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Established in 1938

July 26, 2021

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Governor's Office of Planning & Research

July 26 2021

STATE CLEARINGHOUSE

File Ref: SCH # 2021060578

Port of Stockton
Jason Cashman, Environmental Manager
2201 West Washington Street
Stockton, California 95203

VIA ELECTRONIC MAIL ONLY (ceqa@stocktonport.com)

Subject: Initial Study/Mitigated Negative Declaration (MND) for the Port of Stockton Rail Bridge Replacement and Rail Improvements Project, San Joaquin County

Dear Jason Cashman:

The California State Lands Commission (Commission) staff has reviewed the MND for the Port of Stockton Rail Bridge Replacement and Rail Improvements Project (Project), which is being prepared by the Port of Stockton (Port). The Port, 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.

Based on the MND, staff understands that the Project's rail bridge crossing the San Joaquin River (River) falls within the Commission's jurisdiction because the crossing is within the boundaries of the River's mean high-tide line (also stated on MND page 32). In addition, Project construction requires significant in-water work. Therefore, a lease from the Commission will be required for the Project. An application may be submitted to the Commission through the online application portal ([OSCAR.slc.ca.gov](https://oscar.slc.ca.gov)). If you have questions specific to jurisdiction, lease provisions, or the application process, please contact Public Land Management Specialist Marlene Schroeder (contact information below).

Project Description

The Port proposes to replace an existing outdated single-track rail bridge with a new double-track rail bridge over the River and make improvements to upland rail and transportation components. The new rail bridge will connect the Port's East and West Complexes and increase overall efficiency of train operations within the Port to support projected increases in future train volumes and to meet the Port's objectives and needs for the Project as follows (MND page 14):

- Eliminate outbound staging bottlenecks
- Increase efficiency of train operations on the East Complex
- Increase efficiency of train operations between the East Complex and West Complex
- Mitigate the potential risk of bridge closure, including from fires originating on creosote-treated wood ties/decking on the rail bridge
- Allow for the movement of larger cargo types between the East Complex and West Complex
- Enable the Port to accommodate approved and anticipated tenant rail projections
- Increase rail car storage capacity at the Port

From the Project Description, staff understands that the Project's construction of a new double-track rail bridge and removal of the existing rail bridge (MND page 24) will affect State sovereign land. The Project will occur in phases from 2023 through 2025.

Environmental Review

Commission staff requests that the Port consider the following comments on the Project's MND, to ensure that impacts to State sovereign land are adequately analyzed for the Commission's use of the MND when considering a future lease application for the Project.

General Comments

1. Lease Application: Staff was grateful for the opportunity to better understand the Project and ask questions during the agency staff webinar (Webinar) on July 14, 2021. As discussed during the Webinar, the Port plans to submit a lease application. Therefore, staff recommends the following materials be provided with the lease application for Commission consideration of a lease:
 - a. Mitigation Monitoring Program: Even though this is not part of the current MND, Port staff explained that it would be part of the final MND. Additionally, adoption of a Mitigation Monitoring Program is required as part of the project approval (State CEQA Guidelines, §§ 15074, subd. (d), and 15097).
 - b. List of Mitigation Measures: Although this was not discussed during the Webinar, staff recommend that the MND identify the mitigation measures that apply to land under the Commission's jurisdiction.
 - c. Summary of environmental justice outreach and outcomes for this Project.
 - d. Summary of Tribal Cultural Resources or Consultations.
2. Increase Readability: As brought up during the Webinar, staff would appreciate it if the following information was addressed in the MND:
 - a. Figure 5b (MND page 18): Please add a compass, legend, and mean high-tide line on the right and left banks of the River to help staff confirm that the analysis in the MND is adequate for possible environmental impacts on land under the Commission's jurisdiction.
 - b. MND Page 33: Please mark the resource areas that would be impacted or potentially impacted by the Project. This page appears to be accidentally repeated on the following page, also numbered page 33.

