

# Comment Letter B

## DELTA PROTECTION COMMISSION

P.O. Box 530  
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Phone (916) 322-6545  
Home Page: [www.delta.ca.gov](http://www.delta.ca.gov)



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*Business, Transportation and Housing*

*Department of Food and Agriculture*

*Natural Resources Agency*

*State Lands Commission*

December 27, 2011

Christopher Huitt, Project Manager  
California State Lands Commission  
100 Howe Avenue, Suite 100-South  
Sacramento, CA 95825

Subject: San Francisco Bay and Delta Sand Mining Project  
(SCH # 2007072036)

Dear Mr. Huitt,

The staff of the Delta Protection Commission (Commission) has reviewed the Revised Draft Environmental Impact Report for the San Francisco Bay and Delta Sand Mining Project (SCH #2007072036). These comments are being provided as PRC 7781 lies partially within the Primary Zone of the Sacramento-San Joaquin Delta, and therefore subject to the Commission's Land Use and Resource Management Plan (Plan).

B-1

Specifically the proposed project has the potential to cause entrainment and mortality of delta and longfin smelt, even after mitigation measures. This is inconsistent with the Plan, which includes policies to preserve and protect the natural resources of the Delta, and promote protection of remnants of riparian and aquatic habitat. Additionally, one of the Plan's goals is to protect and enhance long-term water quality in the Delta for fish and wildlife habitat uses, as well as other beneficial uses.

B-2

B-3

Thank you for the opportunity to provide input. Please contact the Commission office at (916) 322-6545, if you have any questions about the comments provided herein.

Sincerely,

A handwritten signature in black ink that reads "Michael Machado".

Michael Machado  
Executive Director

## RESPONSE TO COMMENT SET B: DELTA PROTECTION COMMISSION

**B-1** The discussion of the Suisun Marsh Preservation Act (Section 4.7.2, Regulatory Setting, State, in Section 4.7, Land Use and Recreation) indicates that part of California State Lands Commission (CSLC) Lease PRC 7781 is within the Primary Management Area of Suisun Marsh. The CSLC staff appreciates the information from the Delta Protection Commission (DPC) that Lease PRC 7781 is subject to the DPC's Land Use and Resource Management Plan (Plan) because the lease lies partially within the Primary Zone of the Sacramento-San Joaquin Delta. Although the DPC's Plan contains goals and policies for the Delta, they are not binding when they conflict with the powers and duties of any other State agency, nevertheless, the CSLC will take into account the goals and policies contained in the Land Use and Resource Management Plan when considering Project approval.

In response to the comment, the text of Section 4.7, Land Use and Recreation, Section 4.7.2, Regulatory Setting, in is revised as follows:

### **Delta Protection Commission (DPC)**

The Delta Protection Act of 1992 (Delta Protection Act) established the DPC to plan for and guide the conservation and enhancement of the natural resources of the Delta, while sustaining agriculture and meeting increased recreational demand. The Delta Protection Act defines a Primary Zone, which comprises the principal jurisdiction of the DPC. The Primary Zone includes approximately 500,000 acres of waterways, levees and farmed lands extending over portions of five counties: Solano, Yolo, Sacramento, San Joaquin and Contra Costa. Lease areas PRC 7781 (west) and PRC 7781 (east) are both within the Primary Zone.

The Delta Protection Act requires the DPC to prepare and adopt a Land Use and Resource Management Plan for the Primary Zone of the Delta. The Resource Management Plan, originally adopted in 1995 and updated in 2010, sets forth a description of the needs and goals for the Delta and a statement of the policies, standards, and elements of the Resource Management Plan. Local government general plans are required to be updated to be consistent with the policies of the Resource Management Plan, with respect to land located within the Primary Zone.

The goals of the Resource Management Plan are to "protect, maintain, and where possible, enhance and restore the overall quality of the Delta environment, including but not limited to agriculture, wildlife habitat, and recreational activities; assure orderly, balanced conservation and development of Delta land resources and improve flood protection by structural and nonstructural means to ensure an increased level of public health and safety."

As specified in the Delta Protection Act, the DPC is not authorized to exercise any jurisdiction over matters within the jurisdiction of, or to carry out its powers and duties in conflict with, the powers and duties of any other State agency. The Plan also provides guidance to State agencies undertaking activities in the Primary Zone. The Plan, therefore, applies to development subject to approval by the Delta counties (Contra Costa, Sacramento, San Joaquin, Yolo and Solano).

- B-2** The potential for the Project to result in entrainment and mortality of Delta and longfin smelt is identified as a significant unavoidable impact. Please refer to Impact BIO-8 in Section 4.1, Biological Resources. The CSLC staff acknowledges the DPC's determination that the Project is inconsistent with the policies contained in its Plan in this regard.
- B-3** The potential for the Project to result in impacts to Bay and Delta water quality is examined in Impact HYD-1 in Section 4.3, Hydrology and Water Quality. This analysis determines that the Project would have a less than significant impact on Bay and Delta water quality.

