
San Francisco Bay Regional Water Quality Control Board

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October 15, 2020

Governor's Office of Planning & Research

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STATE CLEARINGHOUSE

Santa Clara Valley Water District
Attn: Alex Hunt, Associate Environmental Planner
5750 Almaden Expressway
San Jose, CA 95118-3614
e-mail: ahunt@valleywater.org

**Subject: Comments on Palo Alto Flood Basin Tide Gate Structure Replacement Project
Draft Mitigated Negative Declaration (State Clearinghouse No. 2020090237),
Santa Clara County**

Dear Mr. Hunt:

San Francisco Bay Regional Water Quality Control Board (Water Board) staff has reviewed the Santa Clara Valley Water District's (Valley Water's) draft mitigated negative declaration (MND) for the Palo Alto Flood Basin Tide Gate Structure Replacement Project (Project) (State Clearinghouse No. 2020090237). The proposed Project is in the city of Palo Alto on the levee that surrounds the Palo Alto Flood Basin (Flood Basin), about a half-mile northeast of the Byxbee Park parking lot on the Adobe Creek Loop Trail. The tide gate controls the downstream water levels for Matadero, Adobe, and Barron Creeks, which all drain to the Flood Basin, and also keeps high tide waters out of the Flood Basin to prevent tidal flooding of homes, businesses, schools, and U.S. Highway 101 in the vicinity of the three creeks. Built in 1957, the existing structure must be replaced because it is deteriorating, and because it was not designed to protect against future sea level rise. The preferred alternative would construct a new 132-foot-wide tide gate structure slightly inboard (upstream) and southeast of the existing 113-foot-wide tide gate structure, remove the existing tide gate structure and levee, and construct a new levee that ties into the new tide gate structure.

Under the California Environmental Quality Act (CEQA), the Water Board is a responsible agency with permitting authority for the Project under the federal Clean Water Act (CWA) and California Water Code for discharges of stormwater, waste, and dredge and fill materials to waters of the U.S. and waters of the State, as well as to locations that could affect waters of the State. The Project would require Clean Water Act (CWA) section 401 water quality certification and waste discharge requirements from the Water Board because it includes excavation and fill of materials in jurisdictional wetlands and other waters of both the U.S. and the State. As summarized in our comments below, the draft MND does not adequately describe avoidance and minimization measures for impacts to jurisdictional wetlands and other waters, and lacks details for a compensatory mitigation plan for the temporary and permanent losses of wetlands and other waters. Thus, we are unable to determine whether mitigation for the Project's impacts

JIM McGRATH, CHAIR | MICHAEL MONTGOMERY, EXECUTIVE OFFICER

would comply with the Water Board regulations and policies. We provide the following comments for your consideration in revising the MND. Our comments are also intended to support evaluation of the project's potential significant environmental impacts and the Water Board's future review of applications to authorize project construction.

Project Summary

The Project objectives are to:

- Prevent failure of the existing tide gate structure, which would result in increased risk of tidal and fluvial flooding;
- Upsize the tide gate structure to function with 2 feet of future sea level rise; and
- Maintain or improve the level of flood protection for Matadero, Adobe, and Barron Creeks, including during construction and operation.

Specific project elements include installing two sheet pile dewatering systems; constructing the new tide gate structure on a concrete foundation supported by drilled piles; demolishing and removing the existing tide gate structure and levee; constructing a new levee connecting to the new tide gate structure; and resurfacing up to 2.3 miles of levee trail (for access). Construction would span up to 5 years but would be limited to September 1 through January 31 annually to avoid and minimize impacts on biological resources. The Project would occur in two phases, based largely on the dewatering approach:

Phase 1: Install the first dewatering system and construct the new tide gate structure, new east levee approach (including ground improvements), remove the existing levee in front of the new structure, and remove the first dewatering system; and

Phase 2: Install the second dewatering system and construct the west levee approach (including ground improvements), remove the existing tide gate structure, and remove the second dewatering system.

