

CALIFORNIA STATE LANDS COMMISSION

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February 7, 2020

Mr. Michael Padilla
U.S. Army Corps of Engineers
231 South LaSalle Street, Suite 1500
Chicago, Illinois 60604

Governor's Office of Planning & Research

FEB 07 2020

STATE CLEARINGHOUSE

Mr. Justin Golliher
Orange County Public Works,
601 Ross Street
Santa Ana, California 92701

VIA REGULAR & ELECTRONIC MAIL (Westminster_comments@usace.army.mil)

Subject: Comments on Integrated Feasibility Report Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for Westminster East Garden Grove Flood Risk Management Study (SCH #2017124001)

Dear Mr. Padilla and Mr. Golliher,

California State Lands Commission (Commission) staff has reviewed the subject EIS/EIR for the Westminster, East Garden Grove, California Flood Risk Management Study Project (Project), which is being prepared by the U.S. Army Corps of Engineers (ACOE) and Orange County Public Works (OCPW). The OCPW, 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.), and the ACOE is 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 land and their accompanying Public Trust resources or uses. Additionally, because the Project involves work on sovereign land, the Commission will act as a responsible agency.

The East Garden Grove-Wintersburg Channel (EGGW Channel) is adjacent to the Bolsa Chica Ecological Reserve (Ecological Reserve), a major environmental resource area in southern California that includes the Bolsa Bay State Marine Conservation Area (Bolsa Bay SMCA), the Bolsa Chica Basin SMCA, and the Bolsa Chica Lowlands Restoration Project (BCLRP). The SMCAs are No-Take areas and have been designated as an area of national significance; these wetlands host a wide assemblage of resident and migratory

waterfowl and marine species, including over 30 state and federally listed sensitive species. The BCLRP is owned and managed by the Commission with the oversight of state and federal interagency partners and on-site management assistance from the California Department of Fish and Wildlife. The BCLRP is included in the Ecological Reserve, but the Ecological Reserve includes some areas outside of the BCLRP.

The State of California acquired fee ownership of the Huntington Harbour Main and Midway Channels in 1961 as a result of a land exchange between the Commission and the Huntington Harbour Corporation, recorded as Sovereign Lands Location No. 34 dated December 22, 1960.

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 including three miles off the coastal shoreline. 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), 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. Activities performed on State-owned sovereign land may require a lease or other authorization from the Commission.

Additionally, under the California Environmental Quality Act (CEQA), the Commission is a trustee agency for projects that could directly or indirectly affect sovereign land and their accompanying Public Trust resources or uses (CEQA Guidelines § 15063(g)). For this Project, the Commission acts as a trustee agency, and likely would act as a responsible agency in the near future.

Based on the identified study area limits and preliminary descriptions in the EIS/EIR plan alternatives, including the Tentatively Selected Plan, the Commission has jurisdiction within the study area and the Project will require Commission authorization, depending on the activities ultimately included. In addition, the Commission has issued various leases within the Project area that may be impacted, including, but not limited to:

- PRC 8704.9, a General Lease – Public Agency Use to the California Department of Fish and Wildlife for the Bolsa Chica Lowlands Restoration Project;
- PRC 4733.9, a General Lease – Public Agency Use to the California Department of Fish and Wildlife for an ecological reserve, recreational facilities, and pedestrian bridge adjacent to Warner Avenue;
- PRC 9063.9, a General Lease – Public Agency Use to the City of Huntington Beach for the Warner Avenue Bridge;
- PRC 8685.9, a General Lease – Other Use to the Bolsa Chica Conservancy for the Bolsa Chica Interpretive Center and related activities;
- Various leases along the Main and Midway Channels in the Huntington Harbour development, along the Bolsa Chica Channel outlet in Huntington Harbour, the Surfside-Sunset area, and Anaheim Bay.

The proposed widening of the channel under the Warner Avenue Bridge will result in a change in the physical character of the sovereign land affected, from upland to submerged

land, and may result in habitat loss. This change will have an impact on both Public Trust uses and Public Trust resources and may require compensation to the State pursuant to the California Code of Regulations (Cal. Code Regs., tit. 2, § 2003, subd. (d)(5); see also Pub. Resources Code, § 8625).

Staff can better identify the Commission's jurisdiction once Project elements are identified with more certainty in the Design and Engineering Phase and site-specific Project details are provided.

Project Description

The study focuses on modifications to the existing channels that include C02 Bolsa Chica Channel, C04 Westminster Channel, C05 East Garden Grove-Wintersburg Channel, and the C06 Ocean View Channel, all within the Westminster watershed in western Orange County, California.

The study examines two plans: Tentatively Selected Plan (TSP) and a Locally Preferred Plan (LPP). The Minimum Channel Modifications Plan is the TSP. It reduces flood risk by lining the existing drainage channels with concrete, thus increasing conveyance efficiency. The Maximum Channel Modifications Plan has been identified as the LPP. It reduces flood risk by altering the geometry of existing drainage channels to increase conveyance efficiency and storage capacity. Both of these plans include additional downstream measures to address the impacts of increased flood flow conveyance resulting from the channel modifications. The downstream measures include increasing the span of Warner Avenue Bridge, removing the tide gates on C05, and constructing a floodwall along Pacific Coast Highway (PCH) at Outer Bolsa Bay. Compatible nonstructural measures were also included in the TSP to lessen the life safety risk associated with flooding in the project area. Each plan will require mitigation to address the loss of habitat.

Environmental Review

Commission staff requests that the OCPW/ACOE consider the following comments on the Final EIS/EIR.

