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File Ref.: SCH #2026030742

City of Del Mar
Amanda Lee
1050 Camino del Mar
Del Mar, CA 92014

Subject: Draft Initial Study/Mitigated Negative Declaration (IS/MND) for San Dieguito Lagoon Levee, Habitat Enhancement, and Trail Project, San Diego County

Dear Amanda Lee:

The California State Lands Commission (Commission) staff has reviewed the Draft Initial Study/Mitigated Negative Declaration (IS/MND) for the San Dieguito Lagoon Levee, Habitat Enhancement, and Trail Project (Project), which is being prepared by the City of Del Mar (City). The City, 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 under the Commission's jurisdiction, 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

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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.

On October 29, 2010, the Commission authorized a Title Settlement and Exchange Agreement (Agreement) between the 22nd District Agricultural Association (Association) and the State Lands Commission ([Item 55](#)). The Agreement effectuated a land exchange terminating the State's sovereign public trust interest claims in certain filled parcels in exchange for acquiring four parcels, including filled and unfilled lands, and impressing those parcels with the Public Trust. Those four parcels are sovereign tide and submerged lands and subject to the common law Public Trust for fisheries, navigation, commerce, and other recognized Public Trust purposes.

As part of the Agreement, the Commission authorized the issuance of Lease 8886, a 49-year General Lease – Public Agency Use (Lease) to the Association for the use of the four state-owned sovereign land parcels located in and adjacent to the San Dieguito River/Lagoon. Under the Lease, the District is authorized to use sovereign land for open space; wetland restoration and maintenance; use and maintenance of a public access trail; flood control improvements; and temporary use and maintenance of an existing parking lot and recycling facility.

The proposed Project would involve use of portions of the parcels the State acquired as sovereign lands through the Agreement. As these uses are not currently authorized and the Lease 8886 does not include this Project, the City of Del Mar will need to apply to the Commission for authorization in the form of a lease for any proposed construction activities and uses of sovereign land. Please note that the North Riverbank parcel is also subject to Lease 8886. To ensure there are no conflicting uses proposed with the existing Lease, the City will be required to obtain a letter of concurrence from the Association acknowledging and agreeing to any proposed construction activities and uses within the existing lease area. The Commission's lease process and application can be found online at www.slc.ca.gov/leases-permits/.

If you have questions specific to jurisdiction, lease provisions, or the application process, please contact Public Land Management Specialist Kelly Connor (contact information below).

Project Description

The City proposes to minimize the risk of future flooding along both sides of the San Dieguito River between the San Dieguito Railway Bridge and the Jimmy Durante Boulevard Bridge to meet the City's objective of achieving increased flood protection in compliance with the Federal Emergency Management Agency No Rise standard, increase native vegetation and habitat, and improve public trail access and recreational amenities along the riverbank slopes.

The San Dieguito Lagoon Levee, Habitat Enhancement, and Trail Project (Project) comprises three areas along the San Dieguito River shoreline: the North Riverbank, the Southeast Riverbank, and the Southwest Riverbank. The Project is a nature-based flood adaptation, ecological enhancement, and public trails project that aims to minimize upland flooding while enhancing public access for the region. The North Riverbank portion of the project covers approximately 1,500 linear feet by 50 feet and uses one of the previously established state-owned sovereign land parcels to establish a living levee design and pedestrian trail. The crest of the levee would be 15 feet wide to support a new pedestrian trail on top of it to connect the Del Mar Fairgrounds and the Coast to Crest Trail.

Environmental Review

Commission staff requests that the City 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**: Commission staff request that you specify what activities will take place during "shoreline enhancement" along the North Riverbank. Page 3 of the MND describes "nature-based flood adaptation" and "ecological enhancement" as part of the project but no further clarification of those terms appears in the project description. There is also no further description of what sections of the project will have "riprap replacement," as mentioned in Section 2.2, Project Characteristics. Please include a description of these activities for the North Riverbank in Section 2.2.1, Project Components. In addition, please refer to Section Four of the Commission's [2023 Shoreline Adaptation and the Public Trust](#) report for more information on the Commission's preferred shoreline adaptation strategies and their advantages and disadvantages for mitigating coastal hazards and protecting Public Trust resources.

