

STAFF REPORT

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12/06/19
Lease 7757.9
D. Tutov

AMENDMENT OF LEASE

APPLICANT /LESSEE:

City of Suisun City

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Suisun Slough and in the area around the Suisun City Marina, City of Suisun City, Solano County.

AUTHORIZED USE:

Maintenance dredge a maximum of 193,155 cubic yards of sediment from Suisun Slough and the area around the Suisun City Marina, not the marina itself, over the entire 10-year lease period to maintain navigable depths. Dredged material will be disposed of at the Pierce Island Levee Rehabilitation Project, a Dredged Material Management Office (DMMO) designated upland disposal site.

LEASE TERM:

10 years, beginning February 4, 2019.

CONSIDERATION:

The public use and benefit, with the State reserving the right at any time to set a monetary rent if the Commission finds such to be in the State's best interests. The dredged material may not be sold.

PROPOSED AMENDMENT:

Amend the lease to extend the annual dredging window to November 30 and to include Exhibit C, Mitigation Monitoring Program. All other terms and conditions of the lease shall remain in effect without amendment.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6216, 6301, 6303, 6501.1, and 6503; California Code of Regulations, title 2, sections 2000 and 2003.

Public Trust and the State's Best Interests Analysis:

On February 4, 2019, the Commission authorized a 10-year General Lease – Dredging to the City of Suisun City (City) for maintenance

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dredging of a maximum 193,155 cubic yards of sediment over the lease term ([Item C35, February 4, 2019](#)). The City is now applying for a lease amendment to extend the annual dredging window to November 30.

The existing lease is for maintenance dredging of Suisun Slough to improve the navigability of the waterway and facilitate water-oriented recreational uses. When the existing lease was considered by the Commission earlier this year, the City had planned to perform its annual dredging in August and September. The City subsequently determined that a minimum of 3 to 4 months is required to complete all necessary maintenance dredging within a single year and minimize potential temporal impacts associated with having to complete the maintenance dredging the following year. The regulatory agencies' maintenance dredging "Environmental Work Windows" adhere to two different, partially overlapping work windows for the delta and longfin smelt (listed as threatened under the California Endangered Species Act in 2009). The California Department of Fish and Wildlife (CDFW) specifies a dredging window from July 1 to September 30, while the DMMO, which includes CDFW as a participating member, specifies a dredging window of August 1 to November 30. Due to the different agency Environmental Work Windows, this allows for only a 2-month dredging window to be conducted in any given year between August 1 and September 30. The City will obtain an Incidental Take Permit from CDFW to allow for extension of the work window to November 30. To comply with the California Environmental Quality Act (CEQA), the City has completed and adopted a Mitigated Negative Declaration to analyze potential environmental impacts of the work window extension and has adopted a Mitigation Monitoring and Reporting Program to mitigate potential impacts.

Overall, the proposed lease amendment is considered beneficial because it will facilitate improved navigability of the waterway and water-oriented recreational uses. Dredging that maintains the navigability of waterways and uses that promote or facilitate water-oriented recreational use are generally consistent with the common law Public Trust Doctrine. Additionally, the existing lease includes certain provisions protecting the public use of the lease area by requiring the City to obtain necessary permits for dredging. The City will coordinate with the U.S. Coast Guard in placing and maintaining navigational buoys as a warning to boaters at all times during dredging activities. Public access to Suisun Slough shall be maintained at all times during dredging operations. The lease restricts the lessee from selling or using the dredged material for commercial purposes. Dredged material will be deposited at the DMMO-approved Pierce Island Levee Rehabilitation Project. The lease requires the lessee

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to indemnify the State for any liability incurred as a result of the lessee's activities thereon.

Climate Change:

Climate change impacts, including sea-level rise, more frequent and intense storm events, and increased flooding and erosion, affect both open coastal areas and inland waterways in California. The lease area consists of Suisun Slough, Laurel Creek Channel, and Whispering Bay Channel. The identified channels require dredging due to the accumulation of sediment impeding the ability of the Suisun Marina vessels from traveling at lower tides. The project area also includes Pierce Island, the area where the dredge spoils will be placed as per the DMMO approvals. The existing levees and Pierce Island area are currently in good condition.