**COMMENT SET C: DELTA STEWARDSHIP COUNCIL**

On July 6, 2012, the chair of the Delta Stewardship Council (DPC) withdrew the comment letter on the Revised Draft Environmental Impact Report that DSC staff submitted to the California State Lands Commission on November 2, 2011.

# Comment Letter D



State of California –The Natural Resources Agency  
DEPARTMENT OF FISH AND GAME  
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Marine Region  
1933 Cliff Drive, Suite 9  
Santa Barbara, CA 93199  
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*EDMUND G. BROWN, Jr. Governor*  
*CHARLTON H. BONHAM, Director*



January 9, 2012

Christopher Huitt  
California State Lands Commission  
100 Howe Avenue, Suite 100-south  
Sacramento, CA 95825  
[Huittc@slc.ca.gov](mailto:Huittc@slc.ca.gov)

Subject: Revised Environmental Impact Report for the San Francisco Bay and Delta Sand Mining Project, SCH #2007072036

Dear Mr. Huitt:

The California Department of Fish and Game (Department) has reviewed the Revised Environmental Impact Report (REIR) for the sand mining project (Project) in the western portion of the Sacramento-San Joaquin Delta (Delta) and San Francisco Bay, California (dated October 31, 2011). The Project proposes to lease 3,643 acres of tidelands and to mine approximately 1,800,000 cubic yards of sand per year in San Francisco Bay and in the western portion of the Delta. The two applicants, Hanson Marine Operations and Jerico Products/ Morris Tug and Barge, are seeking new ten-year leases.

As a trustee for the State's fish and wildlife resources, the Department has jurisdiction over the conservation, protection, and management of fish, wildlife, and habitat necessary for biologically sustainable populations of those species. In this capacity, the Department administers the California Endangered Species Act (CESA), the Native Plant Protection Act, and other provisions of the California Fish and Game Code that afford protection to the State's fish and wildlife trust resources. The Department is recognized as a "Trustee Agency" and a "Responsible Agency" under the California Environmental Quality Act (CEQA guidelines §15368). Pursuant to our jurisdiction, the Department has the following concerns, comments, and recommendations regarding the Project.

## Background

The San Francisco Bay-Delta is the second largest estuary in the United States and supports numerous aquatic habitats and biological communities. It encompasses 479 square miles, including shallow mudflats. San Francisco Bay is divided into four main basins: South Bay, Central Bay, San Pablo or North Bay, and Suisun Bay. The marine and estuarine habitats of San Francisco Bay provide refuge and nursery habitat for many fish and invertebrate species, including many that are State or federally listed.

D-1

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Christopher Huitt  
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Protected species under the State and federal Endangered Species Acts occur in the Project area and could be affected by Project activities. Species include:

- Coho salmon (*Oncorhynchus kisutch*), State and federally endangered (Central California Coast Evolutionarily Significant Unit (ESU));
- Chinook salmon (*Oncorhynchus tshawytscha*), State and federally threatened (Spring-run), State and federally endangered (Winter-run);
- Steelhead (*Oncorhynchus mykiss*), federally-threatened (Central California Coast and Central Valley ESUs);
- Green sturgeon (*Acipenser medirostris*), federally-threatened (southern DPS);
- Delta Smelt (*Hypomesus transpacificus*), federally-threatened and State-endangered; and
- Longfin smelt (*Spirinchus thaleichthys*), State-threatened.

D-1  
cont.

Several species with important commercial and recreational fisheries value also exist in the Project area and could potentially be affected by Project activities. Species include:

- Dungeness crab (*Cancer magister*),
- Pacific herring (*Clupea pallasii*), and
- Bay shrimp (*Crangon franciscorum*).

**General Comments and Recommendations**

The Department provided comments on the Draft Environmental Impact Report issued in 2010 (see the September 27, 2010 comments from the Department). The comments provided in the previous letter remain relevant to the Project and should be considered, with one exception. The comments regarding the benthic survey (comment #4 in the September 27, 2010 letter) have since been clarified and addressed.

D-2

1. **Incidental Take Permit (ITP) Application.** The REIR states that Project operations will likely “take” listed species. As such, the Applicants will need an Incidental Take Permit (ITP) from the Department for all State-listed species to address impacts of the “taking” pursuant to Fish and Game Code sections 2080.1 or 2081(b), and California Code of Regulations Title 14 (14 CCR) § 783 et seq. The Department recommends that the Applicant submit an ITP application to the Department for review. The ITP application should include a complete project description, as well as other required elements per 14 CCR § 783.2. The project description should be sufficient to evaluate the effects of the Project on each Covered Species and will be used to evaluate and develop species-specific minimization and mitigation measures. During the ITP development process, the Department also recommends that National Marine Fisheries Service (NMFS) and U.S. Fish and Wildlife Service (USFWS) staff be included in discussions to assure that Project mitigation measures are consistent with federal requirements.

