

CALIFORNIA STATE LANDS COMMISSION

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Established in 1938

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Governor's Office of Planning & Research

APR 14 2020

STATE CLEARINGHOUSE

April 14, 2020

File Ref: SCH #2020039047

McKinleyville Community Services District
Attn: Greg Orsini
1656 Sutter Rd
McKinleyville, CA 95519

VIA ELECTRONIC MAIL ONLY (mcsdgm@mckinleyvillecsd.com)

Subject: Mitigated Negative Declaration (MND) for Mad River Floodplain and Public Access Enhancement Project, Humboldt County

Dear Mr. Orsini:

The California State Lands Commission (Commission) staff has reviewed the subject MND for the Mad River Floodplain and Public Access Enhancement Project (Project), which is being prepared by the McKinleyville Community Services District (MCS D). The MCS D, 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, if 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 review of the information provided within the MND, staff believes that portions of the proposed project along the Mad River appear to be located in areas where the State's sovereign interest has not been determined at this time. Staff does not have sufficient information to determine whether the Project would intrude upon State sovereign land and further information is necessary to determine if a lease would be required. Please contact Ninette Lee (see contact information below) for information on the Commission's leasing jurisdiction (reference Inquiry No. 1922).

Project Description

MCSD proposes to restore floodplain habitat to meet the agency's objectives and needs as follows:

- Restore floodplain habitat to benefit fish and wildlife
- Improve public access

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. Decommission and revegetate 4.25 acres of infrastructure in the floodplain to create wetlands, riparian habitat, and an off-channel habitat complex for anadromous salmonids.
- Project Component 2. Americans with Disability Act accessible nature study trail, river access and river overlook, with multiple interpretive and bench resting sites.

Environmental Review

Commission staff requests that the MCSD 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. Project Description: A thorough and complete Project Description should be included in the MND in order to facilitate determination of the extent and location of its leasing jurisdiction. While the Project Description was adequate to assess environmental impacts, it is not enough to determine Commission jurisdiction. Please provide more information on work being done waterward of the mean high tide line and include figures with a more zoomed in view of work in those areas. This information will be beneficial in determining the Commission's jurisdiction.

Cultural Resources

2. Title to Resources: The MND 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 Commission (Pub. Resources Code, § 6313). Commission staff requests that the MCSD 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."

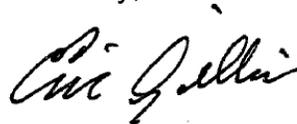
Public Trust Lands

3. The Commission supports the proposed Project's efforts to enhance and restore floodplain habitat resources, provide open space, and extend public access along the Mad River, because enhancing those uses is consistent with Public Trust values.

Thank you for the opportunity to comment on the MND for the Project. As a trustee and potential responsible agency, the Commission may need to rely on the adopted MND for the issuance of any 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, Mitigation Monitoring and Reporting Program, Notice of Determination, and any approving resolution when they become available. Please refer questions concerning environmental review to Christine Day, Environmental Scientist, at (916) 562-0027 or 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 jamie.garrett@slc.ca.gov. For questions concerning Commission leasing jurisdiction, please contact Ninette Lee, Public Land Manager, at (916) 574-1869 or ninette.lee@slc.ca.gov.

Sincerely,



Eric Gillies, Acting Chief
Division of Environmental Planning
and Management

cc: Office of Planning and Research
C. Day, Commission
N. Lee, Commission
J. Garrett, Commission
W. Crunk, Commission