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2. Project Description: Page 5 of the IS/MND indicates that “approximately 8,200 CY of cut and 4,520 CY of fill” would occur, as well as “approximately 111,540 square feet of asphalt would be removed.” Please indicate how the cut material and asphalt would be disposed. In addition, please indicate how the fill would be brought to the Project site. Alternatively, if the cut will be used for the fill, please clarify and identify any testing that will be needed to determine the suitability of the fill for the Project site.
3. Best management practices (BMP): Please specify the BMPs that are being considered as part of Project activities and include a list or reference in the Project Description. In addition, the Section 3 analyses must explain how those BMPs will reduce potential significant impacts to less than significant, particularly in Sections 3.4, Biological Resources, and 3.10, Hydrology and Water Quality.

Biological Resources

4. Inadvertent Introduction of Invasive Species: The IS/MND does not include a robust discussion of the inadvertent introduction of terrestrial invasive species. Please include how invasive species could be introduced into the project area, to what extent they may directly or indirectly impact native and special-status plant species, and any BMPs that would avoid a potentially significant impact.
5. Biological Resources Mitigation: Under MM-BIO-4, it is stated that the California Department of Fish and Wildlife (CDFW) will be contacted if certain parameters are met concerning Crotch's Bumble Bee. Commission staff request clarification on why CDFW will be contacted for concerns with Crotch's Bumble Bee but was not mentioned for other special status species that may be in the Project site during implementation of the Project in MM-BIO-3.

Cultural Resources

6. Potential Deferred Cultural Resources Mitigation: Page 45 of the IS/MND indicates that “If a cultural resource is determined to be significant, the archaeologist and Native American monitor shall coordinate with City staff to develop and implement appropriate treatment measures.” 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. The Guidelines state that that specific details of a mitigation measure may be developed “after project approval when it is impractical or infeasible to include those details during the project's environmental review provided that the agency (1) commits itself to the mitigation, (2) adopts specific performance standards the mitigation will achieve, and (3) identifies the type(s) of potential

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action(s) that can feasibly achieve that performance standard and that will be considered, analyzed, and potentially incorporated in the mitigation measure.” (CEQA Guidelines, §15126.4, subd. (a)(1)(B).) As MM CUL-1 is currently written, it is not clear what specific performance standards will be used to show the impact reduction. It is also unclear what will happen to a discovered cultural resource during and after the development of appropriate treatment measures. Commission staff recommends that MM CUL-1 require a treatment plan be developed prior to construction of the Project, in consultation and coordination with potentially affected tribes and with appropriate treatment measures already outlined.

7. 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 California State Lands Commission (Pub. Resources Code, § 6313).

Staff requests that the following statement be included in the IS/MND's MM-CUL-1: “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.”

Hydrology and Water Quality

8. Impacts to water quality from silt or erosion: BMPs were used in this section to reduce impacts to less than significant. Please indicate what BMPs will be used to reduce impacts to water quality and hydrology during implementation of the Project. BMPs that could be appropriate for this project include physical barriers such as fiber rolls (straw wattles), silt fences, or gravel bags around the perimeter of all areas of soil removal and (if applicable) soil stockpiles.

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 issuing a new lease. Staff requests that you consider these comments before adopting the IS/MND.

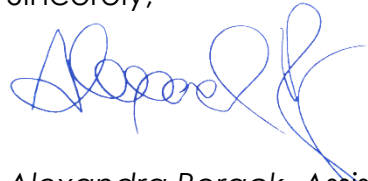
Please send electronic copies of the adopted IS/MND, Mitigation Monitoring Program, Notice of Determination, and approving resolution when they are final. Please note that federal and state laws require all government entities to improve accessibility of information technology and content by complying with established accessibility requirements. (29 U.S.C. § 794d; 36 C.F.R. § 1194.1 et seq.; Gov. Code, § 7405.)

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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 that will be posted online, including relevant 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, Senior Environmental Scientist, at Christine.Day@slc.ca.gov or (916) 562-0027. For questions concerning Commission leasing jurisdiction, please contact Kelly Connor, Public Land Management Specialist, at Kelly.Connor@slc.ca.gov or (916) 574-0343.

Sincerely,



*Alexandra Borack, Assistant Chief, for
Nicole Dobroski, Chief, Division of
Environmental Science, Planning
and Management*

cc: Office of Planning and Research
C. Day, Commission
K. Connor, Commission