General Comments

1. Mitigation Measures. Table 101 in Section 8.2.1 is not comprehensive. To assist responsible agencies that must rely on the EIS/EIR to prepare their own Findings and Mitigation and Monitoring Plans for the Project, Commission staff request that both the relevant impact number and mitigation number be included in the Final Mitigation, Monitoring, and Reporting Plan.

In addition, as stated in our previous letter, in order to avoid the improper deferral of mitigation, mitigation measures must be specific, feasible, and fully enforceable to minimize significant adverse impacts from a project (State CEQA Guidelines, §15126.4, subd. (a)).

For example, to avoid deferral in MM-GEO-1 regarding a Stormwater Pollution Prevention Plan (SWPPP), the text of the measure should be expanded to detail what

activities (noted as “a list of BMPs to minimize potential soil erosion impacts outlined in a SWPPP’ on page 150) would reduce the impact to a less than significant level. The same suggestion would apply to MM-WR-1, which also references the SWPPP to reduce Impact-WR-1, and to MM-WR-4, which references a “Water Quality Mitigation and Monitoring Plan that will be developed “as needed” as part of 404/401 compliance. Commission staff suggest that these measures, and similar measures in the EIS/EIR be revised to include more specifics on how the mitigation would reduce the impacts in question.

Biological Resources

2. Invasive Species: In the letter dated December 3, 2018, Commission staff commented on the potential for invasive species within the Project area. OCPW/ACOE’s response states “Chapter 7-Compliance with Applicable Laws, Policies, and Plans discusses the Recommended Plan’s undertakings to prevent the introduction of invasive species;” however, Commission staff could not find a reference to invasive species in Chapter 7. Please clarify where distinct information regarding how the Project would manage invasive species can be found in the EIS/EIR.

Additional Comments

3. Based on the information provided by Mr. Joel Schmidt of USACE via email dated September 23, 2019, the water surface elevations within Outer Bolsa Bay could be as high as 8.5 feet (NAVD 88) for the current conditions and 8.9 feet (NAVD 88) with the LPP improvements when storm peaks coincide with high tide. This appears that the LPP improvements could possibly introduce an additional 0.4 feet (4.8 inches) of flood water onto the section of PCH adjacent to Outer Bolsa Bay. Commission staff is concerned about this additional flooding since the PCH section is already frequently flooded during the wet season. Commission staff strongly feels that the impact of the additional flooding on PCH due to the LPP improvements be discussed with CALTRANS.
4. As was noted in our December 3, 2018 comment letter, any construction activities or modifications to the existing conditions within the State Lands Commission’s jurisdiction will require prior authorization from the Commission, including but not limited to removal of the lands just upstream to the Warner Avenue Bridge, modification to the existing tide gate at the downstream end of CO5, construction of new floodwall along PCH or other work in Outer Bolsa Bay or the BCLRP Pocket Marsh modification to CO5 adjacent to the BCLRP, Huntington Harbour, Anaheim Bay, significantly altering the hydrology, etc.
5. Page ES-v Land Use – identify and include the Bolsa Chica Lowlands Restoration Project (BCLRP) and Ecological Reserve protected areas as undeveloped land adjacent to CO5 Reach 1. It only identifies the oil production *within* the BCLRP.
6. Commission staff submitted prior comments on January 12, 2018 and December 3, 2018, attached as Exhibit A for your convenience.

Specific Comments on Lower CO5 Project Features and Proposal for Consideration of a New Alternative

The Locally Preferred Plan (LPP) addresses additional local sponsor and stakeholder concerns that may have a more regional, rather than national, benefit. Commission staff recommends that the LPP include consideration of regional benefits beyond the defined 100-yr flood protection objectives of the OCFCD. This includes a consideration of a project design that accommodates the required flow rates generated by increased drainage efficiencies in upstream areas while avoiding damage and enhancing function of downstream wetlands. As a primary affected land owner and public trust agency, Commission staff seeks to assist in this effort by identifying an alternative that would provide greater benefits to the wetlands at the downstream end of the EGGW Channel (lower CO5) and would be expected to lessen the overall project cost and risk of unforeseen impacts and liabilities.

Under both the TSP and LPP, considerable activity is proposed within the tidal reaches of the EGGW Channel to accommodate enhanced flows developed through upstream channel improvements. These flows would be accommodated by the removal of the existing flap-gate weir at the lower end of the channel, lengthening of the Warner Avenue Bridge to accommodate increased flood flow discharge, and construction of a flood wall along PCH in order to accommodate higher water levels and create a greater contained capacity within Outer Bolsa Bay (OBB) during storm discharge peaks. As a component of the mitigation plan, a stoplog structure would be constructed at the BCLRP Muted Pocket Marsh (MPM) to receive flood waters, with enlargement of the culvert at OBB. The cost of such improvements is reported in the document and combined with mitigation and real estate expense the downstream improvements results in a significant overall portion of the project expense. However, we believe that there are additional impacts not yet fully addressed in the document relating to increase scour along the bulkhead walls along the main channel within Huntington Harbour. (See Commission's previous comment letter Exhibit A). These impacts and solutions should be evaluated as they would be expected to result in impacts to eelgrass and shallow water marine habitats as well as adding to the overall project cost. Further, replacement of the Warner Avenue Bridge and the pedestrian bridge at Warner Avenue would have a serious disruptive effect of a main traffic linkage and public access trails and would further impact wetlands of Outer Bolsa Bay. Not addressed in the document are expected effects of changing flow dynamics in Outer Bolsa Bay and the Muted Pocket Marsh and the potential for loss or reconfiguration of mudflats and marshlands that have developed under the current flow regimes.

