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December 2, 2021

File Ref: SCH # 2021110045

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Governor's Office of Planning & Research

Dec 02 2021

STATE CLEARINGHOUSE

VIA ELECTRONIC MAIL (SR37FloodProject@dot.ca.gov)

Subject: Notice of Preparation for an Environmental Impact Report for the State Route (SR) 37 Flood Reduction Project, Marin and Sonoma Counties

Dear Ms. Rivas:

The California State Lands Commission (Commission) staff has reviewed the subject Notice of Preparation (NOP) for an Environmental Impact Report (EIR) for the SR 37 Flood Reduction Project (Project), which is being prepared by Caltrans District 4 (Caltrans). Caltrans, 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. While Commission staff continues to participate in the Preliminary Environmental Linkages (PEL) regional process for the SR 37 corridor, staff also requests that Caltrans consult with the Commission on preparation of the Draft EIR for the Project, as required by CEQA section 21104, subdivision (a), and the State CEQA Guidelines¹ section 15086, subdivisions (a)(1) and (a)(2).

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

¹ As used in this letter, "State CEQA Guidelines" refers to California Code of Regulations, title 14, Division 6, Chapter 3.

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 order. 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 order. Such boundaries may not be readily apparent from present day site inspections.

Portions of the proposed Project located in the Petaluma River and Novato Creek will be located on State sovereign land under the jurisdiction of the Commission. As a result, a lease and formal authorization will be required from the Commission for any portion of the Project encroaching on State sovereign land. The Simmons Slough may also involve State sovereign land. Based on the information submitted in the NOP and Notice of Completion, staff is currently unable to determine the extent or location of sovereign ownership interests of the State in this area. We request, as the Project proceeds, that Caltrans staff contacts the Commission to determine whether the additional Simmons Slough location will require a lease and formal authorization.

Please be advised that Simmons Slough may lie in an area that is subject to a public navigation easement. This easement provides that members of the public have the right to navigate and exercise the incidences of navigation in a lawful manner on State waters that are capable of being physically navigated by oar or motor-propelled small craft. Such uses may include, but not be limited to, boating, rafting, sailing, rowing, fishing, fowling, bathing, skiing, and other water-related public uses. This easement right of the public must not be restricted or impeded.

Project Description

Caltrans proposes to elevate the roadway and reconstruct waterway crossings along SR 37 from the US 101 Interchange to SR 121 to reduce flooding issues due to sea level rise looking out to 2050. The NOP also notes that the Project Build Alternatives would not preclude a future project from addressing long-term sea level rise along the entire SR 37 corridor from US 101 to I-80.

Commission staff notes that no additional information regarding the Project's activities, potential designs, or specific locations can be found in the NOP, NOC, or Caltrans' SR

37 website. Without this information, staff is unable to provide specific questions or needs regarding impacts occurring on or affecting State sovereign land. As noted above, there are three existing SR 37 waterway crossings at Petaluma River, Novato Creek, and Simmons Slough. Both Project construction and operations may affect lands under the Commission's jurisdiction.

Environmental Review

Commission staff requests that Caltrans consider the following comments when preparing the EIR, to ensure that impacts to State sovereign land are adequately analyzed for the Commission's use of the EIR to support a future lease approval for the Project.

General Comments

1. **Project Description**: A thorough and complete Project Description should be included in the EIR 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. In particular, please illustrate on figures and engineering plans and provide written description of activities occurring below the ordinary high-water mark for Project area waterways. Thorough descriptions 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.

Biological Resources

2. For land under the Commission's jurisdiction, the EIR should disclose and analyze all potentially significant effects on sensitive species and habitats in and around the Project area, including special-status wildlife, fish, and plants, and if appropriate, identify feasible mitigation measures to reduce those impacts. Caltrans should conduct queries of the California Department of Fish and Wildlife's (CDFW) California Natural Diversity Database and U.S. Fish and Wildlife Service's (USFWS) Special Status Species Database to identify any special-status plant or wildlife species that may occur in the Project area. The EIR should also include a discussion of consultation with the CDFW, USFWS, and National Marine Fisheries Service (NMFS) as applicable, including any recommended mitigation measures and potentially required permits identified by these agencies.
3. **Invasive Species**: One of the major stressors in California waterways is introduced species. Therefore, the EIR 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, construction boats and barges brought in from long stays at distant projects may transport new species to the Project area via vessel 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 EIR finds potentially significant AIS impacts, possible mitigation could include contracting vessels and barges from nearby or requiring contractors to perform a certain degree of vessel cleaning. The CDFW's Invasive Species Program and Commission Marine 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_and <https://www.slc.ca.gov/misp/>).

4. Construction Noise: The EIR should also evaluate noise and vibration impacts on fish and birds from construction, restoration, or flood control activities in the water, on the levees, and for landside supporting structures. Mitigation measures could include species-specific work windows as defined by CDFW, USFWS, and NMFS. Again, staff recommends early consultation with these agencies to minimize the impacts of the Project on sensitive species. If pile driving would be employed for the proposed Project or any alternatives, then the EIR should include a discussion on underwater acoustic impacts including associated noise thresholds and any applicable minimization/mitigation measures.

Climate Change

5. Greenhouse Gas (GHG): A GHG emissions analysis consistent with the California Global Warming Solutions Act (Assembly Bill [AB] 32; Nuñez, Chapter 488, Statutes of 2006) and required by the State CEQA Guidelines should be included in the EIR. This analysis should identify a threshold for significance for GHG emissions, calculate the level of GHGs that will be emitted as a result of construction and ultimate build-out of the Project, determine the significance of the impacts of those emissions, and, if impacts are significant, identify mitigation measures that would reduce them to the extent feasible.

