

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

Governor's Office of Planning & Research

Dec 04 2020

STATE CLEARINGHOUSE



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

Contact Phone: (916) 574-1890

December 4, 2020

File Ref: SCH #2020110089

Nicholas White
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive #200
Rancho Cordova, CA 95670

VIA ELECTRONIC MAIL ONLY (nicholas.white@waterboards.ca.gov)

Subject: Initial Study/Mitigated Negative Declaration (IS/MND) for Bobcat Flat Phase III Salmon Habitat Restoration Tuolumne River, Stanislaus County

Dear Mr. White:

The California State Lands Commission (Commission) staff has reviewed the subject IS/MND for the Bobcat Flat Phase III Salmon Habitat Restoration Tuolumne River (Project), which is being prepared by the Regional Water Quality Control Board, Region 5 Central Valley (RWQCB). The Tuolumne River Conservancy, Inc. (Conservancy) is the Project proponent and the RWQCB 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-owned 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 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.

Based on the scope of work and specific location, the proposed Project will, at a minimum, encroach on State-owned sovereign land as determined by the ordinary low-water mark in the Tuolumne River, a navigable and non-tidal waterway. At this time, it appears that a lease from the Commission *is required* to carry out the proposed Project. Therefore, the Conservancy must submit a lease application to the Commission for use of State land.

As the Project advances towards implementation, the Commission requests future communications related to the Project.

Project Description

The Conservancy proposes to restore, increase, and enhance the quantity and quality of salmonid spawning and rearing habitat and improve habitat for waterfowl and other aquatic and terrestrial species. The Conservancy's objectives are to restore the Tuolumne River and its adjacent habitat for native fish, birds, and mammals for the present and the future.

From the Project Description, Commission staff understands that the Project would include the following components that have potential to affect State-owned sovereign land:

- Project Component 1. Reestablishing natural floodplain processes through channel contouring and connections
- Project Component 2. Replenishing spawning gravel through augmentation
- Project Component 3. Bank re-vegetation and riparian habitat preservation activities promoting both wetland and upland native plant communities

Environmental Review

Commission staff requests that the RWQCB consider the following comments on the Project's IS/MND, to ensure that impacts to State-owned sovereign land are adequately analyzed for the Commission's use of the IS/MND in consideration of a future lease approval for the Project.

General Comments

1. Project Description: A thorough and complete Project Description should be included in the IS/MND 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, both for inundation areas and for restoration activities. Thorough descriptions and finalized locations of the proposed activities shown in Figures 4 and 5 of the IS/MND 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. Commission staff are unable to meaningfully analyze and comment on impacts within the Commission's jurisdiction at this time because the Draft IS/MND does not adequately describe the construction activities. Subsequent environmental documentation could be required if the Final IS/MND does not describe details of the Project's activities.

Cultural Resources

2. Mitigation Measure CULT-2: The IS/MD should also mention that the title to all archaeological sites and historic or cultural resources on lands of California is vested in the state and under the jurisdiction of the Commission (Pub. Resources Code, § 6313). Commission staff requests that the Conservancy consult with Staff Attorney Jamie Garrett, whose contact information is provided below, 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 Monitoring Reporting Program (MMRP), "The final disposition of archaeological, historical, and paleontological resources recovered on State land under the jurisdiction of the California State Lands Commission must be approved by the Commission."
3. Mitigation Measure CULT-3: If human remains are discovered on State-owned land, the Commission must also be notified. Therefore, Commission staff requests that the following statement be added to Mitigation Measure CULT-3, "Should human remains be discovered on State land, the Conservancy shall also notify the California State Lands Commission within 24 hours of the discovery."

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 new 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, MMRP, Notice of Determination, and the RWQCB's Project approval document when they become available. Please refer questions concerning environmental

review to Alexandra Borack, Senior Environmental Scientist, at (916) 574-2399 or Alexandra.Borack@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 and lease application process, please contact Joanne Holt, Public Land Management Specialist, at (916) 574-1832 or Joanne.Holt@slc.ca.gov.

Sincerely,



Nicole Dobroski, Chief
Division of Environmental Planning
and Management

cc: Office of Planning and Research
J. Holt, Commission
J. Garrett, Commission
E. Kennedy, Commission
A. Borack, Commission