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Governor's Office of Planning & Research

APR 05 2019

STATE CLEARINGHOUSE

VIA REGULAR & ELECTRONIC MAIL (Rajpreet.Bihala@dot.ca.gov)

Subject: Initial Study with proposed Mitigated Negative Declaration (MND) for the Butte City Bridge Project, Glenn County

Dear Rajpreet Bihala:

The California State Lands Commission (Commission) staff has reviewed the subject MND for the Butte City Bridge Project (Project), which is being prepared by the California Department of Transportation (Caltrans). Caltrans, 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 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. On navigable non-tidal waterways, including lakes, the state holds fee ownership of the bed of the waterway landward to the ordinary low-water mark and a Public Trust easement landward to the ordinary high-water mark, except where the boundary has been fixed by agreement or a court. Such boundaries may not be readily apparent from present day site inspections.

After reviewing the proposed MND, Commission staff has concluded that the Project will take place on State sovereign land. In 1959, a Right-of-Way from Caltrans was accepted by the Commission, pursuant to California Streets and Highways Code section 101.5, for the Butte City Bridge (Commission reference Lease No. PRC 2470). However, the proposed work area requiring temporary construction easements and a new bridge proposed for Alternatives A2 and C2 appear to be outside of the existing Right-of-Way in a new alignment and will require a new lease. Alternative D may also require a lease action by the Commission. Please contact Al Franzoia for jurisdiction and leasing requirements for the Project (see contact information at end of letter).

Project Description

Caltrans proposes to replace the existing Sacramento River Bridge crossing on State Route 162 to improve public safety, by removing the seismically vulnerable bridge that has also exceeded its expected service life.

From the Project Description, Commission staff understands that the Project would include the following components (including associated construction footprints) that have potential to affect State sovereign land:

- Alternatives A2 and C2 Bridge Support Piles. Alternative A2 and C2 would require eight 5-foot piles, between 80 and 120 feet in length, that would be driven in-water or directly adjacent (within 17 feet of the water) to a depth of 80 to 100 feet. The pile driving would last 8 to 16 days.
- Temporary Trestle Piles for Alternatives A2, C2, and D. The Project would require up to 220 temporary piles to be installed in the riverbed and immediately adjacent to support both construction of the new pre-stressed concrete box girder superstructure and old bridge removal. Alternative D would require two temporary trestles and platforms: one structure would support new bridge construction, and the other would support the old bridge structure after being pushed off the existing supports.
- Demolition. Alternative D would require demolition of the old bridge structure after it is pushed onto a temporary trestle and platform. Alternatives A2 and C2 would require demolition of the old bridge structure in addition to partial pile removal (proposed at three feet below the mud line) or full removal as required.

Environmental Review

Commission staff requests that Caltrans consider the following comments on the Project's MND to ensure that impacts to State sovereign land are adequately analyzed for the Commission's use of the MND to support a future lease approval for the Project.

General Comments

1. 2019 CEQA Amendments: New amendments to the CEQA Guidelines went into effect on December 28, 2018, which included amendments to the Appendix G Environmental Checklist (<http://opr.ca.gov/ceqa/updates/guidelines/>). Amendments to the Environmental Checklist included additions of new affected resource sections and considerable changes and additions to existing resource sections. The MND does not appear to use or consider the current Environmental Checklist for assessment of affected resources. In accordance with CEQA Guidelines section 15007, subdivision (c), documents circulated for public review after December 28, 2018, are subject to the revised Guidelines, and so the MND should be updated to include analysis covering the new or modified resource impacts. Without this information, CEQA responsible agencies, including the Commission, could require subsequent environmental review. Commission staff notes that the MND does not appear to address the following impacts that could affect State sovereign land:
 - a. State-designated wetlands. Please update the MND to identify any state-designated wetlands in the Project area and associated potential impacts, which could also modify Table 15 and Measure BIO-4.
 - b. Wildfire. This is a new affected resource section and there does not appear to be corresponding analysis in the MND. Section 2.11.2.4 includes some information that should be expanded to address this new resource section and include a brief discussion on page 149 of the MND regarding wildfire hazards.
 - c. Hydrology and Water Quality. This affected resource section was substantially changed, and Commission staff recommends that the MND analysis be revised to address the changes and additions to the resource section.
2. Avoidance and Minimization Measures (AMM): The MND evaluates potential impacts for each affected resource section while taking into consideration a list of "standard avoidance and minimization measures" or "standard measures" that, when implemented, ensure impacts on the affected resource would be less than significant.¹ The document frequently concludes that, because all of the avoidance