The jurisdictional wetlands and other waters the Project will impact, or has potential to impact, due to discharges of dredged or fill materials and construction activities, are: the Palo Alto Flood Basin which is part of Mayfield Slough, the Palo Alto Harbor and Baylands, and South San Francisco Bay. The following beneficial uses of these waters, as designated in the San Francisco Bay Water Quality Control Plan (Basin Plan), include (South San Francisco Bay has additional beneficial uses not listed here): Estuarine Habitat (EST), Fisheries Migration (MIGR), Preservation of Rare and Endangered Species; Wildlife Habitat; and Water Contact Recreation (REC1) and Non-contact Water Recreation (REC2).

Comments

Comment 1. Compensatory Mitigation Plan is not Included in the MND

The Project site has diverse habitat supporting many federal and State listed species in addition to other aquatic and wildlife biota, including Bryant's savannah sparrow (*Passerculus sandwichensis alaudinus*), Black skimmer (*Rynchops niger*), California Ridgway's rail (*Rallus obsoletus Obsoletus*), Salt marsh harvest mouse (*Reithrodontomys raviventris raviventris*) Green sturgeon (*Acipenser medirostris*), California Central Coast steelhead (*Oncorhynchus mykiss*), Longfin smelt (*Spirinchus thaleichthys*), and many other species noted in the draft MND. The preferred alternative would result in loss of 0.09 acre of salt marsh, would directly

impact about 2.7 acre of open waters in the Flood Basin and tidal Bay waters, and would limit access for recreational uses of the trails and waters during construction. The draft MND indicates the temporal and permanent losses of wetlands and other waters due to the Project's impacts would be less than significant based on implementing mitigation measure (MM) BIO-9, *Compensate for Impacts to Jurisdictional Wetlands*. However, MM-BIO-9 does not adequately characterize mitigation to deem the impacts as less than significant. MM-BIO-9 indicates Valley Water would develop an aquatic resource mitigation plan, or might purchase wetland mitigation credits from an agency-approved mitigation bank, such as the San Francisco Bay Wetland Mitigation Bank located in Foster City. Neither of these mitigation frameworks contain sufficient detail to demonstrate that the Project's impacts would be offset or compensated adequately, so the MND does not comply with CEQA. Moreover, we would be unable to issue water quality certification for the Project without a complete mitigation plan that includes compensation for the Project's unavoidable impacts. The MND must be revised with sufficient detail of the mitigation approach and the finding of less than significant should be changed to "significant" or "less than significant with mitigation."

For the approach to develop and implement an aquatic resource mitigation plan, the plan must address the temporal impacts to wetlands and other waters for the duration of the five-year construction period, in addition to the permanent loss of about 0.09 acre of salt marsh habitat. The plan must include, at a minimum, the mitigation site location and the types and areal extents of the mitigation wetlands and/or other waters, mitigation methods, interim performance and final success criteria, a monitoring program, and implementation schedule. The mitigation plan would also need to include measures to prevent the introduction or spread of plant pathogens, including *Phytophthora spp.* For the approach to mitigate with credit from an approved mitigation bank, the MND must specify such details as the exact name of the approved bank, whether the Project is in the bank's service area, and whether the bank has the mitigation credit type available. If the bank is an appropriate means to mitigate for the Project's impacts, Valley Water would need to submit proof of the credit purchase prior to us issuing the water quality certification.

Comment 2. Sea Level Rise and Other Potential Climate Change Impacts

The draft MND indicates that the Project will be designed for the projected sea level rise of two feet over the next 25 to 30 years. Though not mentioned in the draft MND, other projects in the area, such as the South Bay Salt Pond Restoration Project, and the South Bay Shoreline Levee Project, are being designed for the sea level rise projections through about 2067. Although the draft MND states that Valley Water will coordinate the Project with those other projects to "maximize efficiencies of long-term Bay shoreline planning," the draft MND is not clear on whether sea level rise projections for the Project are consistent with those of the other projects. The MND should be revised with a basis of design report to provide information on the life span of the Project in the face of sea level rise projections, and with additional details for coordinating with the other projects in progress or being planned in the area that must also incorporate protection against future sea level rise. For the basis of design report, please also provide details to address the potential for climate change effects on storm intensity and frequency that could affect fluvial flows in the three creeks that drain to the Flood Basin. For purposes of CEQA, the design criteria for sea level rise projections and potential climate change effects on creek flows should be included in the MND to inform the selection of the preferred alternative. The Water Board will also require a basis of design report with the water quality certification application.