We would like to request consideration of an alternative to passing the full flood flows through Huntington Harbour and out Anaheim Bay. This alternative would eliminate the lengthening of the Warner Avenue Bridge, and potentially eliminate the floodwall at PCH and would eliminate or relocate the existing weir at the base of the EGGW Channel. The concept is very schematically outlined in the illustration accompanying this letter. The alternative includes the following elements (conceptually illustrated in Exhibit B):

- 1) A second spill over weir or lowering the levee into the Bolsa Chica Full Tidal Basin (FTB) that would accept flows at higher water surface elevations that would provide both retention in and conveyance through the FTB;
- 2) Enhanced trash and debris removal booms and potentially even active debris traps located upstream of the Bolsa Chica tidal wetland complex;
- 3) Trash racks on constructed weirs;
- 4) Potential area for wetland mitigation within the Bolsa Chica complex;
- 5) A one-way circulation system to facilitate maintenance of the Bolsa Chica inlet shoaling and flushing of the system by using tide gates into Inner Bolsa Bay from Outer Bolsa Bay, and out of Inner Bolsa Bay to the Bolsa Chica Full Tidal Basin, and;
- 6) Participation commitments to the impact receiver wetlands (Commission) for on-going maintenance of the Bolsa Chica MPM and FTB inlet as well as trash removal, which may include capital contributions pursuant to Public Resources Code section 8625.

It is anticipated that conveyance of flood flows into the BCLRP would eliminate the need for replacement of the Warner Avenue bridge and construction of the PCH floodwall. It would also potentially reduce risks of unforeseen as well as known damage to wetlands and infrastructure as discussed below.

The BCSC has previously presented an alternative scenario to handle flood waters within the lower wetland, high frequency flood discharges would continue to flow through OBB under the existing Warner Avenue Bridge. As the water surface elevation rises in Outer Bolsa Bay, water would be spilled into or flow into the BCLRP Muted Pocket Marsh (MPM), depending upon whether the MPM were connected by weir or full levee removal, to avoid discharges onto PCH. This would provide online or offline wet pond retention. As the MPM capacity is consumed, a second stage spill would occur into the Bolsa Chica Full Tidal Basin (FTB). The flood waters spilled to the Bolsa Chica FTB would be conveyed out the ocean inlet. The infrequent and late storm stage discharges into the BCLRP would be expected to minimize trash and debris inputs to the wetlands if adequate debris booms and racks are used. Further, these infrequent spills to the system would provide a means of stimulating vegetation recruitment events and conveying nutrients to the wetlands that are presently substantively separated from freshwater inputs. Pulsed discharges of freshwater to tidal wetlands can stimulate vegetation growth and enhance ecological functions. If contaminants and trash are effectively minimized through avoiding absorbing first flush events and removing debris, the spills to the BCLRP can be a positive benefit to the wetlands. In addition, one of the key physical functions of wetlands is the ability to mitigate flooding.

After discussing the TSP, LPP, and BCSC spill-over scenario with coastal wetland experts and wetland managers engaged in review of the BCLRP, a further alternative was identified to fully connect the Wintersburg Channel, MTB, and OBB by north and south levee removals. This would provide two outlets for storm water and would create a more substantial estuary and wetland linkage between all of the Bolsa Chica wetlands. It may also allow for increased sediment trapping from the watershed. The overall benefits of reconnecting previously fragmented wetlands in a manner that provides greater flood handling capacity is compelling and should be given full consideration. However, this

approach would require substantial additional analyses with respect to where sediment would be expected to be deposited, what new debris management issues may occur, and what other unanticipated affects may occur. This being said, the proposed project action is significant infrastructure and will establish conditions in the area for many years into the future and thus it is believed that the level of consideration given to alternatives to meet project objectives should be fully vetted.

In the event this alternative was determined to be superior to the current proposal, the use of the BCLRP for retention and conveyance would contribute to the need to sustain physical functioning of the BCLRP FTB and MPM. This would require contribution to the maintenance of the of these systems as well as the project's implementation of storm water conveyance weirs on the berms along the EGGW. Maintenance of the ocean outlet is essential to sustaining high functioning of the BCLRP. It would also be essential to maintaining effective functioning of the FTB as a retention pond and conveyance. The maintenance would reduce post-storm freshwater residence time and protect against flooding of surrounding areas. The Bolsa Chica Ecological Reserve would also provide opportunities to mitigate impacts associated with wetlands in the channel complex.

It is anticipated that under the mutually beneficial alternative, mitigation could likely be accommodated within the BCER complex in a manner that contributes to the overall function of the wetlands and provides a minor amount of additional floodable land for storage capacity to the project. Under the alternative proposed, conceptual locations for siting mitigation have been identified. Because restoration of the wetlands has been a collaborative effort on the part of the Bolsa Chica Steering Committee, the Commission, CDFW, and non-governmental organizations including but not limited to the Bolsa Chica Conservancy that have been engaged in restoration, stewardship, and public access work, any mitigation planning at the BCER would need to be a coordinated and public engagement activity. However, collectively the engaged parties are interested in overall enhancement of the wetlands and the Commission would anticipate this effort to be effective and collaborative.

In addition to compensatory mitigation needs, opportunities may exist for improvement of circulation and tidal flushing dynamics of the FTB as an element of mitigation for infrequent retention and conveyance of flows, if the FTB is not fully connected to the Wintersburg Channel and Outer Bolsa Bay. This may include the implementation of one-way flows from OBB through Inner Bolsa Bay, and into the FTB. This would be expected to create an imbalance between ebb and flood tides within the FTB and would be expected to reduce the overall maintenance requirements at the ocean inlet and enhance the functioning of the FTB as an alternative retention pond and conveyance facility for the flood waters.

