

# Staff Report 56

## **APPLICANT:**

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University of California, Davis (UC Davis)

## **PROPOSED ACTION:**

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Consider authorization of modified indemnity language, to facilitate Staff's issuance of a Letter of Non-Objection to UC Davis for a one-year statewide study of Ribbed Limpet Range Expansion and Adaptation in the Intertidal Zone of the Pacific Ocean.

## **AREA, LAND TYPE, AND LOCATION:**

Statewide Offshore

## **TERM:**

One year, beginning October 19, 2023.

## **BACKGROUND:**

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On July 18, 2023, staff authorized a Letter of Non-objection (LON) to UC Davis for a dissertation research project with the Population Biology Graduate Group, attached as Exhibit A. UC Davis staff were unable to sign the issued LON stating that the indemnification language in the LON did not match the standard indemnification language that was negotiated by the California Department of General Services on behalf of the State for contracts with the UC system. To resolve this discrepancy, UC Davis staff requested indemnity language in the LON be revised as follows:

*“That the State of California, its officers, agents, and employees shall not be liable for any claims, damages, or injuries of any kind and from any cause arising out of or connected in any way with the proposed action, and that you shall indemnify, hold harmless, and, at the option of the State, defend the State, its officers, agents, and employees, against and for any and all liability for any claims, damages, or injuries of any kind and from any cause, arising out of ~~or~~ and connected in any way with the proposed action; and”*

The existing delegation to staff is very specific about the indemnity language that must be included in staff-issued LONs. Additionally, the staff-issued LON expired ten (10) days after it was issued because it had not been executed. Staff are seeking authorization from the Commission to issue a LON with the above modification to the Commission’s standard indemnity provision.

## **STAFF ANALYSIS AND RECOMMENDATION:**

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The Comprehensive Delegation of Authority (Delegation of Authority) ([April 26, 2022, Item 55](#)) allows staff to authorize LONs for immediate or minor, nonexclusive, short-term uses of state lands when the activities are exempt from the California Environmental Quality Act (CEQA) and the applicant agrees to certain specific provisions, including standard indemnity language. The Commission must authorize any language that deviates from the standard provisions stated in the Delegation of Authority.

Commission legal staff have reviewed the proposed change to the standard indemnity provision and have found that the proposed substitution of the word “or” for “and” will not expose the Commission to additional liability. Additionally, the California Department of General Services has negotiated standard terms and conditions for contracts with the UC system ([UTC-220](#)). University staff believe this minor change to the LON will bring the letter in closer alignment with these statewide negotiated terms. Commission staff is planning on bringing additional recommended updates to the Commission’s Delegation of Authority to the December 5, 2023 meeting, and will recommend comparable changes to those above and may suggest terms that provide more flexibility to negotiate minor revisions to the standard LON template, when appropriate.

The Delegation of Authority specifically lists information collection and scientific studies as activities that may be authorized by a LON. The proposed study will evaluate and compare how the ribbed limpet, an abundant intertidal invertebrate, adapts or moves in response to climate change. It will also help evaluate whether

California Marine Protected Areas are harboring adaptive variations in intertidal species.

To conduct the study, small data-collecting devices known as robo-limpet temperature sensors (robo-limpets) will be affixed to rock substrate in the intertidal zone below the ordinary high tide line but above the algae line, which will avoid damage to biota. The Applicant proposes to temporarily affix three robo-limpets per site that they will use exclusively for information collection. As they are small devices (3 inches in diameter) and designed to look like limpet shells, they will have minimal aesthetic impact. To affix the robo-limpets to the substrate, the Applicant will use non-toxic epoxy. The robo-limpets will be kept in place for no longer than 12 months. The Applicant will then use a non-toxic chemical to remove the sensors. When the epoxy is removed, the substrate will be returned to its original state, with no permanent changes. The Applicant plans to install robo-limpets at 21 sites along the coast of California, 17 of which are located on State sovereign lands under the jurisdiction of the Commission.

The other four sites are under the jurisdiction of different governmental bodies and will require separate permissions.

The LON would be limited in term to one year and would include provisions to ensure that the activities do not damage state-owned lands or resources.

