

CALIFORNIA STATE LANDS COMMISSION

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



Established in 1938

December 30, 2022

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

File Ref: SCH # 2022120009

California State University
Attn: Huy Hoang
200 Maritime Academy Drive
Vallejo, CA 94590

VIA REGULAR & ELECTRONIC MAIL (Huy.Hoang@cordobacorp.com)

Subject: Notice of Preparation for a Draft Environmental Impact Report for Cal Maritime Waterfront Master Plan, Solano County

Dear Huy Hoang:

The California State Lands Commission (Commission) staff has reviewed the subject Notice of Preparation (NOP) for a Draft Environmental Impact Report (Draft EIR) for the Cal Maritime Waterfront Master Plan (Project), which is being prepared by the California State University Board of Trustees (CSU Board). The CSU Board, 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 lands 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 CSU Board consult with us on preparation of the Draft EIR as required by CEQA section 21153, subdivision (a) and the State CEQA Guidelines (California Code of Regulations, title 14) 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. Such boundaries may not be readily apparent from present day site inspections.

Per the Commission's records, there is an existing lease (Lease 4345) at the Project location. Therefore, work within the Carquinez Strait below the mean high tide line as noted in the NOP would encroach on lands managed by the State of California and require a lease. The CSU Board should provide preliminary plans showing the most recently surveyed mean high tide line for further review once they are available to Kenneth Foster (contact information is provided at the end of this letter).

Project Description

The CSU Board is preparing the Cal Maritime Waterfront Master Plan to redevelop Cal Maritime's in-water and landside facilities and infrastructure to support academic and port operations, public access, environmental factors, and long-term resiliency.

From the Project Description, Commission staff understands that all in-water Project activities have potential to affect State sovereign land in Phases One, Two, and Three.

Environmental Review

Commission staff requests that the CSU Board consider the following comments when preparing the Draft 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. Commission staff understands that Phase 1 activities will be analyzed at a project level, which Commission staff will rely on

for issuance of a lease within Commission jurisdiction. Phases 2 and 3 will have programmatic analysis as discussed below.

General Comments

1. Programmatic Document: Because Phases Two and Three are being proposed at a programmatic rather than a project level, the Commission expects those phases will be presented as a series of distinct but related sequential activities (i.e., new pier and docks, the creation of Basin 2, floating landing). 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. In order to avoid the improper deferral of mitigation, a common flaw in program-level analysis, 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 programmatic portion of the EIR should make an effort to distinguish what activities and associated mitigation measures are being analyzed in sufficient detail to be covered under the 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, 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 mean high tide line. 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

3. For land under the Commission's jurisdiction, the Draft 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. The CSU Board 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 Draft 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.
4. Invasive Species: One of the major stressors in California waterways is introduced species. Therefore, the Draft EIR should consider the Project's potential to encourage the establishment or proliferation of aquatic invasive species (AIS), 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 Draft EIR finds potentially significant AIS impacts, possible mitigation could include contracting vessels and barges from nearby or requiring contractors to perform vessel cleaning prior to arrival. 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/>).

In addition, in light of the recent decline of native pelagic organisms and in order to protect at-risk fish species, the Draft EIR should examine if any elements of the Project would favor non-native fisheries.

5. Construction Noise: The Draft 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.

Climate Change

6. Sea Level Rise: A tremendous amount of State-owned lands and resources under the Commission's jurisdiction will be impacted by rising sea levels. With this in mind, the Draft EIR should consider discussing if and how various Project components might be affected by sea level rise and whether "resilient" designs have been incorporated. The Carquinez Strait and its surroundings will be affected by rising sea levels. Additionally, because of their nature and location, these lands and resources are already vulnerable to a range of natural events, such as storms and extreme high tides. As the Project phases are designed and evaluated, attention should be given to sea level rise projections to ensure the structures' designs are sufficient to ensure function, safety, and protection of the environment over the expected life of the structure.

Governor Brown issued Executive Order B-30-15 in April 2015, which directs State government to fully implement the Safeguarding Plan and factor in climate change preparedness in planning and decision making. Please note that when considering lease applications, Commission staff will: (1) request information from applicants concerning the potential effects of sea level rise on their proposed projects; (2) if applicable, require applicants to indicate how they plan to address sea level rise and what adaptation strategies are planned during the projected life of their projects; and (3) where appropriate, recommend project modifications that would eliminate or reduce potentially adverse impacts from sea level rise, including adverse impacts on public access. In addition, the State of California released the [2018 Update to the Safeguarding California Plan](#) to provide policy guidance for state decision-makers as part of continuing efforts to prepare for climate risks. The Safeguarding Plan sets forth "actions needed" to safeguard ocean and coastal ecosystems and resources as part of its policy recommendations for state decision-makers.

Cultural Resources

7. Submerged Resources: The Draft 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 CSU Board 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.

8. Title to Resources: The Draft 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 CSU Board 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 California State Lands Commission must be approved by the Commission."

Mitigation and Alternatives

9. Deferred Mitigation: In order 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 the preparation of a plan to reduce an impact, without calling out performance criteria, 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.
10. Alternatives: In addition to describing mitigation measures that would avoid or reduce the potentially significant impacts of the Project, the CSU Board 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). For example, construction in a biologically sensitive area may require an alternative to avoid significant impacts. The NOP does not provide any alternative examples.

Environmental Justice

11. 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 CSU Board include a section describing the environmental justice community outreach and engagement undertaken in developing the Draft EIR 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 Community Vulnerability tool developed by BCDC, [BCDC Community Vulnerability 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 Draft EIR. 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 Draft EIR is being prepared.

Please refer questions concerning environmental review to Cynthia Herzog, Senior Environmental Scientist, at (916) 574-1310 or via email at

cynthia.herzog@slc.ca.gov. For questions concerning archaeological or historic resources under Commission jurisdiction, please contact Staff Attorney Jamie Garrett, at (916) 574-0398 or via email at jamie.garrett@slc.ca.gov. For questions concerning Commission leasing jurisdiction, please contact Kenneth Foster, Public Land Manager, at (916) 574-2555 or via email at kenneth.foster@slc.ca.gov.

Sincerely,



Nicole Dobroski, Chief
Division of Environmental Planning
and Management

cc: Office of Planning and Research
C. Herzog, Commission
J. Garrett, Commission
K. Foster, Commission