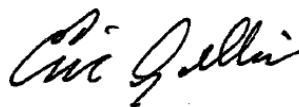
While the overall cost of the recommended alternative has not been determined, it has been noted that the advantages of this concept include the elimination of modifications to the tidal gates, elimination of the flood wall construction in outer Bolsa Bay, and the elimination for the need to widen Warner Ave, reduction in habitat mitigation requirements, elimination for the need to replace the pedestrian bridge, and elimination for the need to reinforce bulkheads in Huntington Harbor. The downstream improvements costs that are

already known total approximately \$100 million. In contrast, with the Bolsa Chica proposed alternative, we anticipate with the reduced capital costs associated with the necessary stormwater conveyance structures, the participation in the flood basin maintenance and development of wetlands within the BCER complex as mitigation, the overall project costs could be dramatically reduced with greater cost certainty. Moreover, existing wetlands in the region would be benefited through this participation. It is believed this mutually beneficial alternative should be considered as an alternative to the present downstream conveyance plan. (State CEQA Guidelines, § 15126.6).

Commission staff have appreciated the efforts of OCFCD and the Corps to consult on the development of a mutually beneficial project. The current proposed action would discharge considerable additional flood peak energy through waters of Outer Bolsa Bay, the BCLRP Muted Pocket Marsh and Huntington Harbour for which the Commission has interest in and will have adverse impacts on these properties. We would like to continue working with you to ensure that the Commission's, our partner state and federal agencies', and the public's interests in the Bolsa Chica Wetlands are fully taken into account, protected, and where possible benefited by the project. In effect, enhancement of flood protection in upstream portions of the watershed exacerbates conditions in the lower watershed. Given this circumstance, it would be prudent to seek means to fully offset the effects of the transfer of impact.

Please continue to keep the Commission updated on developments with the Project and related planning. We look forward to remaining in communication with you on this important effort, and we appreciate the opportunity to comment. Should you have any questions or if we can provide any information that could be helpful, please do not hesitate to contact Wendy Hall, Special Projects Liaison, at (916)-574-0994 or wendy.hall@slc.ca.gov.

Sincerely,



Eric Gillies, Acting Chief
Division of Environmental Planning
and Management

Attachments

cc: Wendy Hall, Commission
Lucinda Calvo, Commission
State Clearinghouse, Governor's Office of Planning and Research
Tim Dillingham, California Department of Fish and Wildlife

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December 3, 2018

File Ref: SCH # 2017124001

U.S. Army Corps of Engineers, Chicago District
Attention: Shawna Herleth-King
231 S. LaSalle Street, Suite 1500
Chicago, IL 60604

Orange County Public Works
Attention: Justin Golliher
300 N. Flower Street
Santa Ana, CA 92703

VIA REGULAR & ELECTRONIC MAIL (Westminster_comments@usace.army.mil)

**Subject: Notice of Preparation (NOP) for a Draft Integrated Feasibility Report,
Draft Environmental Impact Statement/Draft Environmental Impact
Report (EIS/EIR) for the Westminster East Garden Grove, CA Flood Risk
Management Study, Orange County**

Dear Ms. Herleth-King and Mr. Golliher:

Thank you for the opportunity to contribute comments to the Draft Integrated Feasibility Report EIS/EIR for Westminster East Garden Grove Flood Risk Management Study (Feasibility Report or Report). As the landowner of the Bolsa Chica Lowlands Restoration Project and other sovereign State Lands in the area, including lands in Huntington Harbour, the State Lands Commission (Commission) is keenly interested in the Report.

Commission staff has reviewed the subject NOP for an EIS/EIR for the Westminster, East Garden Grove, CA Flood Risk Management Study Project (Project), which is being prepared by the U.S. Army Corps of Engineers (ACOE) and Orange County Public Works (OCPW). The OCPW, 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.), and the ACOE is 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 land and their accompanying Public Trust resources or uses. Additionally, because the Project involves work on sovereign land, the Commission will act as a responsible agency. Commission staff requests that OCPW consult with us on preparation of the Draft EIR as required by CEQA section 21153, subdivision (a), and the State CEQA Guidelines section 15086, subdivisions (a)(1) and (a)(2).

Background on State Lands Commission Interests in Study Vicinity

The East Garden Grove-Wintersburg Channel (EGGW Channel) is adjacent to the Bolsa Chica Ecological Reserve (Ecological Reserve), a major environmental resource area in southern California that includes the Bolsa Bay State Marine Conservation Area (Bolsa Bay SMCA), the Bolsa Chica Basin SMCA, and the Bolsa Chica Lowlands Restoration Project (BCLRP). The SMCAs are No-Take areas and have been designated as an area of national significance; these wetlands host a wide assemblage of resident and migratory waterfowl and marine species, including over 30 state and federally listed sensitive species. The BCLRP is owned and managed by the Commission with the oversight of state and federal interagency partners and on-site management assistance from the California Department of Fish and Wildlife. The BCLRP is included in the Ecological Reserve, but the Ecological Reserve includes some areas outside of the BCLRP.

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Additionally, under the California Environmental Quality Act (CEQA), the Commission is a trustee agency for projects that could directly or indirectly affect sovereign land and their accompanying Public Trust resources or uses (CEQA Guidelines § 15063(g)). For projects involving work on sovereign land, the Commission acts as a CEQA responsible agency. Our understanding is that the environmental document used to review the Study will be a joint NEPA-CEQA document, in which case the Commission would act, at a minimum, as a trustee agency, and likely would be a responsible agency.