The California Ocean Protection Council updated the State of California Sea-Level Rise Guidance in 2018 to provide a synthesis of the best available science on sea-level rise projections and rates. Commission staff evaluated the "high emissions," "medium-high risk aversion" scenario to apply a conservative approach based on both current emission trajectories and the lease location and structures. The San Francisco tide gauge was used for the projected sea-level rise scenario for the lease area as listed in Table 1.

Table 1. Projected Sea-Level Rise for San Francisco¹

Year	Projection (feet)
2030	0.8
2040	1.3
2050	1.9
2100	6.9

Source: Table 13, State of California Sea-Level Rise Guidance: 2018 Update

Note: ¹ Projections are with respect to a 1991 to 2009 baseline.

Rising sea levels can lead to more frequent flood inundation in low-lying areas and larger tidal events. In addition, as stated in *Safeguarding California Plan: 2018 Update* (California Natural Resources Agency 2018), climate change is projected to increase the frequency and severity of natural disasters related to flooding, fire, drought, extreme heat, and storms (especially when coupled with sea-level rise). Climate change and sea-level rise will further influence coastal and riverine areas by changing erosion and sedimentation rates. In rivers and tidally influenced

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waterways, flooding and storm flow will likely increase scour, decreasing bank stability and structure.

The combination of these projected conditions could increase the likelihood of damage to structures within the lease premises during the term of the lease. The channels may require more frequent maintenance dredging as a result of increased sediment accretion resulting from increased duration and strength of future storms. Additional maintenance of the Pierce Island levees may be required as storm intensity and duration increase as well.

Regular maintenance dredging will reduce the likelihood of severe accretion. Pursuant to the existing lease, the Applicant acknowledges that the lease premises and adjacent upland are located in an area that may be subject to effects of climate change, including sea-level rise.

Conclusion:

For all the reasons above, staff believes the amendment of this lease is consistent with the common law Public Trust Doctrine, and that the dredging project will result in a public benefit and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. Approval or denial of the application for a lease amendment is a discretionary action by the Commission. Each time the Commission approves or rejects a use of sovereign land, it exercises legislatively delegated authority and responsibility as a trustee of the State's Public Trust lands as authorized by law. Upon expiration or prior termination of the lease, the lessee has no right to a new lease or to renewal of any previous lease.
2. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction.
2. A Mitigated Negative Declaration, State Clearinghouse No. 2019069029, and a Mitigation Monitoring and Reporting Program were prepared by the City of Suisun City and adopted on July 30, 2019, for this project. Staff has reviewed these documents.
3. This activity involves lands which have NOT been identified as possessing significant environmental values pursuant to Public Resources Code

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section 6370 et seq.; however, the Commission has declared that all lands are significant by nature of their public ownership (as opposed to environmentally significant). Since such declaration of significance is not based upon the requirements and criteria of Public Resources Code section 6370 et seq., use classifications for such lands have not been designated. Therefore, the finding of the project's consistency with the use classification as required by California Code of Regulations, title 2, section 2954 is not applicable.

EXHIBITS:

- A. Land Description
- B. Site and Location Map
- C. Mitigation Monitoring Program

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that a Mitigated Negative Declaration, State Clearinghouse No. 2019069029, and a Mitigation Monitoring and Reporting Program were prepared by the City of Suisun City and adopted on July 30, 2019, for this project and that the Commission has reviewed and considered the information contained therein; that in the Commission's independent judgment, the scope of activities to be carried out under the lease amendment to be issued by this authorization have been adequately analyzed; that none of the events specified in Public Resources Code section 21166 or the State CEQA Guidelines section 15162 resulting in any new or substantially more severe significant impact has occurred; and, therefore no additional CEQA analysis is required.