**AUTHORITY:**

Public Resources Code sections 6005, 6106, 6216, 6301; California Code of Regulations, title 2, section 2100.

**CALIFORNIA ENVIRONMENTAL QUALITY ACT:**

Authorization to modify indemnity language is not a project in accordance with CEQA because it is an administrative action that will not result in direct or indirect physical changes to the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

**EXHIBIT:**

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A. Original July 18, 2023 LON

## **RECOMMENDED ACTION:**

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It is recommended that the Commission:

### **AUTHORIZATION:**

Authorize the modified indemnity language, to facilitate Staff's issuance of a Letter of Non-Objection to the University of California Davis for a one-year statewide study of Ribbed Limpet Range Expansion and Adaptation in the Intertidal Zone of the Pacific Ocean.

## Exhibit A

STATE OF CALIFORNIA

GAVIN NEWSOM, Governor

### CALIFORNIA STATE LANDS COMMISSION

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Sacramento, CA 95825-8202



*Established in 1938*

JENNIFER LUCCHESI, Executive Officer  
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July 18, 2023

File Ref.: I 4066

Shreya Banerjee  
Bodega Marine Lab  
University of California, Davis  
1 Shields Avenue  
Davis, CA 95616

VIA ELECTRONIC MAIL ONLY (smbanerj@ucdavis.edu)

Subject: Study of Ribbed Limpet Range Expansion and Adaptation in the Intertidal Zone of the Pacific Ocean, from Del Norte to San Diego Counties

Dear Shreya Banerjee,

This letter is in response to your request for a Letter of Non-Objection from the staff of the California State Lands Commission (Commission) to conduct a study at the sites listed below.

Based on the information you provided to us, we understand the following regarding the proposed activities:

For your dissertation project with the Population Biology Graduate Group at the University of California, Davis, you plan to conduct a study of the range expansion and adaptation of the ribbed limpet in the intertidal zone of the Pacific Ocean. The study will evaluate and compare how the ribbed limpet, an abundant intertidal invertebrate, adapts or moves in response to climate change. It will also help evaluate whether California Marine Protected Areas are harboring adaptive variations in intertidal species.

To conduct the study, small data-collecting devices known as robo-limpet temperature sensors (robo-limpets) will be affixed to rock substrate in the

intertidal zone below the ordinary high tide line but above the algae line, which will avoid damage to biota. You propose to temporarily affix three robo-limpets per site that you will use exclusively for information collection. As they are small devices (3 inches in diameter) and designed to look like limpet shells, they will have minimal aesthetic impact. To affix the robo-limpets to the substrate, you will use non-toxic epoxy. They will be kept in place for no longer than 12 months. You will then use a non-toxic chemical to remove the sensors. When the epoxy is removed, the substrate will be returned to its original state, with no permanent changes.

Below are the proposed sites:

- Site 1 – Scripps Coastal Reserve, San Diego County
- Site 2 – Crystal Cove, Orange County
- Site 3 – Paradise Cove, Los Angeles County
- Site 4 – Arroyo Hondo, Santa Barbara County
- Site 5 – Boat House, Santa Barbara County
- Site 6 – Hazards, San Luis Obispo County
- Site 7 – Cambria, San Luis Obispo County
- Site 8 – Point Lobos, Monterey County
- Site 9 – Pigeon Point State Park, San Mateo County
- Site 10 – Pescadero State Beach, San Mateo County
- Site 11 – JV Fitzgerald Marine Reserve, San Mateo County
- Site 12 – Pacific State Beach, San Mateo County
- Site 13 – Sculptured Beach, Marin County
- Site 14 – Bolinas Point, Marin County
- Site 15 – Bodega Reserve, Sonoma County
- Site 16 – Fort Ross, Sonoma County
- Site 17 – Kruse Ranch, Sonoma County
- Site 17 – Point Arena, Mendocino County
- Site 19 – Manchester State Park, Mendocino County
- Site 20 – Shelter Cove, Humboldt County
- Site 21 – Damnation Creek, Del Norte County

