

**CALIFORNIA STATE LANDS
COMMISSION**

100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202



Established in 1938

JENNIFER LUCCHESI, Executive Officer

916.574.1800

TTY CA Relay Service: 711 or Phone **800.735.2922**
from Voice Phone **800.735.2929**
or for Spanish **800.855.3000**

Contact Phone: (916) 574-1890

Governor's Office of Planning & Research

Oct 26 2022

October 26, 2022

File Ref: SCH #2022090379

STATE CLEARINGHOUSE

Caltrans-District 10
Jaycee Azevedo
1976 Dr. Martin Luther King Blvd.
Stockton, CA 95205

VIA ELECTRONIC MAIL ONLY: jaycee.azevedo@dot.ca.gov

**Subject: Negative Declaration for State Route 4 River Bridge Maintenance
Project, San Joaquin and Contra Costa Counties**

Dear Jaycee Azevedo:

The California State Lands Commission (Commission) staff has reviewed the Negative Declaration (ND) for the State Route 4 River Bridge Maintenance Project (Project), being prepared by the California Department of Transportation – District 10 (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.), and the lead agency under the National Environmental Policy Act (NEPA) (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 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.

After review of the information contained in the ND, the existing bridge crossing the Old River is located on State sovereign land under the jurisdiction of the Commission. In 1949, the Commission authorized the issuance of Right-of-Way Permit No. PRC 455 with Caltrans for the bridge right-of-way. Based upon the information provided and a review of our in-house records, it appears that a temporary construction easement for the Project will be located outside the existing bridge right-of-way. An application for a new lease or permit amendment will be required for any portion of the Project located on State sovereign land in the Old River outside of the existing right-of-way. Please contact Ninette Lee (information provided below) for information on the Commission's leasing jurisdiction (reference Inquiry No. 3626).

Project Description

Caltrans proposes to preserve the Old River Bridge to meet the agency's objectives and needs of ensuring the serviceability and structural integrity of the bridge.

From the Project Description, Commission staff understands that the Project would include the following components that have potential to affect State sovereign land:

- Project Component 1. Polyester concrete overlay to address the transverse and pattern deck cracks, as well as spot blasting and painting the bridge to address rust on the steel members.
- Project Component 2. Old timber waling would be removed, and the fenders on the north side of Pier 3 and the south side of Pier 2 would be supported with new high-density polyethylene walers mounted to the existing timber tiles.

Environmental Review

Commission staff requests that Caltrans consider the following comments on the Project's ND, to ensure that impacts to State sovereign land are adequately

analyzed for the Commission's use of the ND when considering a future lease application for the Project.

General Comments

1. Unclear document type: The Notice of Intent for the Project states that Caltrans will be adopting a Mitigated Negative Declaration. However, within the document it is called an "Initial Study with Proposed Negative Declaration" with no mitigation measures, but instead, best management practices for the Project. Please clarify if Caltrans will be adopting a Mitigated Negative Declaration or a Negative Declaration.
2. Permits and Approvals: In Section 1.8 (page 8 of the ND), include the Commission in the Permits and Approvals table. This Project will need either a new lease or a permit amendment.
3. Project Description: The Project Description lacks sufficient detail to understand the proposed in-water construction activities, including removal of the old timber waling and fender replacement. Additional description and illustration are needed to describe proposed construction methods, equipment and staging activities, sequencing of proposed work, and construction schedule. Provide engineering plans of the existing structure and proposed work to illustrate the structural design for proposed fender replacement and removal of the old timber waling. In particular, describe or clarify if piling removal or installation, or any other type of disturbance to the bed and bank of the river, would occur. Section 1.3 Project Description, page 2, states that "other proposed work would include work off the paved roadway, trenches, grading, or other ground disturbance..." However, it is unclear in any other section of the ND when and where ground disturbance work will be done during the Project. In addition, it is unclear in the Project Description if the polyester concrete overlay will necessitate closing the bridge, and if so, Commission staff requests an analysis of potential impacts associated with closure. Lastly, photographs of the bridge and the surrounding area would be beneficial to clarify what parts of the bridge are being repaired/preserved and what areas will be used as part of construction and will require a new lease or permit amendment from the Commission.
4. Incomplete Environmental Analysis: The entire analysis of environmental resources in the Environmental Checklist refers to technical reports in Volume 2 of the ND. Commission staff was not able to find Volume 2 on the Caltrans website where Project documents are posted. Without Volume 2, the environmental analysis is grossly incomplete to support impact

