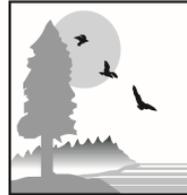


**CALIFORNIA STATE LANDS COMMISSION**  
100 Howe Avenue, Suite 100-South  
Sacramento, CA 95825-8202



*Established in 1938*

JENNIFER LUCCHESI, *Executive Officer*  
(916) 574-1800 Fax (916) 574-1810  
California Relay Service TDD Phone 1-800-735-2929  
from Voice Phone 1-800-735-2922

Governor's Office of Planning & Research

**Contact Phone: (916) 574-1890**

**Oct 13 2020**

## STATE CLEARINGHOUSE

October 12, 2020

File Ref: SCH #2020090220

Caltrans, District 10  
Attention: Dominic Vitali, District 10 Environmental  
1976 East Charter Way / East Martin Luther King Jr. Blvd.  
Stockton, CA 95205

SENT VIA ELECTRONIC MAIL ONLY TO [dominic.vitali@dot.ca.gov](mailto:dominic.vitali@dot.ca.gov)

**Subject: Initial Study with Proposed Mitigated Negative  
Declaration/Environmental Assessment (EA/MND) for the Manthey Road  
Bridge Replacement Project, San Joaquin County**

Dear Mr. Vitali:

The California State Lands Commission (Commission) staff has reviewed the subject EA/MND for the Manthey Road Bridge Replacement Project (Project), which is being prepared by the City of Lathrop (City) in coordination with the California Department of Transportation (Caltrans). The City, 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.), and Caltrans is the lead agency under the National Environmental Policy Act (NEPA) (42 U.S.C. § 4321 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 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.

On December 9, 2003, the Commission authorized Lease PRC 8496 with the City for the continued use and maintenance of the existing Manthey Road Bridge (old Highway 50 bridge) and proposed construction of a bike/pedestrian bridge. The lease is for 25 years, beginning December 9, 2003. However, the Project will require a lease application either to amend the existing lease or to request a new lease. (The application is available at [OSCAR.slc.ca.gov](https://oscar.slc.ca.gov).) The Commission's jurisdiction for both the existing lease and proposed Project areas is the San Joaquin Riverbed up to the ordinary high-water mark.

Promotion of public access to and use of California's navigable waters is a mandate of the California Constitution (Article 10, Section 4), a condition of statehood in the Act of Admission (Vol. 9, Statutes at Large, page 452), and a responsibility of State agencies pursuant to the Public Trust Doctrine, and in this case the Legislature has provided for a process to be followed regarding promoting access at bridge sites in the California Streets and Highways Code section 1809. During the design hearing process, the City of Lathrop is required to prepare a report on the feasibility of providing public access to the waterway for recreational purposes and determine if such public access will be provided.

### **Project Description**

The City proposes to replace the two-lane Manthey Road Bridge to improve safety for the bridge and immediate area, to provide circulation for current and future development, and to improve multimodal transportation across the San Joaquin River. The existing bridge is structurally deficient and functionally obsolete.

From the Project Description, Commission staff understands that the Project would include the following components (with associated construction footprints) that have potential to affect State sovereign land:

- **Bridge support piles:** The new bridge would be supported by three sets of two piers with cast-in-steel shell piles in the river.
- **Temporary barge or trestle piles and cofferdams/steel casings:** Impact pile driving would occur for the temporary trestle piles and/or the barge spud piles as well as to place the cofferdams for river dewatering.

- Demolition: The existing bridge foundations would be removed to three feet below the mudline, and the existing timber piles would be left in place. The EA/MND does not describe how the existing bridge structure would be removed.

### **Environmental Review**

Commission staff requests that the City consider the following comments on the Project's EA/MND to ensure that impacts to State sovereign land are adequately analyzed for the Commission's use of the EA/MND to support a future lease approval for the Project.