Based on the identified study area limits and preliminary descriptions in the Initial Study's plan alternatives, including the Tentatively Selected Plan, the Commission has jurisdiction within the study area and the Project may require Commission authorization, depending on the activities ultimately included. In addition, the Commission has issued various leases within the Project area that may be impacted, including, but not limited to:

- PRC 8704.9, a General Lease – Public Agency Use to the California Department of Fish and Wildlife for the Bolsa Chica Lowlands Restoration Project;
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The proposed widening of the channel under the Warner Avenue Bridge will result in a change in the physical character of the sovereign land affected, from upland to submerged land, and may result in habitat loss. This change will have an impact on both Public Trust uses and Public Trust resources and may require compensation to the State pursuant to the California Code of Regulations (2 CCR § 2003, subd. (d)(5); see also Pub. Resources Code, § 8625).

Staff can better identify the Commission's jurisdiction once Project elements are identified with more certainty and site-specific Project details are provided.

Project Description

The study focuses on modifications to the existing channels that include C02 Bolsa Chica Channel, C04 Westminster Channel, C05 East Garden Grove-Wintersburg Channel, and the C06 Ocean View Channel, all within the Westminster watershed in western Orange County, California.

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Environmental Review

Commission staff requests that the OCPW/ACOE consider the following comments when preparing the EIS/EIR.

General Comments

1. **Project Description:** A thorough and complete Project Description should be included in the EIS/EIR in order 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, illustrate on figures and engineering plans and provide written description of activities occurring below the mean high tide line for Project area waterways. 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

2. For land under the Commission's jurisdiction, the EIS/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 OCPW/ACOE 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 EIS/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.
3. Invasive Species: One of the major stressors in California waterways is introduced species. Therefore, the EIS/EIR should consider the Project's potential to encourage the establishment or proliferation of aquatic invasive species (AIS) such as the quagga mussel, or other nonindigenous, invasive species 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 hull 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 EIS/EIR finds potentially significant AIS impacts, possible mitigation could include contracting vessels and barges from nearby or requiring contractors to perform a certain degree of hull-cleaning. The CDFW's 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>).

Climate Change

4. 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 OCPW/ACOE should consider discussing in the EIS/EIR if and how various project components might be affected by sea-level rise and whether "resilient" designs have been incorporated. 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 individual projects 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. For bridges, this could include

the location and design of the anchors/footings, height of the span, design or use of bank stabilization, etc. Note that the State of California released the *Safeguarding California Plan: 2018 Update* (California Natural Resources Agency 2018) 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.

In addition, 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.

Mitigation and Alternatives

5. Deferred Mitigation: In order to avoid the improper deferral of mitigation, mitigation measures 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)).
6. Alternatives: In addition to describing mitigation measures that would avoid or reduce the potentially significant impacts of the Project, the OCPW/ACOE 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).

Additional Comments

1. Any construction activities or modifications to the existing conditions within the State Lands Commission’s jurisdiction shall require prior authorization from the SLC, including but not limited to removal of the lands just upstream to the Warner Avenue Bridge, modification to the existing tide gate at the downstream end of C05, construction of new floodwall along PCH or other

- work in Outer Bolsa Bay, modification to CO5 adjacent to the BCLRP, Huntington Harbour, Anaheim Bay, etc.
2. Upon removal of the lands just upstream to the Warner Avenue Bridge, will the land/slope be installed with slope stabilization and erosion control features? If no, please explain the reasons. If yes, will the feature installation be supported with geotechnical information and recommendations to ensure safe installation and long-term stability of the features?
 3. Figure 2 of the Report shows the 100-year floodplain for the Westminster watershed. It is assumed that the floodplain is the numerical modeling results with the existing channel conditions incorporated in the numerical model. Please provide the numerical modeling results with the channel conditions as described in Tentatively Selected Plan (TSP) and Locally Preferred Plan (LPP) in a similar manner as shown on Figure 2. It would be even better if the 100-year floodplains from the existing, TSP, and LPP conditions could be presented in the same figure.
 4. The Commission submitted prior comments on January 12, 2018, attached as Exhibit A for your convenience.

Specific Comments on Lower CO5 Project Features and Proposal for Consideration of a New Alternative

The Locally Preferred Plan (LPP) addresses additional local sponsor and stakeholder concerns that may have a more regional, rather than national, benefit. The Commission recommends that the LPP include consideration of regional benefits beyond the defined 100-yr flood protection objectives of the OCFCD. This includes a consideration of a project design that accommodates the required flow rates generated by increased drainage efficiencies in upstream areas while avoiding damage and enhancing function of downstream wetlands. As a primary affected land owner and public trust agency, the Commission seeks to assist in this effort by identifying an alternative that would provide greater benefits to the wetlands at the downstream end of the EGGW Channel (lower CO5) and would be expected to lessen the overall project cost and risk of unforeseen impacts and liabilities.

Under both the TSP and LPP, considerable activity is proposed within the tidal reaches of the EGGW Channel to accommodate enhanced flows developed through upstream channel improvements. These flows would be accommodated by reconstruction of the existing flap-gate weir at the lower end of the channel, lengthening of the Warner Avenue Bridge to accommodate increased flood flow discharge, and construction of a flood wall along PCH in order to accommodate higher water levels and create a greater contained capacity within Outer Bolsa Bay (OBB) during storm discharge peaks. The cost of such improvements is reported in the document and combined with mitigation

and real estate expense the downstream improvements results in a significant overall portion of the project expense. However, we believe that there are additional impacts not yet fully addressed in the document relating to increase scour along the bulkhead walls along the main channel within Huntington Harbour. (See Commission's previous comment letter Exhibit A). These impacts and solutions should be evaluated as they would be expected to result in impacts to eelgrass and shallow water marine habitats as well as adding to the overall project cost. Further, replacement of the Warner Avenue Bridge and the pedestrian bridge at Warner Avenue would have a serious disruptive effect of a main traffic linkage and public access trails and would further impact wetlands of Outer Bolsa Bay. Not addressed in the document are expected effects of changing flow dynamics in Outer Bolsa Bay and the potential for loss or reconfiguration of mudflats and marshlands that have developed under the current flow regimes.