¹ Sections 2.4 (Aesthetics), 2.6 (Air Quality), 2.8 (Cultural Resources), 2.11 (Hazards and Hazardous Materials), and 2.12 (Hydrology and Water Quality) all determine various impact levels are less than significant but appear to require the avoidance and minimization measures to ensure that determination.

and minimization measures would be implemented, the impact is less than significant. This approach appears to improperly separate measures that should otherwise be presented as part of the Project (in the Project Description) by creating resource impact-specific lists of measures. Commission staff are unable to determine which AMMs are attached to any particular impact to ensure a less-than-significant determination (with the exception of Section 2.7.3 (Biological Resources), which identifies AMMs by species). The MND should be updated to clearly list the relevant AMMs for each impact determination. Without this information, the document does not clearly show why many of the impacts are deemed less than significant.

The adopted MND will also require adoption of a mitigation monitoring and reporting program (MMRP), pursuant to CEQA Guidelines section 15074, subdivision (d). The AMMs should be explicitly identified in the adopted MND as Project measures or Applicant-proposed measures to be clearly incorporated into the proposed Project, and clearly identified in the MMRP with the associated timing and agency responsible for implementing each measure (if different from Caltrans). Without this information, CEQA responsible agencies will not be able to identify the agency responsible for the AMMs and may need further CEQA review or action.

3. Mitigation Measures: The MND includes several avoidance and minimization measures which appear to be deferred mitigation measures. For example, page 103 (Section 2.7, Biological Resources) notes that "based on the implementation of containment measures and water quality best management practices (BMPs), the potential for a hazardous material or chemical spill to occur is unlikely. Adherence to predetermined criteria identified during the permitting process is expected to prevent potential effects on fish or habitat". This measure cannot be incorporated into the proposed Project, because it relies upon future criteria to be determined in the permitting process. The MND should therefore be updated to include this measure as a mitigation measure. If this measure arose from consultations with the National Marine Fisheries Service (NMFS), please clarify and reference appropriate pages of the Biological Opinion. If the measure also depends on a future Storm Water Pollution Prevention Program or other Regional Water Quality Control Board approvals, please note that as well. The MND should apply the same analytical approach to Containment measures and Construction site BMPs (page 115), Implement Pile Removal BMPs (page 117), and development of an Oil Spill and Response Plan (Section 2.12.4, Hydrology and Water Quality, page 160).
4. Public Agency Approvals: Please identify the California State Lands Commission as a public agency with jurisdiction and requiring a lease approval over the Project.

In addition, Section 2.7 (Biological Resources) includes avoidance and minimization measures to ensure a less than significant impact on several special-status species even though the determination for 2.7.2.4(a) is less than significant with mitigation incorporated.

5. Existing Bridge Demolition: The MND lacks adequate information regarding demolition of the existing bridge, including pile removal for Alternatives A2 and C2. While the NFMS Biological Opinion discusses a vibratory method, it is unclear whether that document only analyzes the temporary trestle and falsework pile removal. Please have the updated MND clarify the mechanism for partial and full removal of the existing piles to ensure that the initial study has considered all phases of Project implementation in the analysis pursuant to CEQA Guidelines section 15063, subdivision (a)(1).
6. Construction Vessels: Please have the Project Description identify any construction vessels brought to the Project site for in-water work. If those vessels were not already included in the greenhouse gas (GHG) emissions calculations in Table 18 (Section 2.10, Greenhouse Gas Emissions) then Commission staff request that Table 18 be updated to include emissions from construction vessels. Regardless, the GHG emissions calculation modeling should be provided as an appendix for the adopted MND.
7. In-Water Construction Work: Section 1.3 (Project Description) of the MND notes that the trestle and falsework pile installation would likely have 12,000 daily maximum strikes. However, the NMFS Biological Opinion and page 99 (Section 2.7, Biological Resources) indicate that the maximum daily strikes analyzed would be 6,000 for trestle piles and 6,000 to 8,000 for falsework piles. Please update the Project Description accordingly.

