

CALIFORNIA STATE LANDS COMMISSION

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July 17, 2020

Mr. Miles Claret
Central Valley Flood Protection Board
3310 El Camino Avenue, Suite 170
Sacramento, CA 95821

File Ref: SCH #2005072046
8/21/2020

Governor's Office of Planning & Research

Jul 17 2020

VIA ELECTRONIC MAIL: (PublicComment@cvflood.ca.gov) **STATE CLEARINGHOUSE**

Subject: Draft Supplemental Environmental Assessment/Environmental Impact Report (SEA/EIR) for the American River Common Features, Water Resources Development Act of 2016, American River Contract 1, Sacramento County

Dear Mr. Claret:

The California State Lands Commission (Commission) staff has reviewed the subject Draft SEA/EIR for the American River Common Features Development Act of 2016, American River Contract 1 (Project), which is being prepared by the Central Valley Flood Protection Board (CVFPB), as the lead agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.), and the U.S. Army Corps of Engineers (Corps) as 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 sovereign lands and their accompanying Public Trust resources or uses. Additionally, because the Project involves work on sovereign lands, 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.

Based on the information submitted in the SEA/EIR, a portion of Site 2-1 is located on State-owned sovereign land in the lower American River below the ordinary low water mark. To the extent that any portion of the proposed levee improvement project involves State-owned sovereign lands in the American River, a lease will be required. The Department of Water Resources submitted an application to the Commission on January 6, 2020. Access from the American River to the three mitigation sites addressed in the SEA/EIR may also require approval from the Commission. If you have any questions, please contact Joanne Holt, Public Land Management Specialist (see contact information below) to discuss the Commission's leasing requirements.

Please also be advised that the waterways involved in the Project are subject to a public navigational easement. This easement provides that the public has the right to navigate and exercise the incidences of navigation in a lawful manner on State waters that are capable of being physically navigated by oar or motor-propelled small craft. Such uses may include, but are not limited to, boating, rafting, sailing, rowing, fishing, fowling, bathing, skiing, and other water-related public uses. The activities completed under the Project must not restrict or impede the easement right of the public.

Project Description

CVFPB proposes to install erosion protection features along the Lower American River at levee site 2-1. The purpose of the Project is to reduce the overall flood risk within the study area. The design of Site 2-1 was prepared to:

- Minimize impacts on hydraulic capacity
- Maximize the width of the planting benches without impacting hydraulic capacity
- Minimize excavation into the existing berm and preserving existing resources where possible
- Minimize the footprint into the existing channel.

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

- Bank protection (rock revetment) would be placed on the existing bank at a slope varying from a 2:1 slope to a 3:1 slope, extending below the ordinary low-water mark (OLWM).
- A planting bench (trench) would be constructed in the rock, filled with soil, and planted with native grasses, shrubs, and trees with shallow root systems to ensure that they do not limit the functionality of the trench during a flood event.

- Small dead trees with intact root wads, also referred to as in-stream woody material (IWM), would be anchored in lower elevation bench areas, and a mix of water dependent herbaceous plants would be planted.

Environmental Review

Commission staff requests that the lead agencies consider the following comments on the Project's Draft SEA/EIR.

General Comments

1. In Section 2.3.1.2, the SEA/EIR states that "All launchable-rock trenches would be constructed outside of the natural river channel;" however on Figure 2-5, the trench is shown to be below the ordinary high-water mark (OHWM); therefore, staff suggests that "natural river channel" be replaced with the phrase "main channel." In addition, the section states that "[t]he bottom of the trench would be constructed close to the summer mean water surface elevation...". Please clarify whether the "summer mean water surface elevation" is comparable to the ordinary low water mark (OLWM), to help establish what activities would be performed on lands under the jurisdiction of the Commission.

Cultural Resources

2. **Tribal Consultation**: Page 3-91 states that the Shingle Springs Band of Miwok Indians, Wilton Rancheria, and the United Auburn Indian Community (UAIC) requested consultation in February of 2020 and that the consultation is ongoing at this time. Commission staff requests that the results of consultation be provided when complete.
3. **Title to Resources**: Commission staff requests the Archaeological Discovery Plan (Mitigation Measure [MM] CR-2, found on page 3-96) include a statement 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 Commission (Pub. Resources Code, § 6313). Commission staff also requests that MM CR-4 include the following statement: "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." Finally, Commission staff requests that the lead agencies consult with staff attorney Jamie Garrett (see contact information below) should any cultural resources on State lands be discovered during construction of the proposed Project.

Climate Change

4. Climate change is mentioned in Section 3.10, *Greenhouse Gas Emissions and Energy Consumption* of the Draft SEA/EIR; however, there is no distinct discussion of how the Project would address aspects of climate change other than greenhouse gases that are relevant to the Project. The Project area is located in a portion of the

American River that is not tidally influenced and therefore, would not be subject to sea-level rise. However, as stated in *Safeguarding California Plan: 2018 Update* (California Natural Resources Agency 2018), climate change is projected to increase the frequency and severity of natural disasters related to flooding, drought, and storms. In rivers, more frequent and powerful storms can result in increased flooding conditions and damage from storm-created debris as well as decreased bank stability and structure. Conversely, climate-change induced droughts could decrease river levels and flow for extended periods of time. Although relevant information is provided throughout the document, Staff suggests that CVFPB consider adding a separate discussion of how the work purposed at Site 2-1 addresses the potential effects of climate change noted above.

Recreation

5. The SEA/EIR (page 3-144) states that no fishing, swimming, or boating would be possible at the site during construction; however, it is unclear if boaters would have access past the site and if so, what offshore safety measures would be implemented?

Thank you for the opportunity to comment on the Draft SEA/EIR for the Project. As a responsible and trustee agency, the Commission will need to rely on the Final SEIR for the issuance of any lease as specified above and, therefore, we request that you consider our comments prior to certification of the SEIR. Please send copies of future Project-related documents, including electronic copies of the certified SEIR, Mitigation Monitoring and Reporting Program, Notice of Determination, Findings, Statement of Overriding Considerations, and approving resolution when they become available. Please refer questions concerning environmental review to Cynthia Herzog, Senior Environmental Scientist, at (916) 574-1310 or 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 jamie.garrett@slc.ca.gov. For questions concerning Commission leasing jurisdiction, please contact Joanne Holt Public Land Management Specialist, at (916) 574-1832 or Joanne.Holt@slc.ca.gov.

Sincerely,



Eric Gillies, Acting Chief
Division of Environmental Planning
and Management

cc: Office of Planning and Research
C. Herzog, Commission
J. Garrett, Commission
N. Lee, Commission
J. Holt, Commission