We would like to request consideration of an alternative to passing the full flood flows through Huntington Harbour and out Anaheim Bay. This alternative would eliminate the lengthening of the Warner Avenue Bridge, and potentially eliminate the floodwall at PCH and would eliminate or relocate the existing weir at the base of the EGGW Channel. The concept is very schematically outlined in the illustration accompanying this letter. The alternative includes the following elements (conceptually illustrated in Exhibit B):

- 1) Potentially a relocated weir that would facilitate diversion of high flows into off-channel retention in the Bolsa Chica Muted Pocket Marsh (MPM);
- 2) A spill in weir into the MPM that would accept high flows as the water surface rises and prior to reaching an elevation that would result in PCH flooding;
- 3) A second spill over weir into the Bolsa Chica Full Tidal Basin (FTB) that would accept flows at even higher water surface elevations that would provide both retention in and conveyance through the FTB;
- 4) Enhanced trash and debris removal booms and potentially even active debris traps located upstream of the Bolsa Chica Wetlands tidal wetland complex;
- 5) Trash racks on constructed weirs;
- 6) Potential area for wetland mitigation within the Bolsa Chica Wetlands Complex;
- 7) A one-way circulation system to facilitate maintenance of the Bolsa Chica inlet shoaling and flushing of the system, and;
- 8) Participation in maintenance of the Bolsa Chica MPM and FTB inlet as well as trash removal either by capital acquisition of flood water conveyance rights or on-going maintenance commitments to the receiver wetlands (Commission).

It is anticipated that conveyance of flood flows into the BCLRP would eliminate the need for replacement of the Warner Avenue bridge and construction of the PCH floodwall. It would also potentially reduce risks of unforeseen as well as known damage to wetlands and infrastructure as discussed below.

Under the alternative scenario, high frequency flood discharges would continue to flow through OBB under the existing Warner Avenue Bridge. As the water surface elevation rises in Outer Bolsa Bay, water would be spilled into the Bolsa Chica Wetlands (BCW) Muted Pocket Marsh (MPM) to avoid discharges onto PCH. This would provide offline wet pond retention. As the MPM capacity is consumed, a second stage spill would occur into the Bolsa Chica Full Tidal Basin (FTB). The flood waters spilled to the Bolsa Chica FTB would be conveyed out the ocean inlet. The infrequent and late storm stage discharges into the BCW would be expected to minimize trash and debris inputs to the wetlands if adequate debris booms and racks are used. Further these infrequent spills to the system would provide a means of stimulating vegetation recruitment events and conveying nutrients to the wetlands that are presently substantively separated from freshwater inputs. Pulsed discharges of freshwater to tidal wetlands can stimulate vegetation growth and enhance ecological functions. If contaminants and trash are effectively minimized through avoiding absorbing first flush events and removing debris, the spills to the BCW can be a positive benefit to the wetlands. In addition, one of the key physical functions of wetlands is the ability to mitigate flooding.

In the event, this alternative was determined to be superior to the current proposal, the use of the BCLRP for retention and conveyance would contribute to the need to sustain physical functioning of the BCLRP FTB and MPM. This would require contribution to the maintenance of the flood shoal as well as the project's implementation of storm water conveyance weirs on the berms along the EGGW. Maintenance of the ocean outlet is essential to sustaining high functioning of the BCLRP. It would also be essential to maintaining effective functioning of the FTB as a retention pond and conveyance. The maintenance would reduce post-storm freshwater residence time and protect against flooding of surrounding areas. The Bolsa Chica Ecological Reserve would also provide opportunities to mitigate impacts associated with wetlands in the channel complex.

It is anticipated that under the mutually beneficial alternative, mitigation could likely be accommodated within the BCER complex in a manner that contributes to the overall function of the wetlands and provides a minor amount of additional floodable land for storage capacity to the project. Under the alternative proposed, conceptual locations for siting mitigation have been identified. Because restoration of the wetlands has been a collaborative effort on the part of the Bolsa Chica Steering Committee, the Commission, CDFW, and non-governmental organizations including but not limited to the Bolsa Chica Conservancy that have been engaged in restoration, stewardship and public access work, any mitigation planning at the BCER would need to be a coordinated and public engagement activity. However, collectively the engaged parties are interested in overall enhancement of the wetlands and the Commission would anticipate this effort to be effective and collaborative.

In addition to compensatory mitigation needs, opportunities may exist for improvement of circulation and tidal flushing dynamics of the FTB as an element of mitigation for infrequent retention and conveyance of flows. This may include the implementation of

one-way flows from OBB through Inner Bolsa Bay, and into the FTB. This would be expected to create an imbalance between ebb and flood tides within the FTB and would be expected to reduce the overall maintenance requirements at the ocean inlet and enhance the functioning of the FTB as an alternative retention pond and conveyance facility for the flood waters.

