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Established in 1938

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STATE CLEARINGHOUSE

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File Ref: SCH # 2020120220

Traci Michel
Parks and Recreation Department
City of West Sacramento
1110 West Capitol Avenue
West Sacramento, CA 95691

VIA ELECTRONIC MAIL ONLY (tracim@cityofwestsacramento.org)

Subject: Initial Study/Mitigated Negative Declaration (IS/MND) for Bees Lakes Habitat Restoration Plan and Design Project, Yolo County

Dear Ms. Michel:

The California State Lands Commission (Commission) staff has reviewed the IS/MND for the Bees Lakes Habitat Restoration Plan and Design Project (Project), which is being prepared by the city of West Sacramento (City). 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.). The Commission is a trustee agency for projects that could directly or indirectly affect sovereign land and their accompanying Public Trust resources or uses. Additionally, because the Project involves work on 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. Such boundaries may not be readily apparent from present day site inspections.

Based on the information provided in the IS/MND, and a preliminary review of our records, it appears that a portion of the Project extends onto State-owned sovereign lands under the jurisdiction of the Commission, which were conveyed to the State in fee under title settlement agreement AD 600 between the Commission and Sue Paik, Assessor's Parcel Number (APN) 046-050-061. These lands were referred to as the "State Parcel" in that agreement. On March 29, 2012, the Commission authorized the State parcel and a Public Trust easement to be acquired in the Bees Lake Parcel, APN 046-050-062. Also, adjacent to the Project site in the Sacramento River a boundary settlement and exchange agreement (BLA #168) has established the ordinary high-water mark at this location.

In addition, a Public Trust easement exists within the Bee's Lake parcel. Activities within the easement may be limited to the extent necessary to protect sensitive species, identified cultural or historic resources, or safety of the general public provided that the interference with public access is limited to the minimum extent and time necessary to accomplish the public purpose. If any portions of the Project will occur within the easement, our office will require that any proposed improvements be designed and constructed to provide legal public access either over or around the proposed improvements in order to preserve and maintain the legal public access.

A lease for the use of sovereign land will be required from the Commission for the portion of the Project within the State Parcel, and for any portion of the Project that extends below the high-water mark of the Sacramento River. The lease application is available online through our website at <https://www.slc.ca.gov/leases-permits>. If you have any questions, please contact Mary Jo Columbus (contact information provided below).

Project Description

The proposed Project includes implementing ecosystem, water quality, and recreational improvements at the Bees Lakes site consistent with the goals and objectives identified in the Final Bees Lakes Habitat Restoration Plan. Project site restoration includes:

- Focused removal and control of target invasive species
- Disposal of potentially contaminated soil from the two ponds on the site, treatment of the pond water, and removal of trash from the ponds
- Installation of a submerged or floating aeration diffusion device to increase pond aeration and water circulation

- Potential creation of marked foot trails, elevated boardwalks, Americans with Disabilities Act access ramps, an equestrian trail, a ten-stall parking area, portable bathrooms, two large viewing platforms, multi-purpose picnic/recreational areas, way-finding signage, and information kiosks

From the Project Description, Commission staff understands that the Project would include the following components that have potential to affect State Parcel and require a lease from the Commission:

- Optional riverside stairs and out-and-back trail (as depicted on Exhibit 3, *Proposed Project Components*)

In addition, because the Commission has a Public Trust easement on the Bee's Lakes Parcel, comments have been included on impacts to resources within that parcel as well.

Environmental Review

Commission staff requests that the City 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 MND to support a future lease approval for the Project.