In addition, Section 1.3 notes that the maximum area dewatered by cofferdams would be 2,400 square feet. The NMFS Biological Opinion analyzed impacts for up to 19,000 square feet. Please revise Section 1.3 and any corresponding Section 2.7 analysis to be consistent with NMFS results.

Aesthetics

8. Potential Impact AMMs: The AMMs for Section 2.4.3(a) are considered necessary to "ensure impacts on scenic vistas and resources would remain less than significant". However, on page 54, Section 2.4.4 begins by qualifying that "where appropriate and to the degree possible,..." the AMMs would be implemented. If the less-than-significant impact determination is predicated upon implementation of AMMs, then they must be required within Section 2.4.4. Please update the MND to either revise the analysis to explain why the Project impacts do not require any avoidance or minimization measures to remain less than significant, or revise the language at the beginning of Section 2.4.4 to require AMM implementation.

Biological Resources

9. Directional Lighting Impacts: Page 53 of the MND (Section 2.4, Aesthetics) notes that the United States Coast Guard may require navigational lighting on the new

bridge structure due to the Sacramento River's "navigable water" status. Please have the MND both clarify how this lighting would be designed, and evaluate any potential impacts to special-status fish species, bats, and nesting birds.

10. AMMs: Please correct the MND to separate the AMMs on page 117 that follow the phrase "Aquatic Sound Attenuation Devices for the In-Water 60-inch Piles" into a new subsection addressing special-status fish species. The current document shows these measures as addressing riparian community and oak woodland impacts.

Cultural Resources

11. Title to Resources: The MND should note 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 requests that Caltrans consult with Staff Attorney Jamie Garrett should any cultural resources on state lands be discovered during construction of the proposed Project. In addition, Commission staff requests that the following statement be included in the relevant AMMs and the MND's Mitigation and Monitoring Plan: "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."

Greenhouse Gas

12. GHG Analysis: A GHG emissions analysis consistent with the California Global Warming Solutions Act (Assembly Bill [AB] 32) and required by the State CEQA Guidelines should be included in the MND. This analysis should identify a threshold for significance for GHG emissions, calculate the level of GHGs that will be emitted as a result of construction and ultimate build-out of the Project, determine the significance of the impacts of those emissions, and, if impacts are significant, identify mitigation measures that would reduce them to the extent feasible. For the proposed Project, Caltrans did not make a significance determination, because the MND determined it would be too speculative in the absence of further regulatory or scientific information related to GHG emissions and CEQA significance. The Sacramento Metropolitan Air Quality Management District also regulates emissions in the greater Sacramento Valley Air Basin (which this Project resides within) and has GHG CEQA thresholds for construction impacts². Commission staff believes these thresholds are a suitable metric for analysis. Commission staff recommends that Table 18 be updated to identify the calculated GHG emissions by year, facilitating potential CEQA responsible agency analysis of carbon dioxide equivalent emissions.

² Sacramento Metropolitan Air Quality Management District CEQA Guide, page 6-11. Last revised May 2018. Visited on 4/5/2019 at:
<http://www.airquality.org/LandUseTransportation/Documents/Ch6GHGFinal5-2018.pdf>

In addition, please have the MND clarify the nature of the measures listed in Section 2.10.7. Commission staff is unclear what type of CEQA measures they constitute, and which impact they are purporting to avoid, minimize, or mitigate. The nomenclature appears to be different from the rest of the measures in the MND.