D-3

2. **Distance from Bottom.** As part of the existing permit conditions, the REIR states that the end of the pipe should be no further than three feet from the bottom when priming the pump or clearing the pipe. The Department further recommends that the end of the pipe should be as close to the bottom as

D-4

Christopher Huitt  
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possible (less than three feet) when priming the pump or clearing the pipe to further minimize the take of listed species.

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D-4

3. **Pacific herring Work Windows.** As suspended sediments are known to be a stress factor for spawning Pacific herring, the Department recommends that sand mining be avoided in the Central Bay during the Pacific herring spawning season (December 1 through March 1).

D-5

4. **Lake or Streambed Alteration Agreements.** Any activity that will divert or obstruct the natural flow, or change the bed channel or bank of a river or stream, or use material from a streambed may require a Lake or Streambed Alteration Agreement (LSAA). Based on the descriptions provided, a LSAA may be required for portions of the Project in the western-Delta/Suisun Bay Lease Area.

D-6

The Department appreciates the opportunity to review and comment on this REIR. As always, Department personnel are available to discuss our concerns, comments and recommendations in greater detail. To arrange for discussion, please contact Ms. Vicki Frey, Senior Environmental Scientist, Marine Region, 619 2<sup>nd</sup> Street, Eureka, CA 95501, (707) 445-7830, or Mr. Jim Starr, Environmental Program Manager, Bay-Delta Region, 4001 North Wilson Way, Stockton, CA 95336.

Sincerely,



Marija Vojkovich  
Regional Manager  
Marine Region

ec: Becky Ota, [BOta@dfg.ca.gov](mailto:BOta@dfg.ca.gov)  
Vicki Frey, [VFrey@dfg.ca.gov](mailto:VFrey@dfg.ca.gov)  
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State of California  
Department of Fish and Game



## Memorandum

Date: September 27, 2010

To: Mr. Christopher Huitt  
California State Lands Commission  
100 Howe Avenue, Suite 100-South  
Sacramento, CA 95825

From: Charles Armor, Regional Manager   
Department of Fish and Game – Bay Delta Region, 7329 Silverado Trail, Napa, California 94558

Subject: San Francisco Bay and Delta Sand Mining, Draft Environmental Impact Report,  
SCH #2007072036

The Department of Fish and Game (Department) has reviewed the San Francisco Bay and Delta Sand Mining draft Environmental Impact Report (EIR). The Department appreciates the opportunity to comment on the draft EIR and is providing the following comments to assist the California State Lands Commission (Commission) with appropriate measures to offset adverse impacts to sensitive resources. The draft EIR examines the potential environmental effects of proposed new leases and continuation of sand mining for an additional 10-year period in the San Francisco Bay and Delta. Sand mining occurs within the Central San Francisco Bay east of the Golden Gate Bridge, Middle Ground Shoal in Suisun Bay, and areas north of the federal navigation channels of Suisun Bay and western Delta. Sand mining does not occur uniformly within the region, but rather is clustered in specific areas, typically characterized by high river or tidal velocities and sand deposits that contain a low percentage of fine material (silts, clay, and mud). Mining events typically last approximately 3.0 to 4.5 hours, during which time approximately 1,500 to 2,500 cubic yards of sand are excavated. During mining, water is entrained into the suction head, creating a water and sand slurry that mobilizes the sand and allows it to be pumped into the barge. Sand mining within the Central Bay typically occurs at water depths ranging from 30 to 90 feet. Mining within the navigation channels of Middle Ground Shoal and the Suisun Bay/Delta parcel typically occurs in waters that are 15 to 45 feet deep. Approximately 19.2 million cubic meters of water is pumped during sand mining operations at the Central Bay parcels, 1.6 million cubic meters is pumped at Middle Ground Shoal, and 0.9 million cubic meters is pumped at the Suisun Bay/Delta parcel annually.

Since the issuance of the previous lease, the Delta has experienced significant declines in the abundance of Sacramento and San Joaquin Delta fishes including Central Valley steelhead (*Oncorhynchus mykiss*), Sacramento River winter-run Chinook salmon (*Oncorhynchus tshawytscha*), Central Valley spring-run Chinook salmon, Delta smelt (*Hypomesus transpacificus*), longfin smelt (*Spirinchus thaleichthys*), green sturgeon (*Acipenser medirostris*), and Sacramento splittail (*Pogonichthys macrolepidotus*). As a Trustee Agency for the State's fish and wildlife resources, the Department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of such species. In this capacity, the Department administers the California Endangered Species Act, the Native Plant

# Comment Letter D

Mr. Christopher Huitt

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September 27, 2010

Protection Act, and other provisions of the Fish and Game Code that afford protection to the State's fish and wildlife public trust resources. Pursuant to our jurisdiction, the Department submits the following comments and recommendations regarding the project.