determinations. The technical reports in Volume 2 must support a project specific analysis of the Project and study area, rather than general programmatic reports for Caltrans bridge projects. The Project will affect biological resources, hydrology and water quality, cultural resources, air quality and greenhouse gas emissions, recreation, transportation, and emergency response services, among other potential resources. Without additional description and analysis to support impact determinations, Commission staff will not be able to use the current document to support an approval for the Project.

Biological Resources

5. Impacts to aquatic sensitive species: The ND should include a description of what kinds of in-water construction equipment will be used, an analysis of impacts from underwater noise, and information on consultations that have been done or will be done with state and federal agencies.

Cultural Resources

6. Title to Resources Within Commission Jurisdiction: The ND 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). Commission staff requests that Caltrans consult with Staff Attorney Jamie Garrett (information provided 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 ND's Best Management Practices: "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."

Tribal Cultural Resources

7. Tribal consultation: Section 2.1.18 Tribal Cultural Resources does not state whether tribal consultation was done for the Project. Commission staff recommends that Caltrans revise the ND to expand the discussion of Tribal engagement and consideration of Tribal Cultural Resources to demonstrate compliance with AB 52 (Gatto; Stats. 2014, ch. 532), which applies to all CEQA projects initiated after July 1, 2015. AB 52 provides procedural and substantive requirements for lead agency consultation with California Native American Tribes, including consideration of effects on Tribal Cultural

Resources (as defined in Pub. Resources Code, § 21074) and examples of mitigation measures to avoid or minimize impacts to these resources. Even if no Tribe has submitted a consultation notification request for the Project area covered by the ND, Caltrans should:

- Contact the Native American Heritage Commission to obtain a general list of interested Tribes for the Project area.
- Include the results of this inquiry within the ND.
- Disclose and analyze potentially significant effects to Tribal Cultural Resources and avoid impacts when feasible.

8. Determination of Significance: Additionally, with respect to significance determinations, CEQA section 21084.2 states that, “A project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment.” When feasible, public agencies must avoid damaging Tribal Cultural Resources and shall keep information submitted by the Tribes confidential. Commission staff believes that the ND lacks adequate support for Caltrans’ conclusion that the Project will have “No Impact” to Tribal Cultural Resources (page 31 of the ND). Staff recommends that Caltrans provide additional discussion on how it determined the appropriate scope and extent of resources meeting the definition of Tribal Cultural Resources and whether locally-affiliated Tribes were consulted as part of this determination.

Hydrology

9. Water Quality: The ND must describe and illustrate the structural design of the proposed fender replacement work and include an analysis of how the work or design may impact hydrology, sedimentation, and debris flow within the Old River.

Recreation

10. Public Access: The ND should include a section describing the potential for the Project to affect recreational uses and public access to the Old River. The ND 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 (particularly with the use of a barge for Project activities), and what, if any, measures could be implemented to reduce potential negative impacts. This discussion should also identify 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.

Thank you for the opportunity to comment on the ND for the Project. As a responsible and trustee agency, the Commission will need to rely on the adopted ND when issuing a new lease. We request that you consider our comments before adopting the ND.

Send electronic copies of the adopted ND (Volume 1 and 2), Notice of Determination, and approving resolution 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 Commission staff during the processing of a lease or permit, including all CEQA documentation, must meet accessibility requirements for Commission 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 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
C. Day, Commission
N. Lee, Commission
J. Garrett, Commission
A. Kershaw, Commission