Adopt the Mitigation Monitoring Program, as contained in the attached Exhibit C.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed lease amendment will not substantially interfere with the Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

AUTHORIZATION:

Authorize the amendment of Lease No. PRC 7757.9, a General Lease – Dredging, effective December 6, 2019, to extend the annual dredging

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window to November 30, and to include Exhibit C, Mitigation Monitoring Program.

EXHIBIT A

PRC 7757.9

LAND DESCRIPTION

Two (2) parcels of tide and submerged land situate in the bed of Suisun Slough (Duck Slough), County of Solano, State of California, more particularly described as follows:

PARCEL 1 – DREDGE UNIT 2

COMMENCING at a NGS monument “SUISUN HILL 2, PID JT1994” (Epoch 1991.35) having CCS83 Zone 2 coordinates of Northing (y) = 1839997.25 feet, Easting (x) = 6555952.27 feet which bears North 76° 36' 46" West, 18989.66 feet from a NGS monument “POTRERO AVA, PID JS4494” (Epoch 1991.35) having CCS83 Zone 2 coordinates of Northing (y) = 1835600.59 feet, Easting (x) = 6574425.94 feet; thence North 34° 47' 41" West, 9047.80 feet to the POINT OF BEGINNING thence along the following thirteen (13) courses:

- 1) North 12° 12' 46" West 220.10 feet;
- 2) North 09° 22' 18" West 664.81 feet;
- 3) North 12° 37' 23" West 521.14 feet;
- 4) North 74° 59' 12" East 126.04 feet;
- 5) South 15° 39' 55" East 308.42 feet;
- 6) South 12° 42' 30" East 979.49 feet;
- 7) North 81° 11' 06" East 249.44 feet;
- 8) North 88° 31' 25" East 52.16 feet;
- 9) South 54° 13' 51" East 101.61 feet;
- 10) South 78° 32' 53" West 106.96 feet;
- 11) South 72° 25' 03" West 60.93 feet;
- 12) South 72° 34' 09" West 203.68 feet;
- 13) South 77° 22' 59" West 179.97 feet to the POINT OF BEGINNING.

PARCEL 2 – DREDGE UNIT 4

COMMENCING at a NGS monument “SUISUN HILL 2, PID JT1994” (Epoch 1991.35) having CCS83 Zone 2 coordinates of Northing (y) = 1839997.25 feet, Easting (x) = 6555952.27 feet which bears North 76° 36' 46" West, 18989.66 feet from a NGS monument “POTRERO AVA, PID JS4494” (Epoch 1991.35) having CCS83 Zone 2 coordinates of Northing (y) = 1835600.59 feet, Easting (x) = 6574425.94 feet; thence South 31° 27' 06" East, 8873.77 feet to the POINT OF BEGINNING thence along the following twenty-six (26) courses:

- 1) North 54° 13' 51" West 101.61 feet;
- 2) North 89° 29' 42" East 60.20 feet;