#### **General Comments**

1. Deferred Mitigation: In order to avoid the improper deferral of mitigation, mitigation measures (MMs) 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)(1)(B).) The EA/MND evaluates potential impacts for each affected resource section while considering "project features, which can include both design elements...and standardized [Caltrans] measures..." However, several avoidance and minimization measures (AMMs) in Sections 3.2.4 (Biological Resources), 3.2.9 (Hazards and Hazardous Materials), and 3.2.18 (Tribal Cultural Resources) do not appear to involve design elements and may require site-specific information and analysis. For example, noting that a Post Review Discovery and Monitoring Plan (Mitigation Measure CUL-1) to reduce tribal cultural resource impacts will be prepared, without calling out the specific activities that will be included to reduce impacts to a less than significant level, is considered deferral. AMMs identified in the CEQA checklist in Section 3 for western pond turtle, pallid and western red bats, anadromous fish species, lead and asbestos testing, and tribal cultural resource discovery may constitute deferred mitigation measures that could not be considered part of the proposed Project because they rely upon future criteria to be determined in the permitting process or are based on Project-specific conditions. For example, page 85 (Section 2.2.4, *Hazards and Hazardous Materials*) notes if lead or asbestos hazards are identified prior to bridge demolition, an abatement plan would be created and implemented. However, there is no further information to describe how the abatement would occur. The existing bridge is located over the San Joaquin River and could require additional or different equipment to prevent hazardous materials from entering the waterway. Unless this information is in the EA/MND, CEQA responsible agencies may need to conduct further environmental review to evaluate increased nitrous oxides (NO<sub>x</sub>) emissions.

Commission staff requests that more specific information be provided in the MMs and the AMMs to demonstrate how potentially significant impacts will be reduced to less than significant and to ensure that potential mitigation activities are adequately assessed.

2. Mitigation Monitoring and Reporting Program (MMRP): The adopted EA/MND will also require adoption of an MMRP, pursuant to CEQA Guidelines section 15074,

subdivision (d). Each MM and AMM, if used to lessen a potentially significant impact to less-than-significant (see #1, above) should include the associated timing for the measure, the agency responsible (if different from the City), and metrics to track and determine whether the measure has been fulfilled. Without this information, CEQA responsible agencies may need to take additional actions to ensure implementation for those activities under their respective jurisdiction.

3. Existing Bridge Demolition: While the EA/MND provides information regarding existing foundation removal, the document does not explain how any of the remaining existing bridge infrastructure would be removed. Please update the Project Description to describe all activities for complete removal to ensure that affected resources and mitigation measures have been addressed for all phases of Project implementation pursuant to CEQA Guidelines section 15063, subdivision (a)(1).
4. Construction equipment: Several proposed Project in-water work activities are contemplated to be performed either by an installed temporary trestle or by up to three barges brought to the construction site. Potential impacts from barge use are discussed in Section 3.2.4, *Biological Resources*, and elsewhere in the EA/MND but barges are not included in Table 1-2. Barges and their associated tugboats need to be included in the list of construction equipment to appropriately evaluate the worst-case air quality scenario, particularly tugboats because they have higher emissions than other land-based construction equipment. If these vessels were not already included in Tables 3.2.3-1 and 3.2.8-1, then Commission staff requests that the Tables be updated to include tugboat emissions. Regardless, the air quality and greenhouse gas (GHG) emissions calculations should be provided as an appendix to the adopted EA/MND.
5. Final Design: The Project description explains on page 20 that “site-specific details related to foundation and pile removal will be determined in final design, in coordination with the U.S. Coast Guard.” The foundation and timber piles are located under Commission jurisdiction in the bed of the San Joaquin River, and the Commission must therefore also be included as a coordinating agency for the final disposition of any structures proposed for abandonment in place.

#### Biological Resources

6. Invasive Species: The Project description notes that barges may be used for in-water work during bridge construction and/or demolition and Section 2.3.3, *Animal Species*, includes an AMM to address the associated potential to encourage the establishment or proliferation of aquatic invasive species (AIS) such as the quagga mussel, or other nonindigenous, invasive species including aquatic plants. The AMM is also identified in Section 3.2.4 of the CEQA checklist as a measure that will reduce the severity of the Project’s potentially significant impacts on special-status fish species. As such, this AMM should not state that hull cleaning would be performed “if feasible” but be revised to require contractors to perform a certain degree of hull cleaning. The AMM should also include the possibility of contracting vessels and barges from nearby. The CDFW’s Invasive Species Program could

assist with this analysis as well as with the development of appropriate Project design features (information at <https://www.wildlife.ca.gov/Conservation/Invasives>).