Comment 3. Dewatering Plan Impacts

The draft MND indicates that effects of dewatering would be less than significant because MM-BIO-8 implementation includes rescuing and relocating fish and other aquatic biota. We disagree with the finding of less than significant because the draft MND does not provide a complete dewatering plan, and because other aspects of dewatering are not addressed through BIO-8. A complete plan includes a schematic diagram of the dewatering pipes and pumps; specifications for pumps, pipelines, and fish screens consistent with National Marine Fisheries Service and California Department of Fish and Wildlife guidelines to prevent impacts to fish and other aquatic biota (in addition to the details already provided in the draft MND such as phased implementation schedule). If water needs to be contained for discharge later, Valley Water must monitor the discharge to ensure the water meets the Basin Plan receiving water criteria for temperature, dissolved oxygen, and dissolved sulfide, and we recommend Valley Water follow the dewatering and monitoring procedures in your Stream Maintenance Program, which the Water Board authorized with adoption of Order No. R2-2020-0017. In addition, while the dewatering systems are installed, Valley Water should monitor for potential adverse effects due to changes in hydraulics in the vicinity of the dewatering systems. (See also comment 6.b below on this topic). Accordingly, the MND should be revised with additional details for the dewatering plan to ensure entrainment of fish and other biota, and other water quality impacts, would be avoided or minimized.

Comment 4. Compliance with the Stormwater Pollution Prevention Requirements

The draft MND correctly states in the Initial Study, Hydrology and Water Quality section, that Valley Water will need to seek coverage under and comply with the statewide NPDES General Permit for Discharges of Stormwater Associated with Construction Activity (Order No. DWQ-2009-0009, as amended by Order Nos. 2010-0014-DWQ and 2012-006-DWQ) (Construction Stormwater Permit) to construct the Project (p. 4-97). Through complying with the Construction General Permit, many impact and avoidance best management practices would be implemented, including (but not limited to): measures for daily good housekeeping; preventing vehicular fluid spills and leaks into wetlands or other waters; sedimentation and erosion from Project activities; management of soil stockpiles; and preparing for and preventing potential impacts of rainfall in the Project area. Please revise the MND, Table 1.1 to indicate that the Project will comply with the Construction General Permit.

In addition, please note that the gravel and geotextile layer that will be used to resurface 2.3 acres of trails will need to be removed after each construction season. This should be addressed in the site plans and activities required under the Construction General Permit. If Valley Water intends to keep the gravel and geotextile in place for the duration of the Project, we would require additional information and modified designs, acceptable to the Water Board Executive Officer, for the Project to meet requirements under Provision C.3 of the NPDES Stormwater Municipal Regional Permit (MRP), Order No. R2-2015-0049 (NPDES Permit No. CAS612008).

Comment 5. Beneficial Soil Beneficial Reuse Options

The draft MND indicates that excavated soil would be tested and reused in the South Bay Shoreline Project sites, provided the soil quality meets the South Bay Salt Pond reuse standards, and cites the 2018 Quality Assurance Project Plan dated 2018 (p. 2-10). Water Board and other agency staffs are reviewing soil reuse criteria and will likely revise the QAPP.

Please coordinate with Water Board staff to ensure the most recent QAPP criteria would be followed for the duration of Project construction.

Comment 6. Emergency Action Plan and Adaptive Management Monitoring and Actions

- a. Emergency Action Plan. The draft MND states that “An Emergency Action Plan has been prepared in case the existing structure fails during the planning, design, or construction phase of the replacement Project.” (p. 2-28) Please provide the Emergency Action Plan for us to evaluate how the plan would affect the Project activities and potential discharges of dredged, excavated, or fill materials, or pollutants to wetlands or other waters of the State. The Emergency Action Plan should include the key features that would be monitored during and after the Project is constructed and triggers to execute emergency actions, and what those emergency actions would be.
- b. Adaptive Management. Aspects of the Project would need to be subject to periodic monitoring and potential need for adaptive management measures to avoid emergency conditions. For example, the preferred alternative includes excavating a pilot channel measuring 200-feet long with a varying width of 132-feet wide at the outlet of the proposed tide gate structure and tapering to 60-feet wide at the end to facilitate outward flow from the new tide gate structure to the existing channel. (p. 2-30 4-97; and Appendix B, Biological Assessment, p. 16) The pilot channel would be designed to prevent erosion at Hook’s Island shoreline. Therefore, we require Valley Water to develop and implement an adaptive management plan with details for monitoring sites, procedures, and potential emergency prevention actions (such as shoreline stabilization measures consistent with Valley Water’s SMP). In addition, the multiagency meeting of June 27, 2018, included a discussion for the environmental review to include a hydraulics analysis to inform the potential effects of the dewatering system, but this was not included in the draft MND. Please revise the MND with the pertinent information for monitoring and adaptive management of the Project to track the stability and integrity of Project elements and the potential for corrective actions.