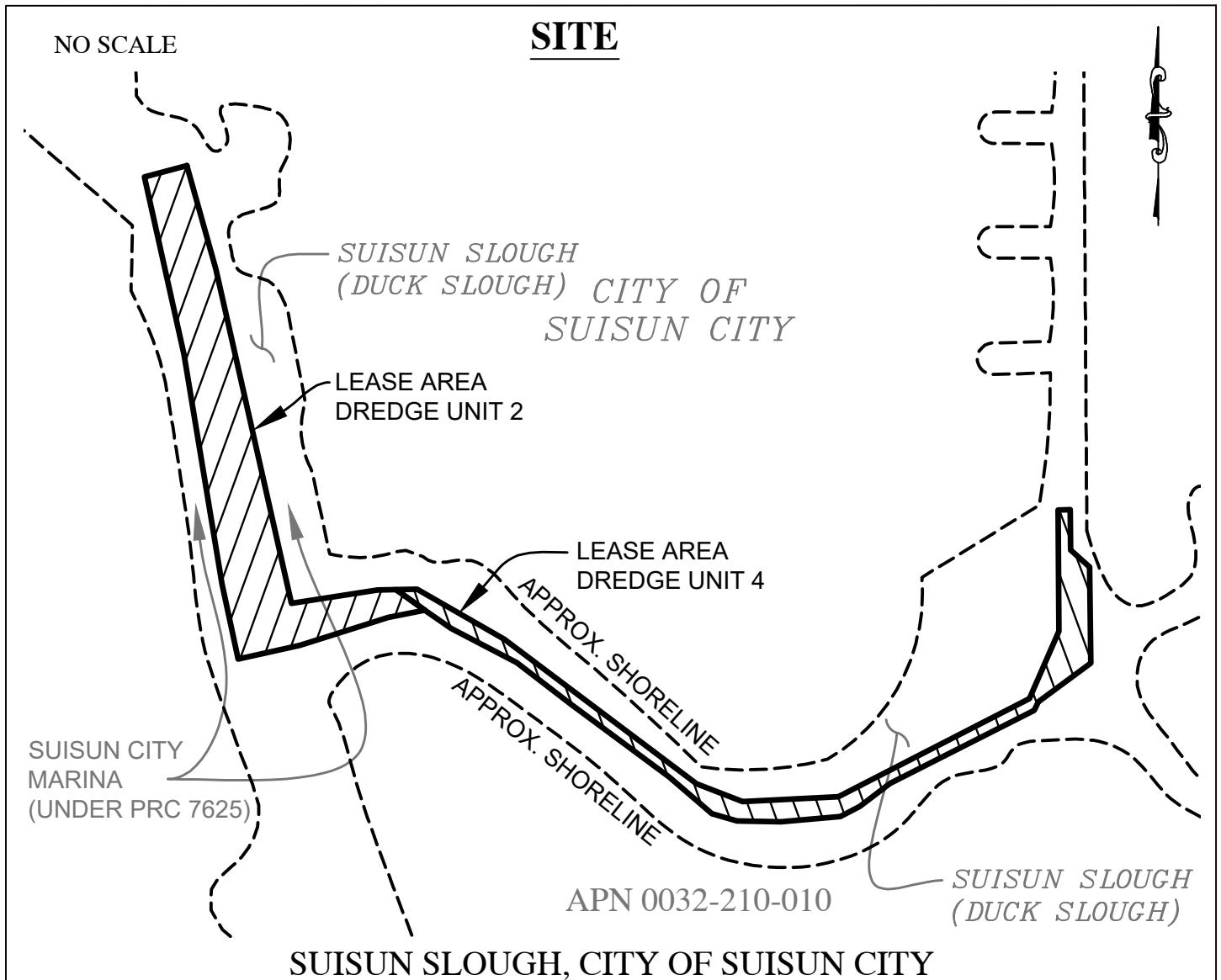
- 3) South 60° 15' 07" East 287.70 feet;
- 4) South 53° 02' 19" East 688.53 feet;
- 5) South 68° 51' 44" East 140.45 feet;
- 6) North 86° 58' 49" East 274.35 feet;
- 7) North 62° 51' 01" East 613.60 feet;
- 8) North 23° 34' 23" East 210.55 feet;
- 9) North 00° 18' 39" West 346.26 feet;
- 10) North 86° 49' 18" East 34.14 feet;
- 11) South 00° 48' 14" East 115.66 feet;
- 12) South 47° 59' 44" East 72.15 feet;
- 13) South 00° 50' 51" East 275.40 feet;
- 14) South 53° 39' 24" West 186.72 feet;
- 15) South 25° 10' 23" West 26.85 feet;
- 16) South 63° 06' 59" West 461.64 feet;
- 17) South 52° 36' 41" West 109.29 feet;
- 18) South 62° 42' 19" West 62.82 feet;
- 19) South 84° 57' 10" West 170.47 feet;
- 20) North 89° 04' 53" West 125.93 feet;
- 21) North 73° 23' 42" West 74.75 feet;
- 22) North 49° 31' 39" West 160.99 feet;
- 23) North 53° 24' 55" West 348.63 feet;
- 24) North 52° 26' 17" West 196.04 feet;
- 25) North 62° 24' 39" West 212.27 feet;
- 26) North 55° 25' 27" West 90.91 to the POINT OF BEGINNING.

