

San Francisco Bay Conservation and Development Commission

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Transmitted via Electronic Mail

June 18, 2020

Governor's Office of Planning & Research

Jun 18 2020

STATE CLEARINGHOUSE

Phil Scott
District Manager
West Bay Sanitary District
500 Laurel Street
Menlo Park, CA 94025

SUBJECT: NOP Scoping Comments – Flow Equalization and Resource Recovery Facility
Levee Improvements and Recycled Water Facility Project;
State Clearinghouse Number 2020050414

Dear Mr. Scott:

Thank you for the opportunity to comment on West Bay Sanitary District's (District) Notice of Preparation (NOP) for the Flow Equalization and Resource Recovery Facility Levee Improvements and Recycled Water Facility Project (Project), State Clearinghouse Number 2020050414, distributed on May 18, 2020 and received in our office on May 27, 2020. The San Francisco Bay Conservation and Development Commission (BCDC or Commission) has not reviewed the NOP, but the following comments provided by staff are based on the *San Francisco Bay Plan* (Bay Plan) as amended through May 2020 and the McAteer-Petris Act. When evaluating projects, BCDC considers all applicable policies. The goal of this letter is to highlight some policies that are relevant to the Project, and to encourage you to meet with BCDC staff well before submitting your permit application to ensure that the proposed Project design is consistent with BCDC policies. In reviewing of your permit application, BCDC staff may raise additional relevant policies.

Commission Jurisdiction. BCDC is responsible for granting or denying permits for any proposed fill (e.g., earth or any other substance or material, including pilings or structures placed on pilings, and floating structures moored for extended periods of time); extraction of materials; or change in use of any water, land, or structure within the Commission's jurisdiction. Generally, BCDC's jurisdiction over San Francisco Bay extends from the Golden Gate to the confluence of the San Joaquin and Sacramento Rivers and includes tidal areas up to mean high tide, including all sloughs, and in marshlands up to five feet above mean sea level; a shoreline band consisting of territory located between the shoreline of the Bay and 100 feet landward and parallel to the shoreline; salt ponds; managed wetlands; and certain waterways that are tributaries to the Bay. The Commission can grant a permit for a project if it finds that the project is either (1) necessary to the health, safety, and welfare of the public in the entire Bay Area, or (2) is consistent with the provisions of the



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McAteer-Petris Act and the Bay Plan. The Commission has jurisdiction over the Bay waters and shoreline areas on or around several parts of the project site and a permit from the Commission will be required. There are at least two existing BCDC permits associated with this site— M1994.044.00 and M2002.006.00. The District should be aware of the requirements of these permits and discuss the implications of these permits on the proposed Project with BCDC.

Priority Use Areas. Section 66602 of the McAteer-Petris Act states, in part, that certain water-oriented land uses along the bay shoreline are essential to the public welfare of the Bay Area, and that these uses include wildlife refuges and water-oriented recreation and public assembly, and, as such, the San Francisco Bay Plan should make provision for adequate and suitable locations for all these uses. In Section 66611, the Legislature declares “that the Commission shall adopt and file with the Governor and the Legislature a resolution fixing and establishing within the shoreline band the boundaries of the water-oriented priority land uses, as referred to in Section 66602,” and that “the Commission may change such boundaries in the manner provided by Section 66652 for San Francisco Bay Plan maps.”

From examination of the boundaries of the Project outlined in the NOP, it appears that one of the proposed sheet pile locations and the horizontal levee are directly adjacent to, and possibly partially within, the South San Francisco Bay Wildlife Priority Use Area. Parts of the Project are also directly adjacent to, and possibly partially within, the Menlo Park Waterfront Park, Beach Priority Use Area. Any proposals for placing fill, extracting materials, or changing the use of any land, water, or structure within those areas that are designated for Wildlife, Waterfront Park, or Beach Priority Use in the Bay Plan must be developed and managed in a manner consistent with applicable policies of the McAteer-Petris Act and the Bay Plan. The District should coordinate with BCDC to confirm whether any components of the Project fall within these Priority Use Areas, and if so, the EIR should describe the consistency of the Project with the relevant sections of the Bay Plan.