1. The draft EIR states that the Project operations will likely “take” listed species including Delta smelt, longfin smelt, winter-run Chinook salmon and Central Valley spring-run Chinook salmon. As such, the Applicants will need an Incidental Take Permit (ITP) from the Department for all state-listed species to address impacts of the “taking” pursuant to Fish and Game Code sections 2080.1 or 2081(b), and California Code of Regulations, Title 14 Section 783 et seq. During the development of the ITP, the Department will assure that minimization and mitigation measures are consistent with the Department’s issuance criteria as required under Fish and Game Code Section 2081(b) (1-4). Specifically, the ITP will include measures that fulfill the Department’s requirement that all impacts of the taking of Covered Species be minimized and fully mitigated and to ensure adequate funding to implement those measures and for monitoring compliance with, and effectiveness of, those measures. The Department recommends that the Applicant submit an ITP application to the Department for review. The ITP application should include a complete project description and the updated analysis provided in the EIR in addition to other required ITP application elements. The project description should be sufficient to evaluate the effects of the project on each Covered Species and will be used to evaluate and develop species-specific minimization and mitigation measures. During the ITP development process, the Department also recommends that the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS) staff be included in discussions to assure that project mitigation measures are consistent with federal requirements. D-7
2. The spatial extent of the overflow plume from a sand mining event is typically a few hundred feet wide by several hundred feet long. Suspended sediments in the water column have known to be a stress factor for spawning Pacific herring (*Clupea pallasii*) populations. Sediment loads cause larval mortality, smothering of eggs, and prevent oxygen exchange in the early development of herring eggs. Suspended sediments, if present in the water column as eggs descend, enhance egg aggregation which could have negative implications for natural spawns. Females may swim away from substrata during spawning and release eggs into the water column (Stacey and Hourston, 1982; Aneer et al., 1983; Hay, 1985). When this occurs, eggs settle and attach to substrata or onto other eggs in a less organized manner, leading to aggregations of multiple layers or clusters. As egg layers increase in thickness, hypoxia, microbial growth, and retardation of embryonic development increase (Stacey and Hourston, 1982; Hay, 1985). Sediment-induced aggregation of eggs in the water column would exacerbate overall aggregation and clustering. The Department recommends that sand mining should be avoided in the Central Bay during the herring spawning season (December 1 through March 1). D-8
3. Please be advised that for any activity that will divert or obstruct the natural flow, or change the bed, channel, or bank (which may include associated riparian resources) of a river or stream, or use material from a streambed, the Department may require an Lake or Streambed Alteration Agreement (LSAA), pursuant to Section 1600 et seq. of the Fish and Game Code, with the applicant. As such, based on Figure 1-1, D-9

# Comment Letter D

Mr. Christopher Huitt

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September 27, 2010

proposed dredging operations in the eastern portion of the Suisun Bay/Delta Lease Area are subject to Section 1600 et seq. of the Fish and Game Code and would require an LSAA.

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D-9  
cont.

4. Appendix F, Benthic survey: the Department questions the methodology described in the report for sub-sampling and collection of infauna less than 2.0 mm. The standard procedure for sampling benthic infauna is to wash the entire sediment sample through a 1.0 or 0.5 mm screen to capture the organisms. The report describes screening 1/2 the grab sample through a 2.0 mm screen, with a sub-sample screened down to 0.5 mm. However, the report does not explain what measurable quantity of sediment was used for the sub-samples. Therefore, the Department can not identify how large a sample was screened for benthic infauna. If the sub-samples that were screened to 0.5-1.0 mm were insignificant in size, then the survey needs to be repeated with correct methodology.

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D-10

The Department appreciates the opportunity to provide comments on the draft EIR. As always, Department personnel are available to discuss our concerns, comments, and recommendations in greater detail. To arrange for discussion, please contact Mr. George Isaac, Environmental Scientist, at (831) 649-2813; or Ms. Vicki Frey, Senior Environmental Scientist, at (707) 445-7830 with our Marine Region. For activities east of the Carquinez Bridge, please contact Bay Delta Region staff members Ms. Corinne Gray, Staff Environmental Scientist, at (707) 944-5526; or Mr. Scott Wilson, Environmental Program Manager, at (707) 944-5584.

cc: State Clearinghouse

Mr. Michael Hoover  
U.S. Fish and Wildlife Service  
2800 Cottage Way, Suite W-2605  
Sacramento, CA 95825-1846

Mr. Bruce Oppenheim  
National Marine Fisheries Service  
650 Capitol Mall, Suite 8-300  
Sacramento, CA 95814-4708

Mr. David Woodbury  
National Marine Fisheries Service  
777 Sonoma Ave  
Santa Rosa, CA 95404-4731

Ms. Brenda Goeden  
San Francisco Bay Conservation  
and Development Commission  
50 California Street, Suite 2600  
San Francisco, CA 94111