EXCEPTING THEREFROM any portion lying landward of the ordinary high water mark of Suisun Slough (Duck Slough).

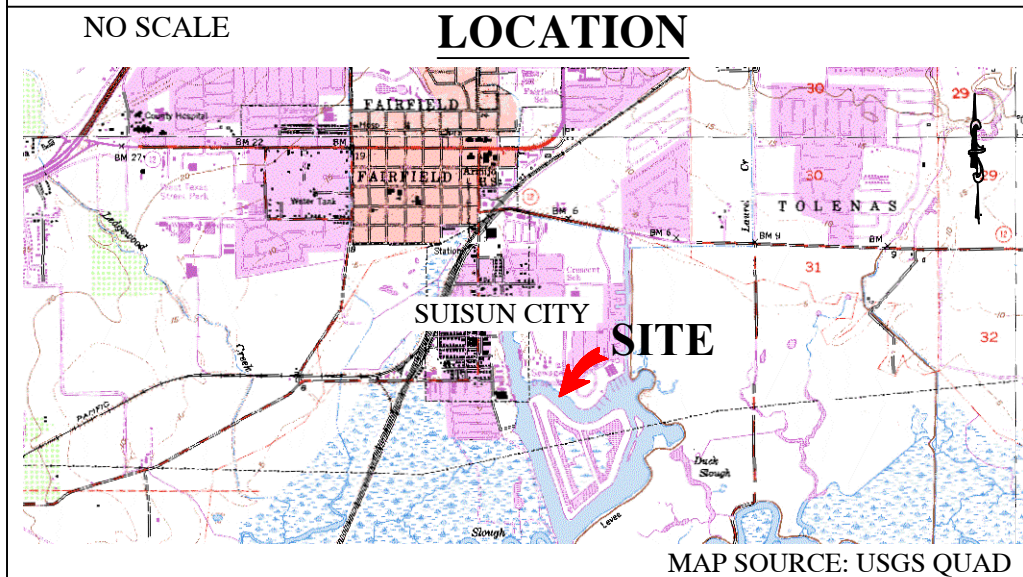
END OF DESCRIPTION

Prepared 11/5/2018 by the California State Lands Commission Boundary Unit.





SUISUN SLOUGH, CITY OF SUISUN CITY



This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

Exhibit B

PRC 7757.9
CITY OF SUISUN CITY
GENERAL LEASE -
DREDGING
SOLANO COUNTY



EXHIBIT C
CALIFORNIA STATE LANDS COMMISSION
MITIGATION MONITORING PROGRAM
SUISUN MARINA OCTOBER AND NOVEMBER
MAINTENACE DREDGING PROJECT
(A2229, State Clearinghouse No. 2019069029)

The California State Lands Commission (Commission or CSLC) is a responsible agency under the California Environmental Quality Act (CEQA) for the Suisun Marina October and November Maintenance Dredging Project (Project).

In conjunction with approval of this Project, the Commission adopts this Mitigation Monitoring Program (MMP) for the implementation of mitigation measures for the portion(s) of the Project located on Commission lands. The purpose of an MMP is to impose feasible measures to avoid or substantially reduce the significant environmental impacts from a project identified in an Environmental Impact Report (EIR) or a Mitigated Negative Declaration (MND). State CEQA Guidelines section 15097, subdivision (a), states in part:¹

In order to ensure that the mitigation measures and project revisions identified in the EIR or negative declaration are implemented, the public agency shall adopt a program for monitoring or reporting on the revisions which it has required in the project and the measures it has imposed to mitigate or avoid significant environmental effects. A public agency may delegate reporting or monitoring responsibilities to another public agency or to a private entity which accepts the delegation; however, until mitigation measures have been completed the lead agency remains responsible for ensuring that implementation of the mitigation measures occurs in accordance with the program.

