

**CALIFORNIA STATE LANDS COMMISSION**

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*Established in 1938*

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November 19, 2021

File Ref: SCH #2021100313

Caltrans District 12  
Carmen Lo, Associate Environmental Planner  
Division of Environmental Analysis  
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Santa Ana, CA 92705

Governor's Office of Planning & Research

**Nov 19 2021**

**STATE CLEARINGHOUSE**

VIA ELECTRONIC MAIL ONLY ([CTD12\\_SR1BikeLaneProject@dot.ca.gov](mailto:CTD12_SR1BikeLaneProject@dot.ca.gov))

**Subject: Initial Study/Mitigated Negative Declaration for State Route 1 – Bike Lane Project, Orange County**

Dear Carmen Lo:

The California State Lands Commission (Commission) staff have reviewed the Initial Study/Mitigated Negative Declaration (IS/MND) for the State Route (SR) 1 – Bike Lane Project (Project), which is being prepared by Caltrans District 12. Caltrans District 12, 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. 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.

Caltrans District 12 has identified the need to use approximately 820 square feet of temporary construction easement (TCE) along Pacific Coast Highway (SR-1) near Warner Avenue that is within Commission jurisdiction. The proposed TCE is located within lands conveyed to the Commission by Gulf Oil Corporation under boundary settlement and exchange agreement, Boundary Line Agreement 139. The location is also subject to Lease No. PRC 4733.9 issued to the California Department of Fish and Wildlife for operation and maintenance of the Bolsa Chica Ecological Reserve (BCER) and Lease No. PRC 8685.9 issued to the Bolsa Chica Conservancy for operation and maintenance of the Bolsa Chica Interpretive Center. Caltrans District 12 will be required to obtain a lease for the proposed TCE and any other work occurring within Commission jurisdiction. An application may be submitted to the Commission through the online application portal (<https://oscar.slc.ca.gov>). If you have questions specific to jurisdiction, or the application process, please contact Drew Simpkin, Public Land Management Specialist (contact information below).

### **Project Description**

Caltrans District 12 proposes to add comprehensive Class II bike lanes in both directions along SR-1. The agency's purpose for the Project is to reduce bicyclist fatalities and serious injuries on the California State Highway System. From the Project Description, Commission staff understands that the Project would include a temporary construction staging area with potential to affect State sovereign land.

### **Environmental Review**

Commission staff request that Caltrans District 12 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 when considering a future lease application for the Project.

### **General Comments**

1. Incorrect Ownership Statement in Chapter 2, Pg. 41: "To offset unavoidable acres of impacts to ESHA, Caltrans proposes to contribute funds for restoration projects. There is ongoing coordination and discussions between Caltrans and the CCC regarding ESHA impacts and potential mitigation locations. Some suggested

mitigation locations include, but are not limited to, **the Bolsa Chica Ecological Reserve owned by State Parks** and/or within parcels managed/owned by The Huntington Beach Wetlands Conservancy. As the project advances to design, Caltrans and the CCC as well as the USFWS will continue to collaborate to solidify mitigation ratios and sites prior to obtaining the CDP.” This is an incorrect statement; the BCER is owned by the Commission, not State Parks. Please correct this error.

### Biological Resources

1. Please provide the wetland delineation and habitat mapping at a higher resolution for the area at Warner Avenue and SR-1. Also, please provide detailed sections (i.e., plan drawing cross-sections) of the proposed Project within this location so that the impacts of future sea level rise (SLR) on the proposed improvements/project components, existing wetlands, and use of State sovereign land may be better understood.
2. Please provide more details on how impacts to biological resources are to be mitigated. The document suggests contribution of funds to restoration projects, but it is not possible to evaluate the suitability of the mitigation without greater detail on the funding, habitat projects proposed, and viability of the restoration project to serve as mitigation. The Commission has not been contacted regarding proposed mitigation of Project impacts on the BCER but would be interested in discussing potential options with Caltrans.

### Cultural Resources

3. Title to Resources Within Commission Jurisdiction: The IS/MND should state 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). Staff request that Caltrans District 12 consult with Staff Attorney Jamie Garrett (contact information below) should any cultural resources on State lands be discovered during construction of the proposed Project.

Staff requests that the following statement be included in the IS/MND’s Avoidance, Minimization, and/or Mitigation Measures Summary within PF-CULT-1: “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.”

### Climate Change

1. Areas located at the intersection of Warner Avenue and SR-1 are presently susceptible to intermittent flooding and are a concern for future flooding as are other areas along SR-1. This area is, however, of particular concern to the Commission in that the encroachment of the proposed Project within Commission jurisdiction in this location may create a need for future encroachments due to loss of options for SLR

adaptation; most particularly, requiring construction of berms, walls, or slopes that encroach into the wetlands of Outer Bolsa Bay. While the present action is proposed to not impact wetlands, further discussion is warranted regarding whether adaptations to address flooding due to SLR at this location will require northern encroachment into Outer Bolsa Bay wetlands, and if the project would exacerbate the potential need for such encroachments in the future.

2. Please discuss how marsh transgression within the BCER is likely to be affected by the proposed adjacent Project improvements and the potential need for future encroachments (e.g., berms, walls, slopes) under SLR scenarios.
3. Please provide discussion regarding how the Project improvements are likely to interact with the proposed County of Orange/Army Corps of Engineers EGG/Wintersburg Channel flood control improvements that are anticipated to change flood elevations within Outer Bolsa Bay and widen the Warner Avenue Bridge. Also, please discuss potential cumulative impacts of this Project in relation to the proposed action area.

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

Please send electronic copies of the adopted IS/MND, the Mitigation Monitoring Program with Avoidance, Minimization, and/or Mitigation Measures Summary, Notice of Determination, and approving resolution, when they become available, and refer questions concerning environmental review, to Christine Day, Environmental Scientist, at [christine.day@slc.ca.gov](mailto:christine.day@slc.ca.gov) or (916) 562-0027. For questions concerning archaeological or historic resources under Commission jurisdiction, please contact Staff Attorney Jamie Garrett, at [Jamie.Garrett@slc.ca.gov](mailto:Jamie.Garrett@slc.ca.gov) or (916) 574-0398. For questions concerning Commission leasing jurisdiction, please contact Drew Simpkin, Public Land Management Specialist, at [drew.simpkin@slc.ca.gov](mailto:drew.simpkin@slc.ca.gov) or (916) 574-2275.

Sincerely,



Nicole Dobroski, Chief  
Division of Environmental Planning  
and Management

cc: Office of Planning and Research  
C. Day, Commission  
D. Simpkin, Commission  
W. Hall, Commission  
L. Calvo, Commission