Commission Law and Bay Plan Policies Relevant to the Project

1. **Bay Fill.** Section 66605 of the McAteer-Petris Act (MPA) sets forth the criteria necessary to authorize placing fill in the Bay and certain waterways. It states, among other things, that further filling of the Bay should only be authorized if it is the minimum necessary to achieve the purpose of the fill and if harmful effects associated with its placement are minimized. According to the MPA, fill should be limited to water-oriented or minor fill for improving shoreline appearance or public access and should be authorized only when no alternative upland location is available for such purpose. The NOP anticipates that the Project will include installation of 3,400 feet of sheet pile wall, construction of an ecotone levee, raising the grades of perimeter access roads, and construction of a recycled water facility, including a potential bayside outfall for brine disposal. Some or all of these activities may involve Bay fill. In the draft EIR (DEIR), please describe how the proposed fill meets MPA fill requirements. Depending on the amount of net total fill proposed to construct the sheet pile wall, the Commission may require that fill be removed elsewhere on the waterfront to mitigate the amount of new fill proposed.

2. **Climate Change and Safety of Fills.** Climate Change Policy No. 2 states that, “When planning shoreline areas or designing larger shoreline projects, a risk assessment should be prepared...based on the estimated 100-year flood elevation that takes into account the best estimates of future sea level rise and current flood protection and planned flood protection...for the proposed project or shoreline area. A range of sea level rise projections for mid-century and end of century based on the best scientific data available should be used in the risk assessment.” Policy No. 3 states that where such assessments show vulnerability to public safety, projects “should be designed to be resilient to a mid-century sea level rise projection” and an “adaptive management plan” should be prepared if it is likely the project will remain in place longer than mid-century.

In addition, Policy No. 4 in the Bay Plan Safety of Fills section states that structures on fill or near the shoreline should have adequate flood protection including consideration of future relative sea level rise as determined by qualified engineers. The policy states that, “[a]dequate measure should be provided to prevent damage from sea level rise and storm activity that may occur on fill or near the shoreline over the expected life of a project.... New projects on fill or near the shoreline should either be set back from the edge of the shore so that the project will not be subject to dynamic wave energy, be built so the bottom floor level of structures will be above a 100-year flood elevation that takes future sea level rise into account for the expected life of the project, be specifically designed to tolerate periodic flooding, or employ other effective means of addressing the impacts of future sea level rise and storm activity.” These policies should be read in combination with Public Access Policy No. 6, which states in part that public access areas “should be sited, designed, managed and maintained to avoid significant adverse impacts from sea level rise and shoreline flooding” and with policies on biological resource protection described below.

The NOP mentions that the District is proposing to bring the site out of the FEMA 100-year flood zone and to plan for a 50-year sea level rise projection. In the DEIR, as required by Bay Plan Climate Change policies, the District should include the mean higher high water level, the 100-year flood elevation, the mid- and end-of-century sea level projections (preferably using projections based on the best-available science found in the State’s SLR guidance, available here:

[http://www.opc.ca.gov/webmaster/ftp/pdf/agenda_items/20180314/Item3 Exhibit-A OPC SLR Guidance-rd3.pdf](http://www.opc.ca.gov/webmaster/ftp/pdf/agenda_items/20180314/Item3_Exhibit-A OPC SLR Guidance-rd3.pdf)), anticipated site-specific storm surge effects, and a preliminary assessment of the Project’s vulnerability to future flooding and sea level rise.

The DEIR should include a discussion of how the Project has been designed to adapt to, tolerate, and/or manage sea level rise and shoreline flooding at the site to ensure the Project is resilient to mid-century sea level rise projections, and how it can adapt to end of the century projections if it is likely the Project will remain in place longer than mid-century. If necessary, the DEIR should indicate whether there are any proposed long-term adaptation strategies, whether adaptation strategies would have the potential to adversely affect public access areas and wildlife habitat, and methods for minimizing these effects.