### Climate Change

7. 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 EA/MND. While the document provides the amount of carbon dioxide equivalent (CO<sub>2</sub>e) emissions produced during construction, the analysis fails to identify an associated CEQA threshold for significance for the GHG construction emissions and determine the significance of the impacts of those emissions. In addition, because there is no appendix showing the inputs for the Sacramento Metropolitan Air Quality Management District's (SMAQMD) Road Construction Emissions Model (Version 8.1.0), Commission staff is unable to determine if the tugboat emissions associated with barge vessel use are included in the 1,588 tons of CO<sub>2</sub>e presented in Table 3.2.8-1. Finally, since the EA/MND uses an SMAQMD model to calculate the emissions, Commission staff recommends that the City also use SMAQMD's GHG CEQA thresholds for construction impacts<sup>1</sup> which are a suitable metric for analysis. Table 3.2.8-1 should be updated to include the relevant CEQA threshold, facilitating CEQA responsible agency review of GHG emissions.

### Cultural Resources

8. Submerged Resources: The EA/MND 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 City 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.
9. Title to Resources: The EA/MND 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 Commission (Pub. Resources Code, § 6313). Commission staff requests that the City 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 EA/MND's

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<sup>1</sup> Sacramento Metropolitan Air Quality Management District CEQA Guide, page 6-11. Last revised April 2020. Visited on 10/3/2020 at <http://www.airquality.org/LandUseTransportation/Documents/Ch6GHG4-25-2020.pdf>

MMRP, "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."

### Recreation

10. Pursuant to California Streets and Highways Code section 1809, during the design hearing process, full consideration of, and a report on, the feasibility of providing public access to the subject waterway is required to be provided. The report should consider the following:

- An assessment of public access needs at the Project location, in addition to a benefit analysis of public access alternatives, not alternatives to access.
- A description of existing public access points and facilities in the Project vicinity, including the existing condition of these resources and entity responsible for maintenance.
- An assessment of existing constraints and hazards that could make on-site public access infeasible.
- A feasibility assessment of proposed on-site public access infrastructure, such as construction of trails, stairs, parking areas, trash cans, restrooms, etc.
- If on-site public access is infeasible, a feasibility assessment of alternatives, such as improving existing public access in the Project vicinity or creating new public access points to the subject waterway within the project vicinity.
- Environmental impacts of providing public access.
- A conclusion on the feasibility of providing public access.

If the report determines that public access is feasible, the EA/MND must reflect how public access improvements will be incorporated into the Project and identify any associated environmental impacts. Planning for preparation of the report should occur during the earliest stages of Project planning, and the report should be used to support the environmental impact analysis of the EA/MND. Because the Commission is acting as a responsible agency for purposes of its approval consideration, Commission staff will need to rely on the EA/MND adopted by the City, to make a CEQA based recommendation to the Commission on the Project. The EA/MND should, therefore, include the requested analysis on feasibility of providing public access to avoid delays with the Commission staff's processing of the application.

### Transportation

11. Vehicle Miles Traveled (VMT) analysis: The CEQA checklist in Section 3.2.17, *Transportation*, requires the City to determine whether the Project is inconsistent with CEQA Guidelines section 15064.3, subdivision (b). Commission staff recommends that the EA/MND analysis also discuss the VMT generated during the Project's construction period to account for all vehicles considered part of the

Project. In December 2018, the Office of Planning and Research provided an updated Technical Advisory to evaluate transportation impacts in CEQA. In particular, the advisory suggests evaluating whether the Project generates or attracts fewer than 110 one-way trips per day as a metric to determine significance. Please update the EA/MND to include an analysis of the VMT generated during the Project's two-year construction period.