The lead agency approved an MND, State Clearinghouse No. 2019069029, adopted an MMP for the whole of the Project (see Exhibit C, Attachment C-1), and remains responsible for ensuring that implementation of the mitigation measures occurs in accordance with its program. The Commission's action and authority as a responsible agency apply only to the mitigation measures listed in Table C-1 below. The segments of the Project area within the Commission's jurisdiction include the channel of Whispering Bay and Marina Village Residential District Area access channels as depicted in Figure 1 of the Adopted MND. The full text of each mitigation measure, as set forth in the MMP prepared by the CEQA lead agency and listed in Table C-1, is incorporated by reference in this Exhibit C. Any mitigation measures adopted by the Commission that differ substantially from those adopted by the lead agency are shown as follows:

- Additions to the text of the mitigation measure are underlined; and

¹ The State CEQA Guidelines are found at California Code of Regulations, title 14, section 15000 et seq.

- Deletions of the text of the mitigation measure are shown as ~~strikeout~~ or as otherwise noted.

Table C-1. Project Impacts and Applicable Mitigation Measures

Potential Impact	Mitigation Measure (MM)²	Difference Between CSLC MMP and Lead Agency MMP
Biological Resources: BIO-1	MM BIO-1: Preconstruction Plant Surveys to identify, mark and avoid sensitive plant colonies identified in MND.	None
Biological Resources: BIO-2	MM BIO-2: All Project activities will comply with USFWS and CDFW approved work windows.	None
Biological Resources: BIO-3	MM BIO-3: All Protect activities will occur outside of the 50-foot suitable tidal marsh habitat for the salt marsh harvest mouse.	None
Biological Resources: BIO-4	MM BIO-4: All Project activities will occur outside of the 50-foot suitable habitat for the Ridgway and California black rail habitat.	None
Biological Resources: BIO-5	MM BIO-5: A qualified biologist will survey, monitor, and document compliance measures in accordance with regulatory agency permits.	None
Biological Resources: BIO-6	MM BIO-6: The City will implement measures to; reduce construction debris, maintain cutterhead at or below sediment surface during dredging, and keep all hazardous and toxic materials from being released.	None
Biological Resources: BIO-7	MM BIO-7: The City shall obtain a CDFW-issued Incidental Take Permit for potential impacts to delta and longfin smelt and implement all required permit conditions.	None
Hydrology and Water Quality: HWQ-1	MM HWQ-1: The City shall keep all sediment and water from the dredging from leaking into the adjacent area,	None

² See Attachment C-1 for the full text of each MM taken from the MMP prepared by the CEQA lead agency.

Potential Impact	Mitigation Measure (MM) ²	Difference Between CSLC MMP and Lead Agency MMP
	keep the cutterhead at or below the sediment surface, monitor turbidity downstream of dredging, keep overflow and decant water from being discharged, and maintain the barge from resting on the bed or bank of the channels.	
Cultural Resources: CUL-1	<u>MM CUL-1: Inadvertent Discoveries of Objects of Cultural Significance</u>	See MM CUL-1 below

Mitigation Measure CUL-1: Inadvertent Discoveries of Objects of Cultural Significance: If any objects of cultural significance are unearthed during the construction process, work shall be halted immediately until a qualified archeologist can assess the significance of the new find. If human remains are unearthed during the construction process, the Proposed Action team shall comply with the California Health and Safety Code Section 7050.5, which states that no further disturbance shall occur until the County Coroner has investigated the situation following the Public Resource Code Section 5097.98.

California State Lands Commission (Commission) staff shall be notified of any California Register of Historic Resources or National Register of Historic Resources-eligible resources or paleontological specimens discovered on lands under the jurisdiction of the Commission. The final disposition of any artifacts or specimens including, but not limited to, those of an archaeological, cultural, historical, or paleontological nature from such lands must be approved by the Commission. The archaeologist shall complete a report of the excavations and findings, and the report shall be submitted to the regional office of the California Historic Resources Information System (CHRIS) and Solano County.