3. **Shoreline Protection.** The Bay Plan establishes criteria by which new shoreline protection projects may be authorized and by which existing shoreline protection may be maintained or reconstructed. Shoreline Protection Policy No. 5 requires that “all shoreline protection projects should evaluate the use of natural and nature-based features such as marsh vegetation, levees with transitional ecotone habitat, mudflats, beaches, and oyster reefs, and should incorporate these features to the greatest extent practicable. Ecosystem benefits, including habitat and water quality improvement, should be considered in determining the amount of fill necessary for the project purpose. Suitability and sustainability of proposed shoreline protection and restoration strategies at the project site should be determined using the best available science on shoreline adaptation and restoration.” Shoreline Protection Policy No. 7 states that “the Commission should encourage pilot and demonstration project to research and demonstrate the benefits of incorporating natural and nature-based techniques in San Francisco Bay.” The Project’s ecotone levee component adds natural and nature-based features and may be considered a pilot or demonstration project. Shoreline Protection Policy 2 states equitable and culturally-relevant community outreach and engagement should be conducted to meaningfully involve nearby communities for all shoreline protection project planning and design processes – other than maintenance and in-kind repairs to existing protection structures or small shoreline protection projects – in order to supplement technical analysis with local expertise and traditional knowledge and reduce unintended consequences. In particular, vulnerable, disadvantaged, and/or underrepresented communities should be involved. If such previous outreach and engagement did not occur, further outreach and engagement should be conducted prior to Commission action. Finally, Water Quality Policy No. 7 requires that, whenever practicable, native vegetation buffer areas should be used in place of hard shoreline and bank erosion control methods (e.g., rock riprap) where appropriate and practicable. New shoreline protection projects are also to avoid adverse impacts to natural resources and public access, and mitigation or alternative public access must be provided when avoidance is not possible.

The DEIR should describe how the sheet pile wall and ecotone levee, as well as any other proposed shoreline protection features of the Project, would be consistent with BCDC’s shoreline protection policies, including how natural and nature-based features are incorporated to the greatest extent practicable. The DEIR should also catalog existing shoreline protection structures at the Project site and identify where maintenance or reconstruction is required. Please also discuss the anticipated performance of the ecotone levee that is proposed for the Project site, and include an analysis of the potential to adversely impact natural resources or public access. The DEIR should also include a discussion of outreach and engagement that was conducted regarding this aspect of the Project.

4. **Water Quality.** The policies in the Water Quality section of the Bay Plan address water quality and require Bay water pollution to be prevented to the greatest extent feasible. New projects are required to be sited, designed, constructed and maintained to prevent or minimize the discharge of pollutants in the Bay by controlling pollutant sources at the project site, using appropriate construction materials, and applying best management practices. More specifically, Bay Plan policies on water quality state, in part, that “water quality in all parts of the Bay should be maintained at a level that will support and promote the beneficial uses of the Bay as identified in the San Francisco Bay Regional Water Quality Control Board’s *Water Quality Control Plan, San Francisco Basin* and should be protected from all harmful or potentially harmful pollutants.” The construction impacts and potential brine outfall described in the NOP could affect water quality around the site and beyond. The DEIR should include an analysis of potential water quality impacts associated with the Project. The District should also work with the Regional Water Quality Control Board and other relevant resource agencies to protect against impacts to the water quality of the slough and tidal marsh and to surrounding natural communities.
5. **Fill for Habitat.** Our Commission recently approved several new Bay Plan policies addressing Bay fill for habitat projects. While most of these policies are focused on projects for which the primary purpose is habitat restoration, enhancement, or creation, some of the policies may apply to the ecotone levee component of this Project. Fish, Other Aquatic Organisms, and Wildlife Policy No. 3 states “In reviewing or approving habitat restoration projects or programs the Commission should be guided by the best available science, including regional goals, and should, where appropriate, provide for a diversity of habitats for associated native aquatic and terrestrial plant and animal species.” The NOP mentions that the proposed ecotone levee is a recommendation of the SF Bay Shoreline Adaptation Atlas. The DEIR should include and expand on this detail. Additionally, Fish, Other Aquatic Organisms, and Wildlife Policy No. 6 states, in part, that “Allowable fill for habitat projects in the Bay should (a) minimize near term adverse impacts to and loss of existing Bay habitat and native species; (b) provide substantial net benefits for Bay habitats and native species; and (c) be scaled appropriately for the project and necessary sea level rise adaptation measures in accordance with the best available science...” The DEIR should address how any fill proposed for the ecotone levee meets these criteria.

