

**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

January 23, 2023

File Ref: SCH# 2022120635

Yuba County CDSA – Planning Department
Ciara Fisher
915 8th Street Suite 123
Marysville, CA 95901

Governor's Office of Planning & Research

JAN 23 2023

STATE CLEARING HOUSE

VIA ELECTRONIC MAIL ONLY: cfisher@co.yuba.ca.us

**Subject: Initial Study/Mitigated Negative Declaration for Upper Rose Bar
Salmonid Spawning Habitat Restoration Project, Yuba County**

Dear Ciara Fisher:

The California State Lands Commission (Commission) staff has reviewed the Initial Study/Mitigated Negative Declaration (IS/MND) for the Upper Rose Bar Salmonid Spawning Habitat Restoration Project (Project), which is being prepared by the Yuba County Planning Department (County). The County 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 its 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 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.

The Yuba River, at the Project location, is State sovereign land under the Commission's jurisdiction. On November 16, 2022, the Yuba County Water Agency submitted an application for a lease for the portion of the Project encroaching on State sovereign land.

Project Description

The Proposed Action, including design, permitting, construction, and monitoring, is funded and directed by the California Department of Fish and Wildlife through the Proposition 1 grant program. The Proposed Action is being led by the South Yuba River Citizens League, CBEC Eco-Engineering, and Cramer Fish Sciences. The County is serving as the CEQA lead agency due to its permitting authority over the Project. Collectively, the Project team proposes to design, implement, and monitor in-channel salmonid habitat restoration to meet the objectives and needs for the Project as follows:

- Increase the amount of high-quality spawning habitat by modifying hydraulic and substrate conditions to within ranges preferred by Chinook Salmon and Steelhead during typical spawning periods.
- Create backwater habitat that incorporates varying depths and low velocities to create juvenile salmonid rearing habitat over a range of flows.
- Create a design that mimics natural morphological features that would not erode significantly through typical non-flood control related operations.
- Reduce bank erosion in the west gully that may be contributing mercury contaminated soil in the Yuba River.

From the Project Description, Commission staff understands that the following activities have potential to affect State sovereign land. The Project includes enhancing two existing spawning riffles, creating a rearing bench, excavating a spawning bench, and developing an access road to the bar.

Environmental Review

Commission staff requests that the County consider the following comments on the Project's IS/MND, to ensure that impacts to State sovereign land are adequately analyzed for the Commission's use of the IS/MND when considering a future lease application for the Project.

General Comments

1. Project Description: The project description does not include where the approximately 38,900 cubic yards of total fill will be from. If fill is to be used from the area, testing for mercury and other hazardous materials would be needed to ensure water quality. Additionally, fill that is from another location will need to be free of seeds of invasive plant species, to the extent possible, and potential hazardous materials depending on where it is from. Transportation of fill from another location or to a landfill should be included in Air Quality/Greenhouse Gas calculations for an accurate analysis of the impacts from the project.
2. Permits and Approvals: In Section 2.7 (page 12 of the IS/MND), include the Commission in the Required Proposed Action Permits and Approvals list. This Project will need a new lease.

Biological Resources

3. Revegetation and Monitoring on State Lands: Commission staff requests that the applicant add the Commission to the list of agencies that may review the Project's Revegetation Plan and post-construction monitoring report for any construction activities on State Sovereign lands. Commission staff also requests the results of future monitoring of the Project area to answer critical questions influencing spawning habitat quality for Central Valley salmonids and the relative benefit of rehabilitating habitats.

Cultural Resources

4. Title to Resources Within Commission Jurisdiction: The IS/MND 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 the County consult with Staff Attorney Jamie Garrett 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 IS/MND's Mitigation Monitoring Program in Mitigation Measure CR-2: Inadvertent

Discoveries of Objects of Cultural Significance: "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."

Thank you for the opportunity to comment on the IS/MND for the Project. As a responsible and trustee agency, the Commission will rely on the adopted IS/MND when considering issuance of a new lease as specified above (see Section "Commission Jurisdiction and Public Trust Lands"). We request that you consider our comments before adopting the IS/MND.

Please send electronic copies of the adopted IS/MND, Mitigation Monitoring Program, and 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 Management Specialist, 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
J. Garrett, Commission
N. Lee, Commission