### Tribal Cultural Resources

12. Tribal Consultation: The EA/MND describes the Section 106 consultation outreach that occurred in 2014 and 2016, wherein one Tribe noted that there are sensitive resources in the Project area and requested involvement during ground disturbance activities. However, it does not appear that the City requested any updated list from the Native American Heritage Commission in the last four years. Commission staff notes that many Tribes have been added and have had contact information updated in the ensuing time. As such, the EA/MND should include a more recent inquiry to ensure that all interested Tribes have an opportunity to engage. In the absence of more recent tribal consultation, CEQA responsible agencies may need to conduct additional outreach and consultation/coordination which could result in additional or modified CEQA mitigation measures to address tribal cultural resource impacts.
13. Assembly Bill (AB) 52: In addition, the City has not provided sufficient information to demonstrate compliance with AB 52 (Gatto; Stats. 2014, ch. 532), which applies to all CEQA projects initiated after July 1, 2015.<sup>2</sup> AB 52 provides procedural and substantive requirements for lead agency consultation with California Native American Tribes, consideration of effects on Tribal Cultural Resources (as defined in Pub. Resources Code, § 21074), and examples of mitigation measures to avoid or minimize impacts to these resources. The EA/MND should disclose whether any Tribe has requested notification from the City under AB 52 for the Project's geographic area of interest, discuss the City's outreach results from a more recent general list of interested Tribes for the Project area, and disclose and analyze potentially significant effects to Tribal Cultural Resources. This information would help CEQA responsible agencies and public understand the City's efforts to comply with AB 52 requirements.
14. Tribal Cultural Resource Impact Significance: With respect to significance determinations, CEQA section 21084.2 states that, "A project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment." When feasible, public agencies must avoid damaging effects to Tribal Cultural Resources, and shall keep information submitted by the Tribes confidential. Commission staff believes that the EA/MND lacks adequate support for the City's conclusion on page 250 that impacts to Tribal Cultural Resources are less than significant with incorporation of MM CUL-1 and Caltrans' standardized stop work measures. Staff recommends that the City provide additional discussion on how it determined the appropriate scope

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<sup>2</sup> Sections 21073, 21074, 21080.3.1, 21080.3.2, 21082.3, 21083.09, 21084.2, and 21084.3 were added to CEQA pursuant to AB 52.

and extent of resources meeting the definition of Tribal Cultural Resources and whether locally-affiliated Tribes were consulted as part of this determination.

Finally, MM CUL-1 is offered to ensure that impacts to potential tribal cultural resources would be less than significant. The measure only states that, "monitoring guided by the Post Review Discovery and Monitoring Plan will be required in areas that have been identified as sensitive for buried archaeological resources", and provides no metrics by which an interested, culturally affiliated Tribe could determine whether the proposed action will reduce any impact. In fact, MM CUL-1 does not include any language requiring the City or assigned contractor to coordinate with the Northern Valley Yokut Tribe (who responded to the 2016 Section 106 outreach) when developing a plan. Commission staff strongly encourages the City to revise MM CUL-1 to state that the Post Review Discovery and Monitoring Plan will be developed and implemented in coordination with culturally affiliated tribes who have requested participation.

Thank you for the opportunity to comment on the EA/MND for the Project. As a responsible and trustee agency, the Commission will need to rely on the adopted EA/MND for the issuance of any lease approval as specified above and, therefore, we request that you consider our comments prior to adoption of the EA/MND.

Please send copies of future Project-related documents, including notification of any public hearing to adopt the EA/MND and subsequent electronic copies of the adopted EA/MND, MMRP, and Notice of Determination when they become available. Please refer questions concerning environmental review to Alexandra Borack, Senior Environmental Scientist at [alexandra.borack@slc.ca.gov](mailto:alexandra.borack@slc.ca.gov). For questions concerning archaeological or historic resources under Commission jurisdiction, please contact Staff Attorney Jamie Garrett at [jamie.garrett@slc.ca.gov](mailto:jamie.garrett@slc.ca.gov). For questions concerning Commission leasing jurisdiction, please contact Marlene Schroeder, Public Lands Management Specialist III at [marlene.schroeder@slc.ca.gov](mailto:marlene.schroeder@slc.ca.gov).

Sincerely,



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Eric Gillies, Acting Chief  
Division of Environmental Planning  
and Management

cc: Office of Planning and Research  
M. Schroeder, Commission  
P. Huber, Commission  
J. Garrett, Commission  
J. Mattox, Commission