Finally, Tidal Marshes and Tidal Flats Policy No. 8 states, in part, that “The level of design; amount, duration, and extent of monitoring; and complexity of the adaptive management plan required for a habitat project should be consistent with the purpose, size, impact, level of uncertainty, and/or expected lifespan of the project. Habitat projects should have a funding strategy for monitoring and adaptive management of the project, commensurate with the level of monitoring and adaptive management that is required for the project...” The DEIR should describe how these factors were taken into account in designing and planning for the long-term management of the ecotone levee.

6. **Biological Impacts.** Protection of biological resources, including wildlife and habitat, is addressed through several sections of the Bay Plan. Fish, Other Aquatic Organisms, and Wildlife Policy No. 1 states “To assure the benefits of fish, other aquatic organisms and wildlife for future generations, to the greatest extent feasible, the Bay's tidal marshes, tidal flats, and subtidal habitat should be conserved, restored and increased.” Furthermore, Tidal Marshes and Tidal Flats Policy No. 2 states that “Any proposed fill, diking, or dredging project should be thoroughly evaluated to determine the effect of the project on tidal marshes and tidal flats, and designed to minimize, and if feasible, avoid any harmful effects.” Additional policies in these Bay Plan sections, and policies in the Subtidal Areas section, provide further requirements on protection of the Bay’s natural resources.

The NOP describes several activities that may impact tidal marshes and tidal flats, and the organisms that rely on these habitats. The Project proposes a potential bayside outfall for brine disposal, 3400 linear feet of sheet pile wall that will be driven or vibrated 30 feet deep and up to 15 feet high, and construction of a horizontal ecotone levee. The NOP states that “the outer levee and slopes and adjacent waters provide habitat for several special status species” and notes that the Project is expected to have temporary and permanent impacts that will require mitigation. The DEIR should address Bay Plan policies on Fish, Other Aquatic Organisms, and Wildlife; Tidal Marshes and Tidal Flats; and Subtidal Areas, and Bay Plan mitigation policies (described in more detail below) to describe how impacts to wildlife, tidal marsh, and tidal flats will be consistent with these policies. The NOP also states that the Project may involve noise and vibration during construction activities. The DEIR should describe the possible noise and vibration impacts to wildlife, particularly marine mammals.

7. **Mitigation.** Bay Plan policies on Mitigation require projects to “compensate for unavoidable adverse impacts to the natural resources of the Bay...” The policies provide specific criteria for how compensatory mitigation projects should be sited and designed, community involvement in providing compensatory mitigation, when compensatory mitigation should occur relative to the impacts, and how to determine whether banking or in-lieu fee programs are acceptable. The policies also state that “Mitigation programs should be coordinated with all affected local, state, and federal agencies having jurisdiction or mitigation expertise to ensure, to the maximum practicable extent, a single mitigation program that satisfies the policies of all the affected agencies.” The NOP mentions that the ecotone levee is proposed in part to compensate for the temporary and permanent impacts to habitats as a result of the Project. The DEIR should discuss how this proposed mitigation measure, and any other mitigation determined to be necessary to compensate for Project impacts, is consistent with Bay Plan Mitigation policies. Additionally, the District should coordinate with all regulatory agencies that have jurisdiction over the Project to develop a mitigation program that is agreeable to all of these agencies.