Biological Resources

3. Existing Pile Removal: Staff recommends the following information be included in the Project Description and resource analyses with the MND:
 - a. Describe structural integrity, if known, of the 235 existing in-water piles (15-inch-diameter creosote-treated timber piles) on land under Commission jurisdiction.
 - b. Describe how the piles will be removed from the River.
 - c. Staff prefers the piles be completely removed. If piles cannot be removed and would need to be cut, please identify depth of cut below mudline, so as to avoid a public navigational hazard during low-water conditions. Staff requests that the piles be cut at a minimum of 5 feet below the mud line.
 - d. Identify if measures will be taken to reduce underwater sediment plumes and turbidity from installing and removing piles.
 - e. Identify if a cofferdam is anticipated to be required.
4. Underwater Noise: Describe what methods will be used (in addition to soft start in MM BIO-4) to monitor underwater noise levels to ensure noise stays below the mortality, injury, or behavioral impacts to fish and other marine wildlife, since vibratory and impact hammers would be used for work in the River.

5. Swainson's Hawk: Identify if there are any known close by California Natural Diversity Database occurrences for the Swainson's Hawk, as there are for the White-Tailed Kite.
6. Bats Under the Bridges: Describe any surveys for bats, and identify if any species have potential to be impacted from proposed work on bridges. If bats are present, please prepare a brief discussion of impacts and appropriate mitigation measures.

Cultural Resources

7. Submerged Cultural Resources: The 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. Staff requests that the Port contact Staff Attorney Jamie Garrett (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 clarify Mitigation Measure CULT-2 that in the event cultural resources are discovered during construction activities, Project personnel shall halt all activities in the immediate area and notify a qualified archaeologist to determine the appropriate course of action.

8. Title to Cultural Resources Within Commission Jurisdiction: The MND should state 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 Port consult with Staff Attorney Jamie Garrett, should any cultural resources on State land be discovered during construction of the proposed Project.

Staff also requests that the following statement be included in Mitigation Measure CULT-2 (on MND page 86), "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."

Recreation

9. Public Recreation Open in the River: The bed of the River is State-owned public land and open to public navigation. Staff recommends that the MND requires public notice of the Project and discuss the temporary public access and recreation impacts of work for 3 years in the Project area, including navigation impacts within the River.

Climate Change

10. Sea-Level Rise: The MND on page 101 acknowledges that sea-level rise is one of the long-term negative environmental impacts in California but does not analyze how the Project is designed to address sea-level rise on state lands. Please note that when considering a lease for the Project, staff would be relying on the MND for considering the climate change effects on the leased structures.
11. City of Stockton Climate Action Plan: The link provided for this plan on MND page 5 does not work, please provide a working link. Also, please specifically discuss what aspects of this plan will shape the proposed Project within the Commission's jurisdiction.

Thank you for the opportunity to comment on the MND for the Project. As a responsible and trustee agency, the Commission will rely on the adopted MND when issuing a new lease as specified above (see Section "Commission Jurisdiction and Public Trust Lands"). We request that you consider our comments before adopting the MND.

Please send electronic copies of the adopted MND, Mitigation and Monitoring Program, and Notice of Determination, when they become available. Refer questions concerning environmental review to Afifa Awan, Senior Environmental Scientist, at Afifa.Awan@slc.ca.gov or (916) 574-1891. For questions concerning archaeological or historic resources under Commission jurisdiction, please contact Jamie Garrett, Staff Attorney, at Jamie.Garrett@slc.ca.gov or (916) 574-0398. For questions concerning Commission leasing jurisdiction, please contact Marlene Schroeder, Public Land Management Specialist, at Marlene.Schroeder@slc.ca.gov or (916) 574-2320.

Sincerely,



Nicole Dobroski, Chief
Division of Environmental Planning
and Management

cc: Office of Planning and Research
Afifa Awan, Commission
Marlene Schroeder, Commission
Andrew Kershen, Commission