Mr. Mike Monroe  
U.S. Environmental Protection Agency  
75 Hawthorne Street  
San Francisco, CA 94105

## **RESPONSE TO COMMENT SET D: CALIFORNIA DEPARTMENT OF FISH AND GAME**

- D-1** This comment provides a brief summary of the Project description and of the biological resources of San Francisco Bay and the Delta. The California State Lands Commission (CSLC) staff acknowledges that the California Department of Fish and Game (CDFG) is a Trustee Agency and a Responsible Agency for this Project.
- D-2** The pertinent information requested in CDFG's comment letter on the 2010 Draft Environmental Impact Report (EIR) was incorporated into the 2011 Revised Draft EIR in Section 4.1, Biological Resources. Please also see responses to comments D-7 through D-10. The CSLC is not providing a formal response to comments submitted on the 2010 Draft EIR that was released on July 28, 2010, since CSLC staff revised and recirculated the Project EIR consistent with the State California Environmental Quality Act (CEQA) Guidelines (Cal. Code Regs., tit. 14, § 15088.5, subd. (f)(1), (3)).
- D-3** The EIR anticipates that Project operations will likely "take" listed species and therefore, as noted in the comment, Applicants will be required to apply for an Incidental Take Permit (ITP) from the CDFG. The commenter notes the requirements for the ITP application process and the CDFG consultation recommendations. The CSLC staff acknowledges the need for an ITP and has advised the Applicants accordingly. See Impact BIO-8 and MM BIO-8 in Section 4.1, Biological Resources.
- D-4** In response to the comment, the text of MM BIO-8a is revised as follows:

**MM BIO-8a. Applicants shall implement operational measures to minimize the potential for entrainment and mortality of delta and longfin smelt.**

- **Timing of dredging relative to X2.** To protect delta and longfin smelt and potentially eggs and young larvae from mortality related to entrainment, sand mining activities shall be restricted upstream of the X2 location (i.e., the location of 2 parts per thousand (ppt) salinity) from December 1 through June 30 each year. This location changes during the water year in response to river flows and its location is tracked on the following website: <http://cdec.water.ca.gov/cgi-progs/queryDaily?X2>. The degree and duration of mining restrictions, and the specific locations where mining should be restricted during this sensitive seasonal period will be based on factors including the specific location of X2 relative to mining activities, species presence and relative abundance in the Project area based on sampling data from the nearest survey stations, and the overall status of the species (population trend). Specific seasonal restrictions will be set through consultation with the

California Department of Fish and Game (CDFG) and would likely be a requirement of any Incidental Take Permit that may be issued for the Project.

- **Current restrictions on sand mining operations**, as specified in the National Marine Fisheries Service Biological Opinion (NMFS 2006) and the U.S. Fish and Wildlife Service Letter of Concurrence (USFWS 2006), serve to avoid and minimize take of delta smelt. Currently there are no Federal restrictions on longfin smelt. Due to similar life stages, however, State delta smelt restrictions and conditions will be applied to both smelt species. These conditions include restrictions on pump priming, limiting the total mining volume, prohibiting mining in areas of shallow water depth and in proximity to shorelines, restricting mining to the designated lease areas which are away from sensitive habitat, and monitoring and reporting the location of each mining event.
- **Additional requirements and restrictions to minimize and avoid take** will be set through consultation with the CDFG and would likely be a requirement of any Incidental Take Permit that may be issued for the Project. **To further minimize take, the Applicants shall keep the end of the pipe and drag head as close to the bottom as possible, and no more than three feet from the bottom, whenever feasible when priming the pump or clearing the pipe. Additional requirements and restrictions may be set through consultation with CDFG.**

**D-5** Please see the response to Comment D-8, below.

**D-6** Please see the response to Comment D-9, below.

**D-7** Please see the response to Comment D-3, above.

**D-8** The commenter is correct in stating that suspended sediments in the water column are known to be a stress factor for spawning Pacific herring (*Clupea pallasii*) and have been reported to have an effect on larval mortality, smothering of eggs, reduced oxygen exchange in early developing eggs, and egg laying and attachment to submerged aquatic vegetation (SAV) (Lassuy 1989; Griffin et al. 2009). As illustrated by the commenter, the greatest threat to Pacific herring from dredging operations, besides the possibility of entrainment, is the effect that increased sedimentation from the discharge plume can have on critical spawning habitat during the period of December 1 through March 1, when Pacific herring spawn in Central Bay. Recent scientific studies have demonstrated that turbidity levels, measured as Total Suspended Solids (TSS) concentrations greater than 100 milligrams per liter (mg/L), can have a deleterious effect on herring spawning and egg survival (Griffin et al. 2009).

