

**CALIFORNIA STATE LANDS COMMISSION**  
100 Howe Avenue, Suite 100-South  
Sacramento, CA 95825-8202



*Established in 1938*

JENNIFER LUCCHESI, *Executive Officer*  
(916) 574-1800 Fax (916) 574-1810  
California Relay Service TDD Phone 1-800-735-2929  
from Voice Phone 1-800-735-2922

**Contact Phone: (916) 574-1890**

Governor's Office of Planning & Research

**FEB 04 2020**

**STATE CLEARINGHOUSE**

February 4, 2020

File Ref: SCH # 2019120560

Attn: Matthew Downing  
City of Pismo Beach  
760 Mattie Road  
Pismo Beach, CA 93449

*VIA REGULAR & ELECTRONIC MAIL ([mdowning@pismo-beach.org](mailto:mdowning@pismo-beach.org))*

**Subject: Notice of Preparation (NOP) for an Environmental Impact Report (EIR)  
for Central Coast Blue Project, San Luis Obispo County**

Dear Mr. Downing:

The California State Lands Commission (Commission) staff has reviewed the subject NOP for an EIR for the Central Coast Blue Project (Project), which is being prepared by the City of Pismo Beach (City). The City, as the operator of the Pismo Beach Wastewater Treatment Plant and 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 staff requests that the City 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).

### **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.

Based upon the information contained in the NOP, and a review of in-house records, Commission staff has determined that the wastewater from the proposed Project will be discharged through the South San Luis Obispo County Sanitation District's existing outfall which is covered under Commission Lease No. PRC 3875.9. The wastewater flow will not cause exceedances of the current National Pollutant Discharge Elimination System (NPDES) permit effluent limits. However, any changes to the existing outfall or lease terms will require a lease amendment.

The proposed new production well and the Advanced Treatment Facility (ATF) locations are currently unknown at this time. Commission staff requests that the City contact Cheryl Hudson (see contact information below) with additional detailed information regarding their location to determine whether the components require a lease and formal authorization from the Commission for the use of State sovereign land.

The above determinations are without prejudice to any future assertion of State ownership or public rights, should circumstances change, or should additional information come to our attention. In addition, these comments are not intended, nor should they be construed as, a waiver or limitation of any right, title, or interest of the State of California in any lands under its jurisdiction.

### **Project Description**

The City proposes to enhance water supply reliability to meet its objective and need to reduce vulnerability of the Santa Maria Groundwater Basin (SMGB) to drought and seawater intrusion. From the Project Description, Commission staff understands that the Project would include the following components that have potential to affect State sovereign land:

- Project Component 1. Advanced treatment of water at the Pismo Beach Wastewater Treatment Plant and the South San Luis Obispo County Sanitation District at a yet to be constructed ATF
- Project Component 2. Injection of water from the ATF to the SMGB from injection wells

## Environmental Review

Commission staff requests that the City consider the following comments when preparing the EIR, to ensure that impacts to State sovereign land are adequately analyzed for the Commission's use of the EIR to support a future lease approval for the Project.

### General Comments

1. Project Description: A thorough and complete Project Description should be included in the 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.
2. Public Trust Resources: *Environmental Law Foundation v. State Water Resources Control Board* (2018) 26 Cal.App. 5th 844, made clear that the potential adverse effects to Public Trust resources, such as navigable surface waters, caused by direct impacts to groundwater systems must be considered by state agencies. Such effects may include impacts to biological resources, water quality, and recreation, among others. The EIR should include a discussion of potential impacts, if any, caused by the Project to surface water systems.

### Biological Resources

3. For land under the Commission's jurisdiction, the 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 City 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 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.
4. Invasive Species: One of the major stressors in California waterways is introduced species. Therefore, the 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 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>).

In addition, in light of the recent decline of native pelagic organisms and in order to protect at-risk fish species, the EIR should examine if any elements of the Project would favor non-native fisheries.

5. Construction Noise: The EIR should also evaluate noise and vibration impacts on fish and birds from construction, restoration or flood control activities in the water, on the levees, and for land-side supporting structures. Mitigation measures could include species-specific work windows as defined by CDFW, USFWS, and NMFS. Again, staff recommends early consultation with these agencies to minimize the impacts of the Project on sensitive species.

#### Cultural Resources

6. Submerged Resources: The EIR should evaluate potential impacts to submerged cultural resources in the Project area. The Commission maintains a shipwrecks database that can assist with this analysis. Commission staff requests that the City contact Staff Attorney Jamie Garrett (see contact information below) to obtain shipwrecks data from the database and Commission records for the Project site. The database includes known and potential vessels located on the State's tide and submerged lands; however, the locations of many shipwrecks remain unknown. Please note that any submerged archaeological site or submerged historic resource that has remained in state waters for more than 50 years is presumed to be significant. Because of this possibility, please add a mitigation measure requiring that in the event cultural resources are discovered during any construction activities, Project personnel shall halt all activities in the immediate area and notify a qualified archaeologist to determine the appropriate course of action.
7. Title to Resources: The EIR should also mention 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). Commission staff requests that the City 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 EIR'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.”

#### Mitigation and Alternatives

8. Deferred Mitigation: As provided in State CEQA Guidelines, §15126.4, subd. (a), mitigation measures must be specific, feasible, and fully enforceable to minimize significant adverse impacts from a project, and “shall not be deferred until some future time.”
9. Alternatives: In addition to describing mitigation measures that would avoid or reduce the potentially significant impacts of the Project, the City 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). Please consider the impacts of each of the locations of injection wells and the ATF that were mentioned in the NOP.

Thank you for the opportunity to comment on the NOP for the Project. As a trustee and responsible agency, Commission staff requests that you consult with us on this Project and keep us advised of changes to the Project Description and all other important developments. Please send additional information on the Project to the Commission staff listed below as the EIR is being prepared.

Please refer questions concerning environmental review to Christine Day, Environmental Scientist, at (916) 562-0027 or via email at [christine.day@slc.ca.gov](mailto:christine.day@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](mailto:jamie.garrett@slc.ca.gov). For questions concerning Commission leasing jurisdiction, please contact Cheryl Hudson, Public Land Management Specialist, at (916) 574-0732 or via email at [cheryl.hudson@slc.ca.gov](mailto:cheryl.hudson@slc.ca.gov).

Sincerely,



*signing for*

Eric Gilles, Acting Chief  
Division of Environmental Planning  
and Management

cc: Office of Planning and Research  
C. Hudson, Commission  
A. Kershen, Commission  
C. Day, Commission  
J. Garrett, Commission

