

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

Contact Phone: (916) 574-1890

Governor's Office of Planning & Research

Feb 22 2021

STATE CLEARINGHOUSE

February 22, 2021

File Ref: SCH #2021010273

Tina Anderson
MBK Engineers
38563 Netherlands Road
Clarksburg, CA 95612

VIA ELECTRONIC MAIL ONLY (Anderson@mbkengineers.com)

Subject: Initial Study/Mitigated Negative Declaration (IS/MND) for the Sutter Slough Critical Erosion Repairs Flood System Repair Project, Yolo and Solano Counties

Dear Tina Anderson:

The California State Lands Commission (Commission) staff has reviewed the IS/MND for the Sutter Slough Critical Erosion Repairs Flood System Repair Project (Project), which is being prepared by the Reclamation District Number 999 (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 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.

The proposed Project will include work in Sutter Slough, which at this location is natural subject to artificial conditions (levees), navigable, and tidal and, therefore, is State-owned sovereign land under the jurisdiction of the Commission. A lease from the Commission will be required for the portion of the project located in Sutter Slough. Please contact Jannalisa Toy (contact information provided at the end of this letter) for more information.

Project Description

The erosion repair sites within the Project area are located along the Sutter Slough Levee (District Unit 3). The District proposes to address bank loss, toe scour, and erosion by flattening the waterside bank slope and placing riprap to reestablish the bank slope and channel or monitor conditions within erosion sites to meet the District's objectives and needs as follows:

- Restore the design profile of the Sutter Slough Levee (Unit 3), where possible, in accordance with the U.S. Army Corps of Engineer's Supplement to Standard Operation and Maintenance Manual, Sacramento River Flood Control Project, Unit No. 113 [revised] (USACE 1966).
- Implement erosion repairs while limiting in-water work and vegetation removal to the extent feasible.

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

- Site preparation activities consisting of grading, clearing ruderal plants, clearing debris, and trimming tree limbs below the ordinary high-water mark (OHWM)
- The placement of riprap below the OHWM

Environmental Review

Commission staff requests that the District consider the following comments on the Project 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.

General Comments

1. Public Agency Approvals: As stated above, work below the OHWM in Sutter Slough will require a lease from the Commission; therefore, Commission staff requests that Section 2.7 identify the Commission as a public agency with jurisdiction and discretionary approval over the Project.

Biological Resources

2. Invasive Species: One of the major stressors in California waterways is introduced species. Therefore, the IS/MND 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, barges brought in from long stays at distant projects may transport new species to the Project area via 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 IS/MND finds potentially significant AIS impacts, possible mitigation could include contracting vessels and barges from nearby or requiring contractors to perform cleaning of submerged vessel surfaces prior to arrival at the Project area. The Commission's Marine Invasive Species Program and 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>).

Climate Change

3. 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.

Commission staff believes that the goals of the proposed Project are consistent with the guidance and recommendations presented in the Safeguarding Plan, as the placement of riprap would create more resilient banks in the slough and minimize adverse ecosystem impacts resulting from sea level rise. However, Commission staff suggests additional information be included in the IS/MND related to sea-level rise and whether the Project would provide continued protection of the banks under current sea-level rise projections. Please contact Maren Farnum (contact information provided at the end of this letter) for further information or questions about the Commissions' sea level rise and climate adaptation programs.

Cultural Resources

4. 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 Program: "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

5. Page 2-12 of the IS/MND states that "Prior to construction activities, signage would be posted at the Slough Entrance (near the Sutter Slough bridge off the Sacramento River) alerting boaters to downstream construction activities so they do not enter the work area." Commission staff is concerned that recreational boaters may enter the slough at different locations and may not see the singularly placed sign. Therefore, additional signage is suggested to address this potential impact more completely in regard to recreational users.

Thank you for the opportunity to comment on the IS/MND for the Project. As a responsible and trustee agency, Commission staff will need to rely on the adopted MND for the issuance of a 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 and Monitoring Program, Notice of Determination, and signed Resolution 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 Jamie Garrett, Staff Attorney, at (916) 574-0398 or Jamie.Garrett@slc.ca.gov. For questions regarding sea-level rise, please contact Maren Farnum, Senior Environmental Scientist, at (916) 574-0966 or maren.farnum@slc.ca.gov. For questions concerning Commission leasing jurisdiction,

please contact Jannalisa Toy, Public Land Management Specialist, at (916) 574-1926
or jannalisa.toy@slc.ca.gov

Sincerely,

A handwritten signature in black ink that reads "Nicole Dobroski". The signature is written in a cursive, flowing style.

Nicole Dobroski, Chief
Division of Environmental Planning
and Management

cc: Office of Planning and Research
C. Herzog, Commission
J. Garrett, Commission
J. Toy, Commission
M. Farnum, Commission