As discussed in the EIR, sand mining occurs in specified deep-water lease areas in Central Bay just inside the Golden Gate in water depths between 30 and

90 feet. None of the sand mining leases in Central Bay contains eelgrass or known SAV beds (Hanson Environmental 2004; Merkel & Assoc. 2010). Known eelgrass and SAV beds adjacent to Angel and Alcatraz Islands, the Tiburon Peninsula, and the Marin headlands are located too distant from the lease areas to be affected by the discharge plume from sand mining activities (Merkel & Assoc. 2010). As stated in Impact BIO-6, the areal extent of the plume in which TSS concentrations exceeding 100 mg/L could occur is estimated to be extremely small, at the upper surface portion of the plume, and with an expected duration of only a few minutes to a maximum of one hour. This estimate is for all sand mining leases in the Bay and Delta, though the percentage of fines relative to the coarser sediment material being mined is generally less in Central Bay, where the sediment plume would therefore be smaller and less turbid.

Scientific investigations conducted by Mechanical Engineering Consultants (MEC) in 1990 and 1993 that monitored the discharge plume from sand mining dredging within the Central Bay leases, including those lease areas adjacent to Alcatraz and Angel Island, reported that the TSS concentrations of the discharge plume ranged between 15.5 and 57 mg/L (MEC 1993), averaged 30-57 mg/L at a distance of 400 meters from the origin of the discharge plume, and never exceeded 90 mg/L (MEC 1990). The U.S. Army Corps of Engineers permits for the Central Bay lease areas all contain prohibitions on dredging within 250 feet of the 30-foot depth contour. All of the SAV beds around Angel and Alcatraz Island are located more than 400 meters from the 30-foot mean lower low water (MLLW) depth contour (Merkel & Assoc. 2010).

The potential for TSS concentrations in the discharge plume to exceed 100 mg/L at the Central Bay sand mining leases is considered extremely small. Furthermore, should any portion of the discharge plume reach an eelgrass or other SAV bed located near any Central Bay sand mining leases, TSS concentrations are expected to be well below 100 mg/L. Therefore, the EIR concludes that no significant threat to Pacific herring spawning or spawning habitat is posed by the proposed Project.

- D-9** The CSLC understands that CDFG regulates changes that are made to the bed, channel or banks of rivers or streams under California Fish and Game Code section 1600 et seq., which allows the issuance of Lake and Streambed Alteration Agreements (LSAAs). Dredging projects in the greater San Francisco Bay area that occur on the periphery of the tidally-influenced Bay, but are within well-defined rivers and streams, are subject to CDFG regulation. Mining activities in the Central Bay, such as those proposed by the Project, are exempt from CDFG jurisdiction under Fish and Game Code section 1600, et seq., which does not extend over tidal waters. However, the start of non-tidal waters east of the Carquinez Strait where a LSAA is required is defined by CDFG. Thus, the need for such agreements in the Suisun Bay and the Western Delta would be determined by CDFG based on its jurisdictional limit.

Project compliance with applicable regulatory requirements, including Fish and Game Code section 1600 et seq., is presumed and is not required as Project mitigation. Thus, if a LSAA is required by CDFG for all or a portion of the Suisun Bay/Delta Lease Area, such a permit shall be acquired by the Applicants. As a trustee agency for the Project, CDFG may rely upon this EIR, provided it is certified by CSLC, as the required CEQA documentation to support the decision to issue any necessary permits, including an LSAA.

- D-10** As stated in Comment D-2, CDFG's concern is addressed in the 2011 Revised Draft EIR; benthic sampling methodologies are described in EIR Appendix F, Benthic Survey of Commercial Aggregate Mining Leases in Central San Francisco Bay and Western Delta, Section 2.1, Field Sampling, pages F-13 to F-24.



**STATE MINING AND GEOLOGY BOARD**

**DEPARTMENT OF CONSERVATION**

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**Brian Baca, vice chair**

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**Charlie Wyatt**

December 13, 2011

Christopher Huitt, Project Manager  
California State Lands Commission  
100 Howe Avenue, Suite 100-South  
Sacramento, California 95825

**Re: San Francisco Bay and Delta Sand Mining Project,  
Revised Draft Environmental Impact Report,  
SCH No. 2007072036; CSLC EIR No. 742**

Dear Mr. Huitt:

Staff of the State Mining and Geology Board (SMGB) has completed a preliminary review of the Revised Draft Environmental Impact Report (DEIR) for the above referenced project. It is our understanding that the California State Lands Commission (CSLC) is considering granting of new leases for ongoing marine sand mining operations for an additional 10-year period. We appreciate the opportunity to comment on the Revised Draft EIR, as the SMGB will rely on the Final EIR in order to approve amended reclamation plans for the affected marine sand mining operations per the requirements of the Surface Mining and Reclamation Act of 1975 (SMARA, Public Resources Code (PRC) Section 2710 et seq.).

