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File Ref: SCH # 2022040471

San Joaquin Area Flood Control Agency
Chris Elias, Executive Director
22 East Weber Avenue, Suite 301
Stockton, CA 95202

VIA REGULAR & ELECTRONIC MAIL (Chris.Elias@stocktonca.gov)

**Subject: Notice of Preparation (NOP) for an Environmental Impact Report for
Mossdale Tract Area Urban Flood Risk Reduction Project, San Joaquin
County**

Dear Chris Elias:

The California State Lands Commission (Commission) staff has reviewed the subject NOP for an Environmental Impact Report (EIR) for the Mossdale Tract Area Urban Flood Risk Reduction Project (Project), which is being prepared by the San Joaquin Area Flood Control Agency (Agency). The Agency, 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 staff requests that the Agency consult with us on preparation of the Draft EIR as required by CEQA section 21153, subdivision (a), and the State CEQA Guidelines 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 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 San Joaquin River (River) and Walthall Slough, at the Project location, are State sovereign land under the Commission's jurisdiction. A lease for the use of State sovereign land will be required from the Commission for any portion of the Project encroaching on State sovereign land.

Project Description

The Agency proposes to provide increased public safety benefits to meet its objectives and needs as follows:

- Improve long-term operations, maintenance, repair, rehabilitation, and replacement over time.
- Modernize the flood risk reduction infrastructure to accommodate future performance and climate change resiliency goals identified in the Central Valley Flood Protection Plan and in Agency's Climate Change Adaptation Policy.
- Implement a multi-benefit flood risk reduction Project that:
 - A. Improves ecological function and habitat in the flood-system
 - B. Contributes additional societal benefits such as recreation where feasible.

From the Project Description, Commission staff understands that most of the Project components have potential to affect State sovereign land.

Environmental Review

Commission staff requests that the Agency 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. Programmatic Document: Because the EIR is being proposed as a programmatic rather than a project-level document, the Commission expects the Project will be presented as a series of distinct but related sequential activities (i.e., proposed actions). The State CEQA Guidelines, section 15168, subdivision (c)(5) states that a program EIR will be most helpful in dealing with subsequent activities if it deals with the effects of the program as specifically and comprehensively as possible. To avoid

the improper deferral of mitigation, a common flaw in program-level environmental documents, mitigation measures (MMs) should either be presented as specific, feasible, enforceable obligations, or should be presented as formulas containing “performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way” (State CEQA Guidelines, § 15126.4, subd. (a)). As such, the program EIR should try to distinguish what activities and their MMs are being analyzed in sufficient detail to be covered under the program EIR without additional project specific environmental review, and what activities will trigger the need for additional environmental analysis (see State CEQA Guidelines, § 15168, subd. (c)).

2. Project Description: A thorough and complete Project Description should be included in the EIR to facilitate meaningful environmental review of potential impacts, MMs, 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. Illustrate on figures and engineering plans and provide written description of activities occurring below the (mean high tide line) for Project area waterways. Please also explain why the Project is proposed on the eastern side of the River levee and not on the western side.

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.

3. Recreation: Staff requests that the EIR include an analysis responding to the following questions explaining how individuals recreating in and around the River would be impacted by the Project-related activities:
 - A. If individuals/communities would be prevented from accessing the River during construction work, how would these individuals/communities be notified in advance?
 - B. How would these individuals/communities be identified?
 - C. Will there be a website dedicated to upcoming planned work in and around the River where River access could be blocked?
 - D. How will this website or another updated source of information be provided to these individuals/communities?
 - E. Will there be signs posted with this website address at the usual access points at the River?
 - F. Will alternative access points to the River be identified on a map and posted at the River entry points for people to continue to use the River to continue to recreate and take advantage of these recreational and green spaces?

4. Project Objectives and Project Elements: Staff recommends that additional information be provided in the EIR explaining the difference between Project objectives and Project elements listed on NOP page 3.
5. Improving Access for the Disadvantaged Communities: Staff requests that the Project improvements be shown on the latest [CalEnviroScreen](#) map to help the readers better understand which communities will be benefitting from the Project objective to implement a multi-benefit flood risk reduction Project that will do the following:
 - A. Improves ecological function and habitat in the flood-system
 - B. Contributes additional societal benefits such as recreation where feasible.

This information will help the readers better understand how River access and green spaces near them would be improved so more disadvantaged communities could have access to these beautiful public lands and natural resources which are essential recreational opportunities. Please see Commission's Environmental Justice Policy and commitment to uplifting historically disadvantaged communities at <https://www.slc.ca.gov/environmental-justice/>.

6. Multi-Benefit Project Components: Staff requests that the EIR analysis include what criteria would be used to decide where these multi-benefit Project components would be located. Would the latest [CalEnviroScreen](#) be part of this criteria to consciously increase access to nature and green spaces in the CalEnviroScreen red and orange areas? Staff requests that Project improvement maps be shown in the EIR with the CalEnviroScreen percentiles.
7. EIR Scope: Staff recommends that any geologic faults, subsidence, and any other local concerns be analyzed in the EIR along with other resource areas listed on NOP page 5.

Biological Resources

8. Sensitive Species: 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 MMs to reduce those impacts. The Agency 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 MMs and potentially required permits identified by these agencies.
9. 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 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 aquatic invasive species 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/>).

10. 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 land-side supporting structures. MMs 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.

Climate Change

11. 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 because of construction and ultimate build-out of the Project, determine the significance of the impacts of those emissions, and, if impacts are significant, identify MMs that would reduce them to the extent feasible.
12. Sea Level Rise: Staff recommends the EIR include green alternatives and not just supplementing riprap rock slope protections since this Project is in the Bay Delta region with expected sea level rise impacts. Riprap rock slope is not a green long-term solution with expected issues like eliminating vegetation along the levees, safety, liability, and ongoing maintenance to prevent or reduce erosion.

Cultural Resources

13. 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 the Agency 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 MMs 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.

14. 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 the Agency consult with Staff Attorney Jamie Garrett, should any cultural resources on state lands be discovered during construction of the proposed Project.

In addition, 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 sovereign land under the jurisdiction of the California State Lands Commission must be approved by the Commission."

Mitigation and Alternatives

15. Deferred Mitigation: To avoid the improper deferral of mitigation, MMs must be specific, feasible, and fully enforceable to minimize significant adverse impacts from a project, and "shall not be deferred until some future time." (State CEQA Guidelines, §15126.4, subd. (a)). For example, references to preparing a specific plan to reduce an impact, without calling out the specific activities that will be included in the plan to reduce that impact to a less than significant level, is considered deferral. Commission staff requests that more specific information be provided in such MMs to demonstrate how the MM is going to mitigate potential significant impacts to less than significant.
16. Alternatives: In addition to describing MMs that would avoid or reduce the potentially significant impacts of the Project, the Agency 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).

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 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 Ninette Lee, Public Land Manager, at Ninette.Lee@slc.ca.gov or (916) 574-1869.

Sincerely,



Nicole Dobroski, Chief
Division of Environmental Planning
and Management

cc: Office of Planning and Research
A. Awan, Commission
J. Fabel, Commission
J. Garrett, Commission
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