Cultural Resources

6. Submerged Resources: The EIR should evaluate potential impacts to submerged cultural resources in the Project area. The Commission maintains a shipwrecks database that can assist with this analysis. Commission staff requests that Caltrans contact Staff Attorney Jamie Garrett (see 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 add a mitigation measure requiring that in the event cultural resources are discovered during any construction activities,

Project personnel shall halt all activities in the immediate area and notify a qualified archaeologist to determine the appropriate course of action.

7. Title to Resources: The EIR should also mention 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 California State Lands Commission (Pub. Resources Code, § 6313). Commission staff requests that Caltrans 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 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."

Recreation

8. Public Access: The EIR should include a section describing the potential for the Project to affect recreational uses and public access to the subject waterways. The EIR should discuss the recreational uses and access points in the Project vicinity, whether and to what extent these uses would be facilitated or disrupted by the Project, and what, if any, measures could be implemented to reduce any potential negative impacts. This discussion should also identify any safety measures Caltrans will put in place to ensure public safety for recreational activities. Measures could include a public notice and Project area signage provided in advance of the Project, notifying the public of any disruptions or creation of alternate access points or use areas.

Pursuant to California Streets and Highways Code section 84.5, during the design hearing process, full consideration of, and a report on, the feasibility of providing public access to the subject waterway is required to be provided. The report should consider the following:

- An assessment of public access needs at the Project location, in addition to a benefit analysis of public access alternatives, not alternatives to access
- A description of existing public access points and facilities in the Project vicinity, including the existing condition of these resources and entity responsible for maintenance
- An assessment of existing constraints and hazards that could make on-site public access infeasible
- A feasibility assessment of proposed on-site public access infrastructure, such as construction of trails, stairs, parking areas, trash cans, restrooms, etc.
- If on-site public access is infeasible, a feasibility assessment of alternatives, such as improving existing public access in the Project vicinity or creating new public access points to the subject waterway within the project vicinity
- Environmental impacts of providing public access

- A conclusion on the feasibility of providing public access

If the report determines that public access is feasible, the EIR must reflect how public access improvements will be incorporated into the Project and identify any associated environmental impacts. Planning for preparation of the report should occur during the earliest stages of Project planning, and the report should be used to support the environmental impact analysis of the EIR. Because the Commission is acting as a responsible agency for purposes of its approval consideration, Commission staff will need to rely on the EIR to make a CEQA-based recommendation to the Commission on the Project. The EIR should, therefore, include the requested analysis on feasibility of providing public access to avoid delays with the Commission staff's processing of the application.

Alternatives

9. In addition to describing mitigation measures that would avoid or reduce the potentially significant impacts of the Project, Caltrans should identify and analyze a range of reasonable alternatives to the proposed Project that would attain most of the Project objectives while avoiding or reducing one or more of the potentially significant impacts (see State CEQA Guidelines, § 15126.6).

Other Commission Considerations

10. Environmental Justice: Environmental justice is defined by California law as “the fair treatment and meaningful involvement of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.” (Gov. Code, § 65040.12.) This definition is consistent with the Public Trust Doctrine's principle that management of trust lands is for the benefit of all people.

The Commission adopted an updated Environmental Justice Policy and Implementation Blueprint in December 2018, found at <https://www.slc.ca.gov/envirojustice/>, to ensure that environmental justice is an essential consideration in the agency's processes, decisions, and programs. The twelve goals outlined in the Policy reflect an urgent need to address the inequities of the past, so they do not continue into the future. Through its policy, the Commission reaffirms its commitment to an informed and open process in which all people are treated equitably and with dignity, and in which its decisions are tempered by environmental justice considerations.

Since the adoption of the Commission's Environmental Justice Policy, staff has worked diligently to create processes to embrace and embed environmental justice in all of its work. Staff developed a comprehensive environmental justice worksheet that is used to process lease applications and negotiate lease terms. The worksheet is used to determine when environmental justice outreach is necessary. Using the [CalEnviroScreen](#) program managed by the California Office of Environmental Health Hazard Assessment, staff identify the census tract covering the proposed project or

lease areas along with adjacent tracts bearing environmental burdens. Staff evaluate the geographic location for lease application or proposed project areas to determine whether environmental burdens, should there be any, would disproportionately impact nearby communities. Based on identified environmental burdens, staff conducts outreach to environmental justice communities and seeks input.

Although not legally required in a CEQA document, staff suggests that Caltrans include a section describing the environmental justice community outreach and engagement undertaken in developing the Draft EIR and the results of such outreach. Environmental justice communities often lack access to the decision-making process and experience barriers to becoming involved in that process. Engaging in early outreach will facilitate equal access for all community members. In this manner, the CEQA public comment process can provide an opportunity for the public to provide input relating to environmental justice. In addition, Commission staff would review Caltrans' environmental justice outreach and associated results as part of any future Commission action.

Thank you for the opportunity to comment on the NOP for the Project. As a trustee and responsible agency, Commission staff requests that you consult with us on this Project and keep us advised of changes to the Project Description and all other important developments. Please send additional information on the Project to the Commission staff listed below as the EIR is being prepared.

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, please contact Mary Jo Columbus, Public Land Management Specialist II, 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
M. Columbus, Commission
J. Garrett, Commission
A. Borack, Commission