E-1

At this time the SMGB has no specific comments regarding the DEIRs analysis of environmental impacts and mitigations. However, we offer the following comment for your consideration in preparing the Final EIR;

E-2

- A brief description of the role of the SMGB and the Department of Conservation's Office of Mine Reclamation (OMR) in implementing SMARA should be included within 4.7.2 (Regulatory Setting).

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Thank you for the opportunity to comment on the Revised Draft EIR for the San Francisco Bay and Delta Sand Mining Project. We look forward to receiving the final EIR. If you have

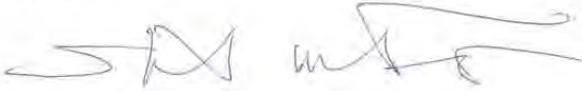
*Mission of the State Mining and Geology Board is to Represent the State's Interest in the Development, Utilization and Conservation of Mineral Resources; Reclamation of Mined Lands; Development of Geologic and Seismic Hazard Information; and to Provide a Forum for Public Address.*

## Comment Letter E

Christopher Huitt  
December 13, 2011  
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questions regarding the above comment or the SMGBs role in this matter, please do not hesitate to contact Will Arcand or myself at the SMGB office.

Sincerely,

Two handwritten signatures in black ink. The first signature on the left is 'S.M. Testa' and the second signature on the right is 'J.S. Pompy'.

Stephen M. Testa.  
Executive Officer

cc: James S. Pompy, Assistant Director, Office of Mine Reclamation

From: Arcand, Will [mailto:Will.Arcand@conservation.ca.gov]  
Sent: Wednesday, December 21, 2011 10:44 AM  
To: Huitt, Christopher@SLC  
Cc: Gillies, Eric@SLC; Oggins, Cy@SLC; Oetzel, Donn@SLC; DSicular@esassoc.com; cmueller@esassoc.com; Douglas Cover; Gary Oates  
Subject: RE: Revised Draft EIR Comment - SF Bay and Delta Sand Mining

Hi Chris:

The following language, to be inserted in Section 4.7.2 under the 'State' heading, should address our comment:

*State Mining and Geology Board*

Under the Surface Mining and Reclamation Act of 1975 (SMARA, Public Resources Code Section 2710 et seq.), a surface mining operation must have a reclamation plan and financial assurance approved by its respective lead agency (city, county, San Francisco BCDC, or the SMGB) prior to engaging in surface mining activities (PRC Section 2770). Prior to approving a reclamation plan or financial assurance, a lead agency must provide the Department of Conservation's Office of Mine Reclamation the opportunity to review and comment on the documents (PRC Section 2774(c) et seq.). The State Mining and Geology Board (SMGB) serves as the SMARA lead agency for marine sand mining operations in the San Francisco Bay-Delta area, and is responsible for the review and approval of reclamation plans, financial assurances, and environmental review documents pertinent to such operations. The SMGB most recently approved reclamation plans and financial assurances for the sand mining operations covered by the RDEIR on February 10, 2005, and January 12, 2006, respectively. Upon completion and certification of the environmental documents, and renewal of the subject leases, the SMGB will require the current reclamation plans and financial assurances to be amended and re-approved, as necessary.

E-3

Feel free to contact me with any questions on this.

Best Regards,  
Will

From: Huitt, Christopher@SLC [mailto:Christopher.Huitt@slc.ca.gov]  
Sent: Friday, December 16, 2011 10:40 AM  
To: Arcand, Will  
Cc: Gillies, Eric@SLC; Oggins, Cy@SLC; Oetzel, Donn@SLC; DSicular@esassoc.com; cmueller@esassoc.com; Douglas Cover; Gary Oates  
Subject: RE: Revised Draft EIR Comment - SF Bay and Delta Sand Mining

Hi Will,

Please provide the specific language to address the Board's concerns and your comments. We would greatly appreciate it. I hope you are doing well, take care.

Christopher Huitt  
Staff Environmental Scientist  
DEPM, CSLC

## RESPONSE TO COMMENT SET E: STATE MINING AND GEOLOGY BOARD

- E-1** The State Mining and Geology Board (SMGB) is listed as a Responsible Agency in the EIR because it has approval authority over the reclamation plans prepared for the sand mining sites. Please see EIR Section 1.3, Permits, Approvals, and Regulatory Requirements, in Part III of this Final EIR.
- E-2** Please see the response to Comment E-3.
- E-3** The following text is added to Section 4.7, Land Use and Recreation, in the Final EIR:

### State Mining and Geology Board

Under the Surface Mining and Reclamation Act of 1975 (SMARA; Pub. Resources Code, § 2710 et seq.), a surface mining operation must have a reclamation plan and financial assurance approved by its respective lead agency (city, county, BCDC, or the SMGB) prior to engaging in surface mining activities (Pub. Resources Code, § 2770). Prior to approving a reclamation plan or financial assurance, a lead agency must provide the Department of Conservation's Office of Mine Reclamation the opportunity to review and comment on the documents (Pub. Resources Code, § 2774(c) et seq.). The SMGB serves as the SMARA lead agency for marine sand mining operations in the San Francisco Bay-Delta area, and is responsible for the review and approval of reclamation plans, financial assurances, and environmental review documents pertinent to such operations. The SMGB most recently approved reclamation plans and financial assurances for Bay and Delta sand mining operations on February 10, 2005, and January 12, 2006. Upon completion and certification of the EIR, and reissuance of the subject leases, if approved, the SMGB would require the current reclamation plans and financial assurances to be amended and re-approved, as necessary.