Recreation

13. Public Access and Water Recreation: Promotion of public access to and use of California's navigable waters is a mandate of the California Constitution (art. 10, § 4), a condition of statehood in the Act of Admission (vol. 9, Statutes at Large, p. 452), and a responsibility of State agencies pursuant to the Public Trust Doctrine. The State Legislature has provided for a process to be followed regarding promoting access at bridge sites in California Streets and Highways Code sections 84.5 and 101.5.

The California Streets and Highways Code (see §§ 84.5 and 101.5) requires during the design hearing process, full consideration of, and a report on, the feasibility of providing public access to the subject waterway for public recreational purposes. The report should consider the following:

- An assessment of public access needs at the Project location in addition to a benefit analysis of public access alternatives, not alternatives to access
- A description of existing public access points and facilities in the vicinity, including the existing condition of these resources and entity responsible for maintenance
- An assessment of existing constraints and hazards that could make on-site public access infeasible
- A feasibility assessment of proposed on-site public access infrastructure, such as construction of trails, stairs, parking areas, trash cans, restrooms, etc.
- If on-site public access is infeasible, a feasibility assessment of alternatives, such as improving existing public access in the project vicinity or creating new public access points that could provide a means to access the subject waterway within the project vicinity
- Environmental impacts of providing public access
- A conclusion on the feasibility of providing public access.

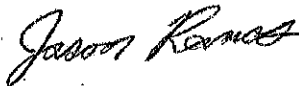
The MND should: (1) describe the potential for the Project to affect recreational uses and public access to the subject waterway; (2) discuss the recreational uses and access points in the Project vicinity, whether and to what extent these uses would be facilitated or disrupted by the Project, and what, if any, measures could be implemented to reduce any potential negative impacts; and (3) identify any safety measures Caltrans will put in place to ensure public safety for recreational activities. Measures could include public noticing and future Project area signage provided in advance of Project construction, notifying the public of any disruptions or location of alternate access points or use areas.

The draft Section 4(f) analysis, provided as Appendix B, appears to include information relevant to a CEQA recreational impact analysis. For example, pages 6 and 9 state that "passage beneath the river for boaters would also be maintained while construction is underway." Commission staff requests that this information be included and analyzed within Section 2.18 (Recreation) of the MND. The CEQA analysis should also evaluate the Butte City Park property, immediately upland of the Sacramento River at the Project site, that currently provides boating, fishing, and other public access. Please update the MND to discuss potential impacts to public access from this property to the river that are associated with construction staging areas or other restrictive fencing. Finally, there is a boat launch located approximately 0.5 miles upstream of the Project site. The Section 2.18 analysis should also clarify any potential impacts and associated mitigation for summer recreational boaters, including anglers in drift boats, who may be traversing the Project site during in-water work windows.

Thank you for the opportunity to comment on the MND for the Project. As a responsible and trustee agency, the Commission will need to rely on the adopted MND for the issuance of any amended or new lease as specified above and, therefore, we request that you consider our comments prior to adoption of the MND.

Please send copies of future Project-related documents, including electronic copies of the adopted MND, MMRP, Notice of Determination, and approving resolution when they become available. Please refer questions concerning environmental review to Alexandra Borack, Senior Environmental Scientist, at (916) 574-2399 or via email at Alexandra.Borack@slc.ca.gov. For questions concerning archaeological or historic resources under Commission jurisdiction, please contact Staff Attorney Jamie Garrett, at (916) 574-0398 or via email at jamie.garrett@slc.ca.gov. For questions concerning Commission leasing jurisdiction, please contact Al Franzola, Public Land Management Specialist III, at (916) 574-0992 or via email at Al.Franzola@slc.ca.gov.

Sincerely,



on behalf of

Eric Gillies, Acting Chief
Division of Environmental Planning
and Management

cc: Office of Planning and Research
A. Franzola, Commission
A. Borack, Commission
J. Fabel, Commission
J. Garrett, Commission