

CALIFORNIA STATE LANDS COMMISSION

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Established in 1938

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Governor's Office of Planning & Research

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STATE CLEARINGHOUSE

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File Ref: SCH #2020100329

Gilbert Labrie, AIA
Brannan-Andrus Levee Maintenance District
P.O. Box 929
Walnut Grove, CA 95690

VIA ELECTRONIC MAIL ONLY (GLabrie@DCCEng.net)

Subject: Initial Study/Mitigated Negative Declaration (IS/MND) for the Brannan-Andrus Levee Maintenance District Sacramento River Erosion Control and Habitat Enhancement Project, Sacramento County

Dear Mr. Labrie:

The California State Lands Commission (Commission) staff has reviewed the subject IS/MND for the Sacramento River Erosion Control and Habitat Enhancement Project (Project), Sacramento County, which is being prepared by the Brannan-Andrus Levee Maintenance 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, since 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 ordinary high water mark as generally indicated by 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.

At the locations of the proposed Project, the Sacramento River is State-owned sovereign land. Based upon the information provided and a preliminary review of Commission records, Commission staff has determined that the proposed Project will require submission of a lease application for issuance of a lease. The application can be found at our website at www.slc.ca.gov. Please contact Al Franzoia for jurisdiction and leasing requirements for the Project (see contact information at end of letter).

Project Description

The District proposes to implement the Project to repair areas of levee erosion located on the left bank of the Sacramento River, between the City of Isleton and the confluence of the Sacramento River and Deep-Water Ship Channel. The proposed Project will increase levee stability and improve the level of flood protection for Brannan and Andrus islands by repairing areas of levee erosion. The proposed erosion control project is also required to implement/incorporate methods that provide enhanced riparian and wetland habitat in this reach of the Sacramento River that currently provides limited fish habitat.

The Project objectives are to:

- Provide suitable levee erosion control on approximately 1.2 nautical miles of levee on the left bank of the Sacramento River in three locations.
- Provide fish-friendly habitat on the Sacramento River channel margin through the creation of wetland and riparian benches.
- Minimize long-term maintenance and repair costs by repairing existing areas of erosion using stable and effective erosion control methodologies.

From the Project Description (Section 2.3.4 of the IS/MND), Commission staff understands that the Project would include the following component that has the potential to affect State sovereign land:

- Planted Wetlands Bench. Planted Wetlands Benches at the three Erosion Control/Habitat Enhancement Sites would be established approximately 1.8 feet below mean high water and extend a minimum of 8 feet into the channel from the waterside levee toe. The base of the containment berms would be 2 to 3 feet below the mean lower low water line (MLLW).

Environmental Review

Commission staff requests that the District consider the following comments on the Project's IS/MND to ensure that impacts to State sovereign land are adequately

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

General Comments

1. Public Agency Approvals: As stated in the IS/MND Project Description, a portion of the rock protection for the waterside berms would be below the mean high-tide line, and under the Commission's jurisdiction. Therefore, Commission staff request that the IS/MND identify the Commission as a public agency with discretionary approval over the Project.
2. Avoidance and Minimization Measures vs. Mitigation Measures. A list of Avoidance and Minimization Measures (AMMs) is listed in Section 2.3.11 of the IS/MND. The IS/MND states that these measures "...would be incorporated into the Proposed Project to assist in mitigating the potential environmental effects during construction," which indicates that the measures would reduce potential impacts prior to a significance determination. Therefore, when assessing environmental effects these measures would not be considered "mitigation." However, on some of the resource checklists the "less than significant with mitigation incorporated (LSWM)," box has been checked, and the text indicates that the impacts are reduced to less than significant with incorporation of identified mitigation measures (MMs) and AMMs. For example, under Section 3.4.2, Biological Resources issue areas (a, d, & e), the impacts were found to be LSWM. Commission staff suggests that the AMMs identified (AMM 1 – AMM 5) to further reduce the level of identified impacts be included as part of the MMs. Other resource areas where this is an issue are Aesthetics (AMM 5), Geology/Soils (AMM 3), and Hydrology and Water Quality (AMM 1 – AMM 4). Consequently, these AMMs will be identified as additional MMs in the Commission's review and use of the IS/MND during the lease application process, if it is determined the AMMs will further reduce impacts of resources identified on State sovereign Land.
3. 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 CDFW 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 MMs to demonstrate how the MM is going to mitigate potential significant impacts to less than significant.

Climate Change

4. A tremendous amount of State-owned lands and resources under the Commission's jurisdiction will be impacted by rising sea levels. With this in mind, the District should consider discussing in the IS/MND if and how various Project components might be affected by sea-level rise and whether "resilient" designs have been incorporated.

In rivers and tidally influenced waterways, more frequent and powerful storms can result in increased flooding conditions and damage from storm-created debris as well as decreased bank stability and structure. Conversely, climate-change induced droughts could decrease river levels and flow for extended periods of time. Flooding and storm flow, as well as runoff, will likely increase scour and sediment accumulation and decrease bank stability at a faster rate. Regular maintenance and implementing best management practices will help reduce the likelihood of severe future structural degradation and dislodgement. The Sacramento River and its surroundings are generally in a low-lying, flood-prone area that will be affected by rising sea levels.

The California Ocean Protection Council updated the State of California Sea-Level Rise Guidance in 2018 to provide a synthesis of the best available science on sea-level rise projections and rates. Attention should be given to sea-level rise projections to ensure the proposed structures' designs are sufficient to ensure function, safety, and protection of the environment over the expected life of the structure. 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.

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. In addition, 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.

Cultural and Tribal Resources

5. Title to Resources: The IS/MND should mention that the title to all 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 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

IS/MND'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."

Geology/Soils

6. Paleontological Resources: Under Section 3.7 of the IS/MND, Geology/Soils issue area (f), the impact was found to be LSWM. In the Summary of findings in section 1.4, it was identified as less than significant (LTS). There appears to be a disconnect or an error identifying whether the impact was LTS or LTSW.

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

Please send copies of future Project-related documents, including electronic copies of the adopted MND, Mitigation Monitoring and Reporting Program, and Notice of Determination, when they become available. Please refer questions concerning environmental review to Christopher Huitt, Senior Environmental Scientist, at (916) 574-2080 or Christopher.Huitt@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. For questions concerning Commission leasing jurisdiction, please contact Al Franzoia, Public Land Management Specialist, at (916) 574-0992 or Al.Franzoia@slc.ca.gov.

Sincerely,



Nicole Dobroski, Chief
Division of Environmental Planning
and Management

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