

**CALIFORNIA STATE LANDS COMMISSION**  
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*Established in 1938*

June 15, 2022

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**Governor's Office of Planning & Research**

**Jun 15 2022**

## **STATE CLEARINGHOUSE**

File Ref: SCH # 2022040504

Tess Byler  
San Francisquito Creek Joint Powers Authority  
2100 Geng Road  
Palo Alto, CA 94303

VIA REGULAR & ELECTRONIC MAIL: [tbyler@sfcjpa.org](mailto:tbyler@sfcjpa.org)

**Subject: Notice of Preparation (NOP) for an Environmental Impact Report (EIR)  
for the Strategy to Advance Flood Protection, Ecosystems and  
Recreation along San Francisco Bay Project, San Mateo County**

Dear Tess Byler:

The California State Lands Commission (Commission) staff has reviewed the subject NOP for an EIR for the Strategy to Advance Flood Protection, Ecosystems and Recreation along San Francisco Bay Project (Project), which is being prepared by the San Francisquito Creek Joint Powers Authority (SFCJPA). The SFCJPA, as a California 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 because of its trust responsibility 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 is also a responsible agency. Commission staff requests that the SFCJPA consult with us on preparation of the Draft EIR (DEIR) 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, §§ 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.

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 ordinary high-water mark as generally indicated by the mean high tide line (MHTL), 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.

After review of the information contained in the NOP and our in-house records, Commission staff has determined that portions of the Project area will include State-owned sovereign land under the jurisdiction of the Commission. Therefore, a lease from the Commission will be required for any portion of the Project encroaching on State sovereign land. Please contact George Asimakopoulos, Public Land Management Specialist (see contact information below), for further information on the extent of the Commission's jurisdiction and lease application requirements. The Commission has a lease in this vicinity with the U.S. Department of the Interior, Fish and Wildlife Service including Ravenswood Slough. On August 20, 1981, the Commission authorized a General Lease – Public Agency Use, Lease No. PRC 6045.9, for the operation, management, protection, and maintenance of State sovereign land to be used in conjunction with the San Francisco Bay National Wildlife Refuge, which encompasses refuge areas in Alameda, San Mateo, and Santa Clara counties. The lease will expire August 31, 2047. The Commission has a lease in the vicinity of Flood Slough with the Menlo Park Sanitary District. On December 20, 1979, the Commission amended a Permit – Public Agency Use, No. PRC 5468.9, for the construction and maintenance of a sanitary pumping station. This lease will expire on May 31, 2044. The Project area may contain other leases or existing facilities.

### **Project Description**

The Project will provide resiliency to coastal flooding and sea level rise in East Palo Alto and Menlo Park as well as habitat and recreation improvements. The SFCJPA is collaborating with the South Bay Salt Ponds Restoration Project to restore former salt production ponds, Pond R1 and Pond R2, located in the Ravenswood Complex, as part of the Project. The Project will construct levees, floodwalls, and other flood protection features necessary to enable the restoration of tidal action to these ponds. The Project also proposes to increase the diversity of habitat by building tidal salt marsh-upland transition zone habitat (transition zone habitat) on the bayward slope of appropriate segments of the levee adjacent to existing and/or restored tidal salt marsh. In addition, the Project proposes to enhance recreational access to the shoreline by creating new sections of the Bay Trail and by placing existing sections of the Bay Trail atop new

levees where they will be less susceptible to flooding. Consistent with CEQA, the Project EIR will contain both project-level and program-level evaluations.

### **Environmental Review**

Commission staff requests that the consider the following comments when preparing the DEIR.

#### **General Comments**

1. **Project Description**: A thorough and complete Project Description should be included in the DEIR in order 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, construction schedule and staging areas, etc.), as well as the details of the timing and length of activities. 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. Please be as specific as possible regarding all proposed work within the Commission's jurisdiction waterward of the MHTL and all other land under Commission jurisdiction.
2. **Permits and Approvals**: Please update the Permits and Approvals table on page 11 of the NOP to state that a lease will be required from the Commission.