# Comment Letter F



Commanding Officer  
United States Coast Guard  
Civil Engineering Unit Oakland

1301 Clay Street, Suite 700N  
Oakland, CA 94612-5203  
Staff Symbol: CEUO-PLRP  
Phone: (510) 637-5540  
Email: Christine.L.Schneider@uscg.mil

16475  
15 December 2011

Christopher Huitt, Project Manager  
California State Lands Commission  
100 Howe Avenue, Suite 100-South  
Sacramento, CA 95825

Dear Mr. Huitt:

The U.S. Coast Guard (USCG) appreciates the opportunity to provide comments on the Revised Draft Environmental Impact Report (Revised DEIR) for the San Francisco Bay and Delta Sand Mining Project (SCH No. 2007072036, CSLC EIR No. 742, CSLC Ref Files: Lease PRC709, 2036, 7779, 7780, and 7781; W30128.2). The USCG offers the following comments.

As stated in the Revised DEIR, "The California State Lands Commission (CSLC) holds title to and manages tidelands and submerged lands and bed of navigable waterways for the benefit of all people of the State for statewide Public Trust purposes, which include waterborne commerce, navigation, fisheries, water-related recreation, habitat preservation, and open space. The CSLC may grant leases on these State lands for such purposes as, but not limited to, ports, marinas, docks and wharves, and dredging."

In accordance with various authorities under 33 USC § 1221 *et seq.* the Coast Guard Captain of the Port has comprehensive authority to ensure navigational and vessel safety and protection of the marine environment in the Bay Area. Sand mining activities may occur within navigable areas of the San Francisco Bay, and in particular deep draft vessel traffic lanes, and may present a risk to navigational and vessel safety. The Revised DEIR should address the potential for conflicts between sand mining barges and vessel traffic.

The Coast Guard Captain of the Port is responsible under 33 CFR Part 100 to ensure safe navigational safety by issuance of permits for marine events, parades, and regattas that may, by their nature, circumstances, or location, introduce extra or unusual hazards to the safety of life on the navigable waters of the United States. Sand mining activities, and in particular activities in lease areas within the CSLC Lands of the Central San Francisco Bay (i.e., PRC 709, PRC 7780, and PRC 709) may conflict with other marine events permitted by the Coast Guard and present a risk to navigational safety. In particular, the Americas Cup 34 sailboat races are proposed to occur in the Central San Francisco Bay in the summers of 2012 and 2013 and may conflict with sand mining operations in the Central Bay which, according to the Revised DEIR (page 2-21), also occurs largely during the summer months.

Lastly, the Revised DEIR should include in the cumulative analysis actions permitted or undertaken by the USCG to ensure navigational safety in the San Francisco Bay, including recurring events such as Fleet Week that may overlap with sand mining operations.

Thank you for your consideration of these issues and, should you have any questions, please contact Ms. Christine Schneider of my staff at 510-637-5540 or [Christine.L.Schneider@uscg.mil](mailto:Christine.L.Schneider@uscg.mil)

Sincerely,

J. W. McPherson  
Lieutenant Commander  
U. S. Coast Guard

F-1

F-2

F-3

## **RESPONSE TO COMMENT SET F: UNITED STATES COAST GUARD**

- F-1** The U.S. Coast Guard's (USCG) authority over navigational and vessel safety in the Bay, as well as the potential for conflicts between sand mining vessels and other vessels on the Bay, are discussed in Section 4.4, Hazards and Hazardous Materials of this Final Environmental Impact Report (EIR). Sand mining vessels are subject to USCG's vessel traffic control systems. Potential conflicts are addressed in the EIR in the context of the potential for spills.
- F-2** The California State Lands Commission (CSLC) staff expects that sand mining vessels would be subject to the same USCG navigational controls and limitations as are other vessels during the America's Cup 34 sailboat races. While this may restrict sand mining activities in some of the lease areas, it is not expected to result in a significant environmental impact.
- F-3** Sand mining vessels are subject to the same USCG navigational controls and limitations as other vessels during Fleet Week and other recurring events. Sand mining is not a new activity, but an ongoing one; the CSLC staff is unaware of any past conflicts or accidents involving sand mining vessels during Fleet Week or other recurring events. Therefore, no new impacts related to vessel traffic safety are foreseen, and there is no need to include such events in the cumulative analysis.