Comment 7. Comments on Specific Best Management Practices (BMPs)

The draft MND has a variety of BMPs at Table 2.4 to avoid and minimize impacts to wetlands and other waters of the State in the Project, some of which would be covered under the Construction General Permit. Please revise the MND to address the following issues:

- a. BMP BI-2, Avoid impacts to nesting migratory birds. This BMP would entail nesting bird surveys to be performed by a qualified biologist during the bird nesting season (January 15 to September 1) prior to any activity that could result in the abandonment, loss, damage, or destruction of birds, bird nests, or nesting migratory birds. If a lapse in Project-related work of 15 days or longer occurs, another survey would be conducted. This BMP may not be protective of migratory birds, and thus the WILD beneficial use, if the area surveyed exceeds the area where construction activities occur during a 15 day period. We recommend Valley Water consult with California Department of Fish and Wildlife and U.S. Fish and Wildlife Service, if such a consultation has not yet occurred, to verify whether an area should be resurveyed at least every 15 days even if there is no lag in work activities were to occur.

- b. *BMP BI-8, Minimize Spread of Invasive Plants.* Please clarify if this BMP would include measures to prevent the introduction or spread of *Phytophthora spp.* in addition to weeds mentioned in items 1 through 3 of this BMP.
- c. *BMP WQ-4, Isolate Work in Tidal Areas with Use of Cofferdam.* This BMP includes a description of the dewatering plan in which the work area would be isolated and the ambient water would flow past the work area. See Comment 3, above pertaining to additional details needed for a complete dewatering plan.
- d. *BMP WQ-10, Prevent Stormwater Pollution.* In addition to the measures listed in this BMP, compliance with the Construction General Permit requirements will entail the measures noted in the BMP and many other pollution prevention measures. (See Comment 3 above.)

In conclusion, the draft MND should be revised and recirculated to provide the opportunity for public review of the mitigation plan and the other changes necessary for a complete MND that meets CEQA requirements, before a final MND is adopted. If you have any questions concerning our comments, please contact Susan Glendening at (510) 622-2462 or susan.glendening@waterboards.ca.gov. We look forward to continuing to work with you on this project.

Sincerely,

for Elizabeth Morrison
Senior Environmental Scientist

Cc: State Clearinghouse, State.Clearinghouse@opr.ca.gov

Valley Water:

Kevin Sibley, ksibley@valleywater.org

Navroop Jassal, NJassal@valleywater.org

Zooey Diggory, ZDiggory@valleywater.org

Clayton Leal, CLeal@valleywater.org

Jen Watson, jwatson@valleywater.org

Roger Narsim, rarsim@valleywater.org

BCDC, Walt Deppe, walt.deppe.bcdc.ca.gov

Corps, SF Regulatory, Katerina Galacatos, Katerina.galacatos@usace.us.mil.gov

CDFW:

Mayra Molina, mayra.molina@wildlife.ca.gov

Brenda Blinn, Brenda.blinn@wildlife.ca.gov

NMFS, Brian Meux, Brian.Meux@noaa.gov

USFWS, Elden Holdorf, elden_holdorf@usfws.gov

City of Palo Alto:

Daren Anderson, daren.anderson@CityofPaloAlto.org

Lisa Myers, lisa.myers@CityofPaloAlto.org

Michel Jeremias, michel.jeremias@CityofPaloAlto.org

Baylands Nature Preserve, Corinne DeBra, open.space@CityofPaloAlto.org