental Benefits. Improve fish passage, natural creek processes, and fish and riparian habitat adjacent to the creek.
3. Public Access and Recreational Quality. Maintain public access along the creek via the multi-use path and enhance the recreational experience and amenities along the Creek corridor to meet Town of Ross and Kentfield area community needs.
4. Operational Reliability. Improve operational reliability and reduce long-term maintenance costs through improving channel stability and protecting existing utilities.
5. Regulatory Compliance. Comply with local, state, and federal environmental laws and regulations.
6. Fiscally Responsible. Implement a flood risk reduction project that can be accomplished with local and grant funding and reasonably foreseeable grant funding opportunities.

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

- Unit 2. Enhancement of the Creek habitat by replacing the concrete channel with an earthen channel and vegetation downstream of Stadium Way. Submerged lands downstream of Stadium Way are considered State

sovereign land. Modifying the channel would include removal of the concrete channel and installation of vegetated and unvegetated rock slope protection.

### **Environmental Review**

Commission staff requests that the District consider the following comments when preparing the Draft EIR to ensure that impacts to State sovereign land are adequately analyzed for the Commission's use of the certified 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 Draft 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, illustrate on figures and engineering plans and provide written description of activities occurring below the mean high tide line for Project area waterways. For the work in Unit 2, describe how the Creek would be dewatered prior to concrete removal. Thorough descriptions will facilitate Commission staff's determination of the extent and locations of its 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 Draft 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 Draft 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 Draft EIR 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 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 Draft 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 Draft EIR should also evaluate noise and vibration impacts on fish and birds from construction and restoration activities in the water. Mitigation measures could include species-specific work windows as defined by CDFW, USFWS, and 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 [AB] 32) and required by the State CEQA Guidelines should be included in the Draft 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. For the proposed Project, the removal and disposal of the concrete in Unit 2 may result in substantial emissions.
6. Sea-Level Rise: A tremendous amount of State-owned lands and resources under the Commission's jurisdiction will be impacted by rising sea levels. 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. 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. The Safeguarding Plan sets forth "actions needed" to safeguard ocean and coastal ecosystems and resources as part of its policy recommendations for state decision-makers.

In addition, 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. Commission staff believes the goals of the proposed Project are consistent with the guidance and recommendations presented in the Safeguarding Plan, and that Project would benefit coastal management agencies' efforts to plan for more resilient shorelines and minimize adverse ecosystem impacts resulting from sea-level rise.

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. Therefore, this information should be included in the Draft EIR.

### Cultural Resources

7. **Title to Resources:** The Draft EIR should also mention that the title to all abandoned archaeological sites and historic or cultural resources on or in the 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 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 Draft EIR is being prepared.

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 concerning archaeological or historic resources under Commission jurisdiction, please contact Staff Attorney Jamie Garrett, at (916) 574-0398 or at [jamie.garrett@slc.ca.gov](mailto:jamie.garrett@slc.ca.gov). For questions concerning Commission leasing jurisdiction, please contact Al Franzoia, Public Land Management Specialist, at (916) 574-0992 or [al.franzoia@slc.ca.gov](mailto:al.franzoia@slc.ca.gov).

Sincerely,



Eric Gillies, Acting Chief  
Division of Environmental Planning  
and Management

cc: Office of Planning and Research  
J. Garrett, Commission  
A. Franzoia, Commission  
C. Herzog, Commission