ATTACHMENT C-1

**Mitigation Monitoring Program Adopted by
The City of Suisun City**

Mitigation Monitoring and Reporting Program (MMRP)				
Mitigation/Avoidance Measure	Method(s) of Verification	Timing of Verification	Monitoring Responsibility	Verification (Date/Initials)
Biological Resources				
BIO-1 Prior to placement of dredge materials, the Project's biologist shall perform a preconstruction presence/absence survey to flag the location of any sensitive plant species including Suisun Marsh aster and Mason's lilaeopsis plants or plant colonies within 50 feet of dredging placement work areas. Any such identified plant or colony shall be avoided.	Biologist compliance documentation	Prior to and during dredging and placement	City/City Biologist	
BIO-2 All Project work on Pierce Island shall be conducted according to the USFWS and CDFW approved work window of September 1st – January 31st to avoid potential impacts to the Suisun song bird.	Biologist compliance documentation	Applicable work window	City/City Biologist	
BIO-3 No project activities shall occur within 50 feet of suitable tidal marsh habitat for the salt marsh harvest mouse (SMHM) within two (2) hours before and after an extreme high tide event (6.5 feet or higher measured at the Golden Gate Bridge and adjusted to the timing of local high tides) or when adjacent marsh is flooded unless SMHM proof exclusion fencing has been installed around the work area.	Biologist compliance documentation	Prior to and during dredging and placement	City/City Biologist	
BIO-4 No project activities shall occur within 50 feet of suitable Ridgway's (California clapper) rail (CCR) or California black rail (CBR) habitat during extreme high tide events or when adjacent tidal marsh is flooded. Extreme high tides events are defined as a tide forecast of 6.5 feet or higher measured at the Golden Gate Bridge and adjusted to the timing of local high tides.	Biologist compliance documentation	Prior to and during dredging and placement	City/City Biologist	
BIO-5 The City will retain a qualified biologist to survey, monitor and document compliance with measures AM BIO-3 through AM BIO-5 with the submittal of weekly summary reports/emails or through requirements outlined in the Project's regulatory permit conditions.	Biologist compliance documentation	Prior to and during dredging and placement	City/City Biologist	
BIO-6 The City shall implement the following BMPs: <ul style="list-style-type: none"> Construction debris will not be allowed to enter the water. The cutterhead shall remain at or below the sediment surface during dredging. Any hazardous or toxic materials that could be deleterious to aquatic life that could be washed into the stream or its tributaries shall be contained in water tight containers or removed from the Project Site. 	Contractor Agreement and Contractor work log	Prior to and during dredging	City/City Contractor	

Mitigation Monitoring and Reporting Program (MMRP)				
Mitigation/Avoidance Measure	Method(s) of Verification	Timing of Verification	Monitoring Responsibility	Verification (Date/Initials)
BIO-7 Prior to start of October through November dredging, The City shall obtain a CDFW-issued Incidental Take Permit for potential impacts to delta smelt and longfin smelt resulting from dredging activities conducted outside of the CDFW Environmental Work Window. The City shall implement the permit conditions according to permit timing and requirements, which may include purchase of mitigation credits, removal of creosote pilings, or other form of mitigation acceptable to CDFW.	Obtain Incidental Take Permit	Prior to October/ November dredging	City	
Hydrology and Water Quality				
HWQ-1 The City shall implement the following BMPs: <ul style="list-style-type: none"> • No water or sediment shall be allowed to leak from the pipeline under any circumstances. • The cutterhead shall remain at or below the sediment surface during dredging. • Turbidity monitoring shall be conducted downstream as well as at an appropriate reference area upstream. If turbidity is found to threaten aquatic life, CDFW approved control methods will be installed. • No overflow or decant water shall be discharged at the site from the barge. • The barge will remain afloat at all times and shall not rest on the bed or bank of the water body. 	Contractor Agreement and/or Contractor work log	Prior to and during dredging	City/City Contractor	