8. **Public Access / Appearance, Design, and Scenic Views.** Section 66602 of the McAteer-Petris Act states, in part, “that maximum feasible public access, consistent with a proposed project, should be provided.” The Commission can only approve a project within its jurisdiction if it provides maximum feasible public access, consistent with the project. The Bay Plan policies on public access state, in part, that “in addition to the public access to the Bay provided by waterfront parks, beaches, marinas, and fishing piers, maximum feasible access to and along the waterfront and on any permitted fills should be provided in and through every new development in the Bay or on the shoreline...Public access to some natural areas should be provided to permit study and enjoyment of these areas...Public access should be sited, designed, managed and maintained to avoid significant adverse impacts from sea level rise and shoreline flooding. Whenever public access to the Bay is provided as a condition of development, on fill or on the shoreline, the access should be permanently guaranteed...Diverse and interesting public access experiences should be provided which would encourage users to remain in the designated access areas to avoid or minimize potential adverse effects on wildlife and their habitat.” Additionally, the Bay Plan policies on Appearance, Design, and Scenic Views state, in part, that: “Maximum efforts should be made to provide, enhance, or preserve views of the Bay and shoreline, especially from public areas...”

The NOP states that “Construction may cause temporary disruption of access to Bedwell Bayfront Park”, but that no permanent impacts are anticipated. It also states that the Project “would add new visual elements to the site including a 5-foot high sheet pile wall...” The DEIR should discuss how the Project will maintain public access and views of the Bay, and how the Project will provide public access and views that are consistent with the Commission’s Bay Plan policies.

9. **Environmental Justice.** Our Commission recently approved several new Bay Plan policies on Environmental Justice and Social Equity. Policy No. 2 of the new Bay Plan Environmental Justice and Social Equity chapter states “...the Commission should support, encourage, and request local governments to include environmental justice and social equity in their general plans, zoning ordinances, and in their discretionary approval processes.” Policy No. 3 says “[e]quitable, culturally-relevant community outreach and engagement should be conducted by local governments and project applicants to meaningfully involve potentially impacted communities for major projects and appropriate minor projects in underrepresented and/or identified vulnerable and/or disadvantaged communities... Evidence of how community concerns were addressed should be provided.” Policy No. 4 states “[i]f a project is proposed within an underrepresented and/or identified vulnerable and/or disadvantaged community, potential disproportionate impacts should be identified in collaboration with the potentially impacted communities.” Revised Public Access Policy No. 5 states “[p]ublic access that substantially changes the use or character of the site should be sited, designed, and managed based on meaningful community involvement to create public access that is inclusive and welcoming to all and embraces local multicultural and indigenous history and presence...” The updated policies go further to state that public

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access improvements should not only be consistent with the project, but also incorporate the culture(s) of the local community, and provide "...barrier free access for persons with disabilities, for people of all income levels, and for people of all cultures."

The DEIR should specify the culturally-relevant community outreach and engagement efforts that will be conducted for the Project, identify whether the Project is in a vulnerable community, and if so, should identify potential disproportionate impacts. The DEIR should also discuss how any public access provided as part of the Project will be sited, designed, and managed based on community involvement, and how it will ensure that the access is inclusive and welcoming to all.

Thank you for your consideration of these comments. Again, we encourage the District to discuss Project plans with BCDC during the pre-application phase of the process. If you have any questions regarding this letter, please do not hesitate to contact me at (415) 352-3626 or via email at megan.hall@bcdc.ca.gov.

Sincerely,

DocuSigned by:

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MEGAN HALL
Coastal Scientist

MH/ra

cc: State Clearinghouse (Sent Via Email: state.clearinghouse@opr.ca.gov)