While the overall cost of the recommended alternative has not been determined, it has been noted that the advantages of this concept include the elimination of modifications to the tidal gates, elimination of the flood wall construction in outer Bolsa Bay, and the elimination for the need to widen Warner Ave, reduction in habitat mitigation requirements, elimination for the need to replace the pedestrian bridge, and elimination for the need to reinforce bulkheads in Huntington Harbor. The downstream improvements costs that are already known total approximately \$100 million. Whereas with the Bolsa Chica proposed alternative, we anticipate with the reduced capital costs associated with the necessary stormwater conveyance structures, the participation in the flood basin maintenance and development of wetlands within the BCER complex as mitigation, the overall project costs could be dramatically reduced with greater cost certainty and existing wetlands in the region would be benefited through this participation. It is believed this mutually beneficial alternative should be considered as an alternative to the present downstream conveyance plan. (State CEQA Guidelines, § 15126.6).

We would like to request an opportunity to continue to work with OCFCD and the Corps on development of a mutually beneficial project. The current proposed action would discharge considerable additional flood peak energy through waters of Outer Bolsa Bay and Huntington Harbour for which the Commission has interest in and will have adverse impacts on these properties. We would like to work with you to ensure that the Commission's, our partner state and federal agencies', and the public's interests in the Bolsa Chica Wetlands are fully taken into account, protected, and where possible benefited by the project. In effect, enhancement of flood protection in upstream portions of the watershed exacerbates conditions in the lower watershed. Given this circumstance it would be prudent to seek means to fully offset the effects of the transfer of impact.

Please refer questions concerning the Commission staff review to me, at (916) 574-0994 or via email at wendy.hall@slc.ca.gov.

Sincerely,



Wendy Hall
Bolsa Chica Project Manager
Special Projects Liaison, Executive Office

S. Herleth-King/J. Golliher
December 3, 2018
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cc: State Clearinghouse, Governor's Office of Planning and Research
Tim Dillingham, California Department of Fish and Wildlife

Office of Planning and Research
E. Gillies, Commission

Exhibit A

**Prior California State Lands Commission Comment Letter
January 12, 2018 Scoping Comments on
Westminster East Garden Grove Study, SCH #2017124001**

CALIFORNIA STATE LANDS COMMISSION

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Established in 1938

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Contact Fax: (916) 574-1810

January 12, 2018

VIA EMAIL (Shawna.S.Herleth-King@usace.army.mil)

Shawna Herleth-King
Fisheries Biologist
U.S. Army Corps of Engineers
231 S. LaSalle Street, Suite 1500
Chicago, Illinois 60604

Subject: Westminster East Garden Grove Study (SCH #2017124001)

Dear Ms. Herleth-King:

Thank you for the opportunity to contribute comments to the scoping process for the Corps' Westminster East Garden Grove Study. As the landowner of the Bolsa Chica Lowlands Restoration Project and other sovereign State Lands in the area, including lands in Huntington Harbour, the State Lands Commission (Commission) is keenly interested in the Study.

Background on State Lands Commission Interests in Study Vicinity

The East Garden Grove-Wintersburg Channel (EGGW Channel) is adjacent to the Bolsa Chica Ecological Reserve (Ecological Reserve), a major environmental resource area in southern California that includes the Bolsa Bay State Marine Conservation Area (Bolsa Bay SMCA), the Bolsa Chica Basin SMCA, and the Bolsa Chica Lowlands Restoration Project. The SMCAs are No-Take areas and have been designated as an area of national significance; these wetlands host a wide assemblage of resident and migratory waterfowl and marine species, including over 30 state and federally listed sensitive species.

The Bolsa Chica Lowlands Restoration Project is owned and managed by the Commission with the oversight of state and federal interagency partners and on-site management provided by the California Department of Fish and Wildlife.

Two maps are attached to illustrate the relative locations of the Ecological Reserve, the SMCAs, and the Bolsa Chica Lowlands Restoration Project.

The State of California acquired fee ownership of the Huntington Harbour Main and Midway Channels in 1961 as a result of a land exchange entered into between the Commission and the Huntington Harbour Corporation, recorded as Sovereign Lands Location No. 34 dated December 22, 1960.

The State of California also has fee ownership of a portion of the land underlying the EGGW Channel, subject to an existing easement.

Background on State Lands Commission Jurisdiction

The Commission has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways including 3 miles off the coastal shoreline. 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), 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. Activities performed on State-owned sovereign land may require a lease or other authorization from the Commission.

Additionally, under the California Environmental Quality Act (CEQA), the Commission is a trustee agency for projects that could directly or indirectly affect sovereign land and their accompanying Public Trust resources or uses (CEQA Guidelines Section 15063, subd. (g)). For projects involving work on sovereign land, the Commission acts as a CEQA responsible agency. Our understanding is that the environmental document used to review the Study will be a joint NEPA-CEQA document, in which case the Commission would act, at a minimum, as a trustee agency, and likely would be a responsible agency.

Comments on the Study and Study Area

Given the somewhat general, conceptual information we were provided, our comments are also somewhat general and are aimed at providing you with a preview of the types of concerns we may have as the Study project develops.

1. The Study should fully analyze the risks described in staff comments below and identify appropriate avoidance or mitigation measures. The Corps May 28, 2014 Review Plan for the Study acknowledges that some of the proposed alternatives could negatively impact the restored wetlands, induce “flooding in the region, inundate of [*sic*] the oil wells, and spread oil contaminated waters into environmentally sensitive habitat. . . . The study will have to ensure that

there are no adverse impacts to these mitigation sites.” (p. 6.) For all alternatives except the No Action Alternative, the proposed improvements would result in increased flows during major storm events that will require some type of improved discharge conveyance system either via outer Bolsa Bay and under the Warner Avenue Bridge, or a tunnel system, since a new ocean outlet appears to be removed from consideration. Without an improved conveyance system, the existing flooding problems would simply be moved further downstream and could increase the potential for overtopping of the existing flood control levees with spillover occurring in the west end of the Full Tidal Basin area of the Bolsa Chica Restoration Project and/or into the Pocket Marsh. A portion of the core of the Restoration Project levees surrounding the Full Tidal Basin and a large overlook contain contaminated soil covered by one meter of clean compacted fill. Should this clean fill be washed away by spillover flooding, the underlying contaminated soil may become exposed to the flood waters and result in deposition of sediment into west end of the Full Tidal Basin area and the Pocket Marsh, with negative effects for habitat.

