

**CALIFORNIA STATE LANDS
COMMISSION**

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Established in 1938

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October 9, 2023

File Ref: SCH #2021110045

Caltrans, District 4
ATTN: Skylar Nguyen
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P.O. Box 23660, MS 8B
Oakland, CA 94623-0660

Governor's Office of Planning & Research

Oct 09 2023

STATE CLEARINGHOUSE

Sent via email: SR37FloodProject@dot.ca.gov

Subject: Draft Environmental Impact Report/Environmental Assessment for State Route 37 Flood Reduction Project, Marin County

Dear Skylar Nguyen:

California State Lands Commission (Commission) staff has reviewed the Draft Environmental Impact Report/Environmental Assessment (EIR/EA) for the State Route (SR) 37 Flood Reduction Project (Project), which is being prepared by the California Department of Transportation (Caltrans). Caltrans, as the public agency responsible for the State Highway System and the agency proposing to carry out the Project, is the lead agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.), and the lead agency under the National Environmental Policy Act (42 U.S.C. § 4321 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 may involve 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.

At least two areas of the proposed Project, including the crossing over Simonds Slough, may lie outside of Caltrans' existing right-of-way, and therefore may be located on State sovereign land under the jurisdiction of the Commission. As a result, the Commission must approve any portion of the Project temporarily or permanently encroaching on State sovereign land that does not have existing authorization.

Please also be advised that Novato Creek and Simonds 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 replace the Novato Creek Bridge and to elevate 2.5 miles of SR 37 on a causeway to an elevation of 35 feet to build resiliency to the effects of projected 2130 sea level rise and stormwater overtopping SR 37 from United States Highway 101 (U.S. 101) to Atherton Avenue. The newly elevated SR 37 will be constructed along the existing alignment.

From the Project Description, the Project would include a causeway that will be built in two phases. Staff understands that the following Project components have the potential to affect State sovereign land:

- Phase 1. Construction of a temporary transition bridge and replacement/extension of various culverts.
- Phase 2: Removal of the Phase 1 temporary bridge as well as construction of a causeway from both U.S. 101 to the new Novato Creek Bridge and from the eastern end of the new Novato Creek Bridge to Atherton Avenue.

Two alternatives were discussed in the EIR/EA. The Build Alternative, which is described above, and the No-Build Alternative. The No-Build Alternative would leave SR 37 with no improvements. The Draft EIR/EA did not appear to identify the environmentally superior alternative.

Environmental Review

Staff requests that Caltrans consider the following comments on the Draft EIR/EA, to ensure that impacts to State sovereign land are adequately analyzed for the Commission's use of the EIR when considering a future lease application for the Project.

General Comments

1. Project Description: The Project Description should be as precise as possible in describing the details of Phase 1 construction activities. This includes the types of equipment or methods that may be used, the maximum area of impact or volume of sediment removed or disturbed during temporary bridge and culvert construction, seasonal work windows, locations for material disposal, and construction activity timelines. These details are necessary to support the impact analyses in Sections 2.2.6, *Air Quality*, and 3.1.8, *Greenhouse Gas Emissions*, which provide criteria pollutant and greenhouse gas (GHG) emissions without any supporting information and calculations. Staff could locate neither a construction equipment/activity narrative nor an appendix with the Sacramento Metropolitan Air Quality Management District's Roadway Construction Emissions Model results. Including a more robust project description in and model calculation results accompanying the Final EIR/EA will reduce the potential for the Commission to require subsequent environmental review.

Project Description, Phase 2: The project description states that Phase 2 is subject to funding availability. The EIR/EA should evaluate any potential environmental impacts that could arise if Phase 2 is not funded by the planned construction year of 2050.

Climate Change

2. Sea Level Rise: While the EIR/EA discusses how SR 37 will have greater resilience to sea level rise and stormwater after Phases 1 and 2 are completed, the document does not describe sea level rise impacts to SR 37 post-Phase 1 but prior to 2041 (when Phase 2 would begin). According to the Ocean Protection Council's *State of California Sea Level Rise Guidance*, the 2040 sea level rise projection is 1.3 feet under a medium-high risk aversion scenario. Since the project area already experiences episodic flooding, the EIR/EA should describe how a 1.3-foot increase in sea levels will affect flood-related closures between the completion of Phase 1 and the construction of Phase 2. Considering funding for Phase 2 has not yet been secured, the EIR/EA should also assess the Project's resilience to sea level rise and the associated level of flood-related closure improvements that would occur if the Project is only able to implement Phase 1 activities.

Biological Resources

3. Invasive Species: One of the major stressors in California waterways is introduced species. Therefore, the EIR/EA should consider the Project's potential to encourage the establishment or proliferation of aquatic invasive species (AIS) or other nonindigenous, invasive species including aquatic and terrestrial plants beyond just invasive weeds. 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/EA 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/>).

Cultural Resources

4. Submerged Cultural Resources: The EIR/EA does not 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 Caltrans contact the shipwrecks database email (contact information below) to obtain shipwrecks data and Commission records for the Project site. The Commission's 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 historic or 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.

5. Title to Resources Within Commission Jurisdiction: The EIR/EA 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). Staff requests consultation with Caltrans 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 EIR's Mitigation Monitoring Program: "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

6. Public Access: The EIR/EA should include a section describing the potential for the Project to affect recreational uses and public access to the subject waterways. The EIR/EA should discuss the recreational uses and recreational 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 and the alternative ways for the public to access Novato Creek and Simonds Slough at the Project location.
- 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/EA 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/EA.

The EIR/EA should, therefore, include the requested analysis on feasibility of providing public access to avoid delays with staff's processing of the application.

Thank you for the opportunity to comment on the EIR/EA for the Project. The Commission will rely on the certified EIR/EA when issuing a lease, temporary construction easement, or other approval as specified above (see Section "Commission Jurisdiction and Public Trust Lands"). We request that you consider our comments before certifying the EIR/EA.

Please send electronic copies of the Final EIR/EA, Mitigation Monitoring Program, Notice of Determination, approval document, CEQA Findings, and Statement of Overriding Considerations when they become available. Please note that federal and state laws require all government entities to improve accessibility of information technology and content by complying with established accessibility requirements. (29 U.S.C. § 794d; 36 C.F.R. § 1194.1 et seq.; Gov. Code, § 7405.) California State law prohibits State agencies from publishing on their websites content that does not comply with accessibility requirements. (Gov. Code, § 115467.) Therefore, any documents submitted to staff during the processing of a lease or permit, including all CEQA documentation, must meet accessibility requirements for staff to place the application on the Commission agenda.

Refer questions concerning environmental review to Christine Day, Environmental Scientist, at Christine.Day@slc.ca.gov or (916) 562-0027. For questions concerning Commission leasing jurisdiction, please contact Ninette Lee, Public Land Manger, at (916) 574-1869 or via email at Ninette.Lee@slc.ca.gov. Please send inquiries regarding the Commission's shipwrecks database to Shipwre@slc.ca.gov.

Sincerely,



Nicole Dobroski, Chief
Division of Environmental Science,
Planning, and Management

cc: Office of Planning and Research
C. Day, Commission
M. Wells, Commission
N. Lee, Commission