

CALIFORNIA STATE LANDS COMMISSION
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Established in 1938

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Governor's Office of Planning & Research

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STATE CLEARINGHOUSE

August 1, 2022

File Ref: SCH #2005072046

Kalia Schuster
Department of Water Resources
3464 El Camino Avenue Room 200
Annex Suite 200
Sacramento, CA, 95821

VIA ELECTRONIC MAIL ONLY: PublicCommentARCF16@water.ca.gov

Subject: Draft Supplemental Environmental Assessment/Environmental Impact Report (SEA/EIR) for the American River Common Features, Water Resources Development Act of 2016, Sacramento River East Levee Contract 4, Sacramento County

Dear Kalia Schuster:

The California State Lands Commission (Commission) staff has reviewed the Draft SEA/EIR for the American River Common Features Development Act of 2016, Sacramento River East Levee Contract 4 (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 (USACE) 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 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.

The Sacramento River, at the location of the proposed Project, is tidal State sovereign land under the jurisdiction of the Commission. In addition, the Commission has jurisdiction over the following upland parcels within the Project area: APN 002-0010-023, APN 024-0010-010, APN 024-0010-012, APN 024-0010-019, and APN 024-0081-019.

Based upon the information provided and a preliminary review of Commission records, Commission staff has determined that the Project will require submission of a lease application for issuance of a lease. The application can be found at our website at www.slc.ca.gov. As the Project proceeds, please submit additional information, including but not limited to ordinary high-water mark (OHWM) and boundary surveys, for a determination of the extent of the Commission's jurisdiction. Please contact Sandra Avila, Public Land Management Specialist, for jurisdiction and leasing requirements for the Project (see contact information at end of letter). Additionally, please ensure that the Commission's Land Management Division staff is included on any future distribution mailing list for the Project.

Proposed Project Description

The USACE, CVFPB, and Sacramento Area Flood Control Agency propose to construct levee improvements along the Sacramento River East Levee to meet embankment and foundation stability requirements. Project objectives include the following:

- Reduce the chance of flooding and damages, once flooding occurs, and improve public safety preparedness and emergency response.
- Reduce maintenance and repair requirements by modifying the flood management system in ways that are compatible with natural processes.
- Integrate the recovery and restoration of key physical processes, self-sustaining ecological functions, native habitat, and species.
- Ensure that technically feasible and cost-effective solutions are implemented to maximize the flood risk reduction benefits given the practical limitations of applicable funding sources.

Commission staff understand that areas within Commission jurisdiction below the OHWM would be disturbed during construction; however, no work would be performed within the wetted channel of the Sacramento River. Work below the OHWM would not include removing any vegetation serving as shaded riverine aquatic habitat but would include removal of up to 1.5 acres of riparian vegetation

(including willow scrub) below the OHWM that may provide juvenile foraging, refugia, spawning, and/or shallow water habitat for various life stages of special-status fish species. Work areas below the OHWM would be cleared and grubbed to implement stormwater best management practices (BMPs), and approximately 100 cubic yards of fill would be placed on approximately 0.1 acre to replace unsuitable materials from the levee at this location. Portions of a waterside staging area at Chicory Bend in the Little Pocket area below the OHWM would be used for equipment storage and material laydown. This would not require clearing, grubbing, or stripping, and no trees or shrubs would be removed. Therefore, no ground surface below the OHWM would be disturbed at this staging area. Additional work may be conducted on the upland parcels noted above, which will be clarified during the application process.

Environmental Review

Commission staff request that the lead agencies consider the following comments on the Draft SEA/EIR.

General Comments

1. Commission staff request that the SREL C4 Improvements Overview figures (Figures 2-1 through 2-5) include a line indicating the OHWM to be consistent with the text and so staff can better assess impacts to areas within Commission jurisdiction. Per page 17 of the SEA/EIR, "An updated OHWM determination for the Sacramento River within the 13-mile Sacramento River study area of the GRR was signed on January 4, 2022."

Cultural Resources

2. Title to Resources: Commission staff request the Archaeological Discovery Plan (Mitigation Measure CR-2) 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 are vested in the State and under the jurisdiction of the Commission (Pub. Resources Code, § 6313), as follows: "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 request that the lead agencies consult with Staff Attorney Jamie Garrett (see contact information below) should any cultural resources on State land be discovered during construction of the Project.

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 Final SEA/EIR, an accessible version of the final Mitigation Monitoring and Reporting Program, Notice of Determination, Findings, Statement of Overriding

Considerations (if applicable), 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 Sandra Avila, Public Land Management Specialist, at (916) 574-0282 or sandra.avila@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
S. Avila, Commission