It should also be noted that any alternative that could lead to increased groundwater levels may require mitigation to avoid issues in the neighboring residential areas.

In short, the Study should focus on alternatives that address flood risk along the entire reach of the EGGW Channel. The Study should avoid incomplete solutions that would only transfer the flooding problem from one area to another and protect upstream infrastructure at the potential expense of downstream restored wetlands.

2. Any modifications that increase velocities of flood waters channeled through the narrow lower reaches of the EGGW Channel may also have negative effects to the mudflats in Outer Bolsa Bay as well as increased risk of scour to bulkheads in the residential area of Huntington Harbour. These issues would need to be addressed.
3. If a spillway and/or dredging of outer Bolsa Bay is still under consideration for the Study, these could produce negative impacts to the Bolsa Chica Pocket Marsh and lead to the loss of mudflat and marsh vegetation.

4. If the Bolsa Chica Channel (CO2) soft bottom is converted to hard bottom, Huntington Harbour could undergo increased siltation impacts requiring more frequent dredging which could affect a number of the Commission's lessees, including Orange County, which currently holds a lease with the Commission for dredging (PRC 9212), and operates a marina at the end of the Channel along one side. Indirect impacts could be realized by all Huntington Harbour lessees if increased siltation more generally affects mooring depths along the Main and Midway Channels.
5. The Corps May 28, 2014 Review Plan for the Study states that "There is a concern that any increase in flows from the CO5 channel may adversely impact Huntington Harbor. . . . Huntington Harbor is a complex hydraulic system and any extensive modeling of the harbor could be very costly and time-consuming. The exact extent of required analysis will not be known until all upstream improvements in the CO5 channel have been identified." Please identify the threshold that would trigger the need for modeling, and what type of modeling would be employed.
6. Staff requests the Study examine the possibility of diverting some of the upstream flow from CO5 and/or CO6 into other drainage conveyance systems such as the Santa Ana River, the existing flood control channels in the city of Fountain Valley, etc.
7. Regarding alternatives that propose raising Pacific Coast Highway, Commission staff have received informal communications that the Highway is currently subject to flooding. Raising the Highway could ameliorate the periodic flooding affecting the Highway.
8. The Study should provide a map delineating areas within the overall study area (Westminster Watershed) that have experienced flooding in the past or have triggered this Study.

Comments on Level of Environmental Review

The notice we received from the State Clearinghouse indicated that comments are also sought regarding the level of environmental review for the Study. Your letter indicated that the Corps previously issued a notice of intent to prepare an Environmental Impact Statement (EIS) for the Study. Commission staff understand that the County of Orange Flood Control Division will act as the CEQA lead. As a state entity, the Commission is bound by CEQA and staff believe an EIR is the appropriate

level of CEQA review for the Study, given the potential for some alternatives to create hydrology and erosion impacts in adjoining areas of the Bolsa Bay SMCA including the Outer Bolsa Bay and the Bolsa Chica Restoration Project, and/or Huntington Harbour.

Information Requests

Commission Staff requests the following information, ideally as soon as possible and prior to release of the Study:

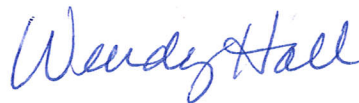
- Specific, detailed information on the location of each alternative, including the location of any facilities that are part of the alternative and ancillary facilities (channels, tunnels, etc.), including maps, so that Commission staff can determine which features and activities may be proposed on lands subject to the Commission's jurisdiction
- Specific, detailed information on any ecosystem restoration plans and/or features associated with each alternative, including maps, so that Commission staff can determine which features and activities may be proposed on lands subject to the Commission's jurisdiction

If it is not possible to transmit this information to us prior to release of the Study, then Commission staff requests that this information be contained in the Study itself.

Please continue to keep the Commission updated on developments with the Study. We look forward to remaining in communication with you on this important project, and we appreciate the opportunity to comment.

Should you have any questions or if we can provide any information that could be helpful for the Study, please do not hesitate to contact us.

Sincerely,



Wendy Hall
Special Projects Liaison

cc: State Clearinghouse, Governor's Office of Planning and Research
Orange County Public Works, Division of Flood Control
Clark Winchell, U.S. Fish and Wildlife Service
Bryant Chesney, NOAA Fisheries West Coast Region
Robert Revo Smith, U.S. Army Corps of Engineers
Larry Smith, U.S. Army Corps of Engineers

Shawna Herleth-King

January 12, 2018

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Tim Dillingham, California Department of Fish and Wildlife

Kelly O'Reilly, California Department of Fish and Wildlife

Eric Gillies, California State Lands Commission

Chandra Basavalinganadoddi, California State Lands Commission

Joo Chai Wong, California State Lands Commission

Lucinda Calvo, California State Lands Commission

Exhibit B

Conceptual Illustration for Bolsa Chica Lowlands Enhancement Project Potential Alternative for Flood Control at East Garden Grove/Wintersburg Channel

Exhibit B

Bolsa Chica Lowlands Enhancement Project Potential Alternative for Flood Control at East Garden Grove-Wintersburg Channel (EGGW Channel)

Westminster, East Garden Grove, CA Flood Risk Management Study
California State Lands Commission Comments and Recommendation