All sites with the exception of four will involve State sovereign land under the jurisdiction of the Commission. The tide and submerged lands of the Pacific Ocean at Point Lobos (Site 8) were transferred to the Department of Natural Resources and is, therefore, not **within the Commission's jurisdiction**. The Pacific

Ocean, at the Scripps Coastal Reserve (Site 1), is land granted to the Regents of the University of California for uses in connection with scientific research and investigation at the Scripps Institution of Oceanography at La Jolla pursuant to chap. 514, stats. 1929 and as amended, no minerals reserved. The tidelands of the Pacific Ocean (between high and low tide) at Pescadero State Beach (Site 10) have been granted to San Mateo County pursuant to chap. 24, stats. of 1893, minerals reserved. The Pacific Ocean, at the Sculptured Beach (Site 13), from the average high tide waterward 1320 feet is located within lands granted to the United States for Point Reyes National Seashore pursuant to chap. 983, stats. 1965, minerals reserved. You will need to contact each of those organizations for permission to conduct your study within the areas under their control.

Commission staff does not object to you utilizing sovereign land for the proposed activity, subject to the following conditions:

1. That the State of California, its officers, agents, and employees shall not be liable for any claims, damages, or injuries of any kind and from any cause arising out of or connected in any way with the proposed action, and that you shall indemnify, hold harmless, and, at the option of the State, defend the State, its officers, agents, and employees, against and for any and all liability for any claims, damages, or injuries of any kind and from any cause, arising out of or connected in any way with the proposed action; and
2. That you shall comply with any and all terms and conditions imposed by Commission staff; and
3. That you shall obtain and secure, prior to commencement of the project, all approvals necessary or appropriate from any and all other agencies or governmental entities having jurisdiction; and
4. That disturbance of the property under the Commission's jurisdiction shall be kept to a minimum area consistent with the nature and purpose of the proposed action, and that you shall take all necessary and appropriate precautions to prevent littering or pollution on sovereign lands, waterways, and adjoining properties; and

5. That you shall be responsible for any damage, destruction, or loss occurring to State lands, waterways, adjoining property, the State's lessees, or other members of the public; and
6. That you shall provide Commission staff satisfactory evidence of insurance coverage as requested by Commission staff; and
7. No refueling, maintenance, or repairs to any equipment or vehicles will be permitted on lands subject to the Commission's jurisdiction; and
8. All personal property, tools, equipment, or other materials taken onto or placed upon State lands shall remain your property or the participants in your project. Such property shall be promptly removed from State lands upon completion of the proposed activity. The Commission does not accept any responsibility for any damage, including damages to any property, including equipment, tools, machinery, or other materials placed on State land; and
9. No heavy machinery or equipment shall be allowed on the State land; and
10. This Letter of Non-Objection shall become effective upon the date executed by you and shall remain in effect until August 31, 2024.

You acknowledge that Commission staff's issuance of this Letter of Non-Objection for the project is no assurance that future use of State lands would be allowed. Each time the Commission takes action to approve or reject a project, it is exercising its authority and responsibility as trustee of the State's Public Trust lands as authorized by law (Pub. Resources Code, §§ 6301 and 6216). You also acknowledge that its use of State land is non-exclusive.

This letter is not intended, nor shall it be construed as, a waiver of any limitation of any right, title, or interest of the California State Lands Commission in any lands under its jurisdiction.

The Executive Officer finds that this project is exempt from the California Environmental Quality Act as a categorically exempt project. The project is exempt under Class 6, Information Collection; California Code of Regulations, title 2, section 2905, subdivision (e)(3).

Please have an authorized representative of the University of California, Davis sign in the space provided below, accepting the conditions as set forth in this letter and return the signed original to this office. You may provide a digital or scanned copy of the executed letter, however if the original is not received



within 10 business days after receipt of this letter, this Letter of Non-Objection shall be null and void.

If you have any questions, please contact, Ninette Lee, Public Land Manager, at (916) 574-1869 or [ninette.lee@slc.ca.gov](mailto:ninette.lee@slc.ca.gov).

Sincerely,



Brian Bugsch, Chief  
Land Management Division

Accepted by:  
University of California, Davis

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

cc: Ninette Lee, Commission  
Alexandra Borack, Commission