#### **Biological Resources**

3. The DEIR 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. The SFCJPA 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 DEIR should also include a discussion of consultation with the CDFW, USFWS, and the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NMFS), including any recommended mitigation measures and potentially required permits identified by these agencies.
4. **Construction Noise**: The DEIR should also evaluate noise and vibration impacts on fish and birds from construction, restoration, or flood control activities in the water and levee systems. 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.

### Cultural Resources

5. Title to Resources: The DEIR should also mention 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 California State Lands Commission (Pub. Resources Code, § 6313). Commission staff requests that the SFCJPA 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 DEIR'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."

### Hydrology and Sea Level Rise

6. In the Environmental Setting section of the DEIR, please provide detail regarding the Project area's surface hydrology features and characteristics, groundwater characteristics, history of flood events and any known land uses and structures subject to flood hazards, and any flood zone designations for the Project area. In addition to Federal Emergency Management Agency standards for sea level rise with flood protection structures, identify all coastal adaptation plans applicable to the Project area and describe how the Project will implement the sea level rise goals and objectives of these plans. Describe how proposed construction activities with levees, flood walls, and other flood protection structures will be designed to withstand future projections of sea level rise and elevated groundwater levels and enhance resiliency to restored tidal areas. Describe proposed monitoring programs and adaptive management measures to achieve restoration and flood protection goals. Describe how flood protection structures will be designed for compatibility with existing tidal restoration and habitat management goals for the Project region and will avoid adverse impacts to adjacent properties.

### Recreation

7. Please provide a comprehensive description of existing recreational uses and public access to the Bay Trail and San Francisco Bay. Describe how proposed improvements to the Bay Trail will enhance public access to the Bay and uses with the trail, including protection from coastal flooding. Describe any restrictions or limitations on public access to the Project area during construction, and methods to provide notice and accommodations to the public prior to construction.

### Alternatives

8. In addition to describing mitigation measures that would avoid or reduce the potentially significant impacts of the Project, the SFCJPA 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. (State CEQA Guidelines § 15126.6.) Alternatives to construction methods, materials, and access should be considered that minimize impacts to public use of the Bay Trail.

### Environmental Justice

9. 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 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. 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.

Although not legally required in a CEQA document, Commission staff suggests that the SFCJPA include a section describing the environmental justice community outreach and engagement undertaken in developing the DEIR and the results of such outreach. The California Office of Environmental Health Hazard Assessment developed the [CalEnviroScreen](#) mapping tool to assist agencies with locating census tracts near proposed projects and identifying the environmental burdens, should there be any, that disproportionately impact those communities.

Environmental justice communities often lack access to the decision-making process and experience barriers to becoming involved in that process. It is crucial that these communities are consulted as early as possible in the project planning process. Commission staff strongly recommends using the [CalEnviroScreen](#) tool and then, as applicable, reaching out through local community organizations, such as the [California Environmental Justice Alliance](#). Engaging in early outreach will facilitate more equitable access for all community members. In this manner, the CEQA public comment process can improve and provide an opportunity for more members of the public to provide input related to environmental justice. Commission staff also recommends incorporating or addressing opportunities for community engagement in mitigation measures. Commission staff will review the 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, the Commission 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 DEIR is being prepared. Please refer questions concerning

environmental review to Jason Ramos, Senior Environmental Scientist, at (916) 574-1814 or via e-mail at [Jason.Ramos@slc.ca.gov](mailto:Jason.Ramos@slc.ca.gov). For questions concerning archaeological or historic resources under Commission jurisdiction, please contact Jamie Garrett, Staff Attorney, at [Jamie.Garrett@slc.ca.gov](mailto:Jamie.Garrett@slc.ca.gov) or (916) 574-0398. For questions concerning Commission leasing jurisdiction, please contact George Asimakopoulos, Public Land Management Specialist, at (916) 574-0990, or via e-mail at [george.asimakopoulos@slc.ca.gov](mailto:george.asimakopoulos@slc.ca.gov).

Sincerely,



Nicole Dobroski, Chief  
Division of Environmental Planning  
and Management

CC: Office of Planning and Research  
G. Asimakopoulos  
J. Ramos  
J. Garrett