Biology

1. Mitigation Measure (MM) BIO-1 is meant to address impacts to special-status species with the potential to occur onsite; however, specific measures relevant to species such as the valley elderberry longhorn beetle (VELB), western pond turtle, or various nesting raptors is absent. In the case of the VELB, impacts may be assumed if activity takes place within 100 feet of a suitable shrub. Therefore, a VELB survey should be conducted to determine potential impacts and the plan modified accordingly. For raptors, the IS/MND should state that vegetation removal should avoid nesting season, or that a pre-construction survey be conducted and likewise for the western pond turtle. Commission staff request that rather than simply stating that candidate species will be avoided, specific measures be established to guide Project avoidance.
2. MM BIO-2 states that the proposed Project would require regulatory permits from the U.S. Corps of Engineers and the Regional Water Quality Control Board. The MM further states that the Project would "Implement any measures identified within these permits designed to offset the loss of Waters of the U.S. and/or wetlands." Therefore, the impacts were found to be less than significant.

In order to avoid the improper deferral of mitigation, 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)). For example, references to obtaining permits from regulatory agencies to

reduce an impact, without calling out the specific activities in the document to reduce that particular impact to a less than significant level, may be considered deferral. Commission staff suggest that MM BIO-2 be re-written and if best management practices or measures are required to reduce the impact to a less than significant level, that they are clearly detailed as part of the Project plans or called out in the MM.

Cultural Resources

3. Tribal Engagement and Consideration of Tribal Cultural Resources. The IS/MND states that the document "...relied heavily on previous research conducted for the Southport EIP," which was conducted in 2011 through 2013. The proposed Project appears to be a separate and complete project from the Southport Sacramento River Early Implementation Project (Southport EIP), therefore, Commission staff recommends that the City revise the IS/MND to reflect the September 2016 update to the State CEQA Guidelines Appendix G Checklist Form (see https://www.opr.ca.gov/s_ab52.php) and expand the discussion of Tribal engagement and consideration of Tribal Cultural Resources in order to demonstrate compliance with AB 52 (Gatto; Stats. 2014, ch. 532), which applies to all CEQA projects initiated after July 1, 2015.¹ The Commission staff notes that the IS/MND does not contain sufficient information as to how the City has complied with AB 52 provisions, which provide 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. Updated information in the IS/MND should include:

- Evidence of recent contact with the Native American Heritage Commission to obtain a general list of interested Tribes for the Project area.
- The results of this inquiry, inclusive of what Tribes received outreach letters and whether the City received any responses from the Tribes to maintain a clear record of the City's efforts to comply with AB 52.
- Potentially significant effects to Tribal Cultural Resources, analysis of these impacts, and measures to avoid impacts when feasible.

In addition, MM CUL-1 should be revised to include consultation with, and inclusion of, Tribal members in monitoring efforts during construction in addition to a qualified archaeologist.

4. 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 City consult with Staff

¹ 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.

Attorney Jamie Garrett (contact information at the end of this letter) 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 Commission must be approved by the Commission."

Climate Change

5. Sea-Level Rise. Although sea-level rise is briefly discussed on page 3-65 of the IS/MND, affects to the proposed Project due to sea-level rise is requested. 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. 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. Comments 4 and 5, below, should be addressed in the final EIR to facilitate Commission staff's evaluation of the proposed Project for leasing purposes.

For this reason, Commission staff requests that the IS/MND discuss how Project components would be affected by the stated sea-level rise of 38.4 to 40 feet, and how the City would respond to these affects. Please contact Kelly Keen, Division of Environmental Planning and Management (contact information at the end of this letter), for further information or questions about the Commission's sea level rise and climate adaptation programs.

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 amended/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, Mitigation Monitoring and Reporting Program, and Notice of Determination when they become available. Please refer questions concerning environmental review to Cynthia Herzog, Senior Environmental Scientist, at (916) 574-1310 or 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 jamie.garrett@slc.ca.gov. For further information or questions about the Commission's sea level rise and climate adaptation programs, please contact Kelly Keen at kelly.keen@slc.ca.gov. For questions concerning Commission leasing jurisdiction, please contact Mary Jo Columbus, Public Land Management Specialist, at (916) 574- 0204 or MaryJo.Columbus@slc.ca.gov.

Sincerely,



Nicole Dobroski, Chief
Division of Environmental Planning
and Management

cc: Office of Planning and Research
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