

## San Francisco Bay Regional Water Quality Control Board

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**Subject: Comments on Draft Environmental Impact Report – Mowry Village Project, Newark, Alameda County**

Thank you for the opportunity to comment on the Draft Environmental Impact Report (DEIR) for the Mowry Village Project in Newark, California (Project). The San Francisco Bay Area Regional Water Quality Control Board (Water Board) reviewed the DEIR and submits these comments.

Water Board staff are submitting comments on only those activities that are germane to our agency's statutory responsibilities in connection with this Project. The Toxics Cleanup Division assists the Alameda County Water District (ACWD) with oversight of the Site Cleanup Program (SCP) investigation and cleanup of the Pick-N-Pull Auto Dismantlers located on the property (pursuant to California Water Code 13304), where hazardous substances have been discharged and have created a condition of pollution and nuisance. The Watershed Management Division considers any proposals to fill jurisdictional wetlands or any waters of the State and United States, under the California Water Code. Comments from both divisions are included in this letter.

We urge the City of Newark to take a thorough and thoughtful approach to the project's California Environmental Quality Act (CEQA) environmental review. The Project could cause human health impacts as well as impacts to jurisdictional waters that the Regional Water Board is charged with protecting pursuant to State and federal laws and regulations. As such, the Regional Water Board will rely on the City's CEQA documents to help evaluate project impacts when considering any applications or plans it receives for proposed activities related to the Project.

### Toxics Cleanup Division Comments

1. Because the proposed project is located within the area of a known auto wrecker, hazardous materials may pose a short and long-term risk to residential receptors.

2. The previously submitted cleanup action plan is more than three years old and the area of contaminant extent was based on limited sampling data due to parked cars on the property. The extent of contamination may not be fully defined. Additional soil and groundwater sampling data is needed to fully define the extent of contamination and determine what remediation or mitigation is needed.
3. A Site Management Plan (SMP) should be prepared to inform current and future owners and occupants of the environmental conditions, to prevent exposure to residual contamination, and to ensure the health and safety of residents and on-site workers.
4. The Project is located less than 150 feet from the San Francisco Bay, in an area that may be subject to sea-level and groundwater rise impacts. A vulnerability assessment should be conducted as part of the investigation and remediation process to identify and evaluate the potential adverse impacts from sea-level and groundwater rise to the remedy components. If projected vulnerabilities or actual impacts are identified, Mowry Village Project should prepare an adaptive management plan to implement repairs and/or engineered controls to maintain protectiveness of the remedy components.

### **Watershed Management Division Comments**

#### **1. The DEIR Lacks Sufficient Information to Determine the Full extent of Waters of the State that May be Present at the Project Site**

The discussion of impacts to biological resources in the DEIR is supported in part by the *Mowry Village Project Aquatic Resources Delineation Report* (Delineation Report) (Helix Environmental Planning, Inc., October 2022). Section 3.3.1, Delineation, of the Delineation Report states that field work for the delineation was conducted on July 3, 2019, November 16, 2021, March 8, 2022, and September 17, 2022. In the Mediterranean climate of the Bay Area, delineations should be conducted late in the wet season, when conditions are optimal for observing hydric vegetation and evidence of wetland hydrology. Only the March 8, 2022, field work was conducted late in the wet season. The July and September field work was conducted well into the dry season and the November field work was conducted very early in the wet season.

Section IV.A.2.a of the *State Wetland Definition and Procedures for Discharges of Dredged and Fill Material to Waters of the State* states that Water Board staff may require, on a case-by-case basis, supplemental field data from the wet season to substantiate dry season delineations.

2. Additional Information Required for a Complete Application
  - a. If required by the permitting authority on a case-by-case basis, supplemental field data from the wet season to substantiate dry season delineations, as is consistent with the 1987 Manual and Supplements.

Generally, wet season delineations are more likely to be necessary in areas where wetland indicators are difficult to resolve. The ideal time to delineate a wetland is during the wet portion of the growing season of a normal climatic period. Otherwise, indicators provided in the Corps' delineation manuals must be relied on to identify wetland boundaries. Collection of supplemental information in certain situations is an accepted practice and is consistent with recommendations presented in the Corps regional supplements for wetland delineation, which recommends that practitioners return to the delineation site, if possible, during the "normal wet portion of the growing season" (Arid West Regional Supplement, pp. 58, 87, 104; Western Mountains, Valleys, and Coast Regional Supplement, pp. 66, 100) to resolve wetland indicators that were unresolved during the dry-season delineation.

Fifteen data points were sampled for wetland characteristics over the four days of field work conducted for the delineation. Based on the information provided in the Delineation Report it is not clear if any of these 15 data points overlapped or how it was determined that these data points were sufficient to adequately characterize the extent of jurisdictional wetlands at the Project site. In addition to evaluating the sufficiency of 15 sample points to assess the full extent of wetlands at the Project site, the wetland delineation should be repeated late in the wet season of a year with typical rainfall to ensure that the full extent of wetlands subject to regulation as waters of the State have been identified. Without a wet-season delineation with a sufficient number of data points, it is not possible to establish with sufficient certainty that the Project will not impact waters of the State.

## **2. The Stormwater Detention Basins at the Project Site May be Regulated as Waters of the State**

The Delineation Report identifies two stormwater detention basins (SWDB-1 and SWDB-2) and a constructed storm drain (CSD-1) as potential jurisdictional waters and concludes that they are not federal waters, because they were constructed in uplands. However, these features may be regulated as waters of the State if they are sustained by a watershed and are not managed under an approved Management Plan.

Water Board Resolution No. 94-102 exempts waters created for stormwater treatment from regulation as waters of the State. But that exemption requires that the created waters be managed under a Water Board-approved Management Plan. If SWDB-1, SWDB-2, and CSD-1 are being managed under an approved Management Plan, please provide us with a copy of the Management Plan. If the features are not being managed under a Water Board-approved Management Plan, they are likely to be regulated as waters of the State. If they are waters of the State, the DEIR should be revised to include specific mitigation measures for impacts to these waters of the State.

**3. The DEIR Should Include an Assessment of Mitigation for Potential Project Impacts to Alameda County Line D**

Section 4.1, Existing Land Use, in Appendix C, *Biological Resources Technical Report*, states that Alameda County Flood Control and Water Conservation District (District) Line D is currently in a location that would be impacted by Project implementation. Line D has a footprint of 0.29 acres within the Project site and consists of an earthen channel that is regulated as a water of the State. The discussion in Section 4.1 states that Line D is proposed to be re-aligned outside of the Project footprint prior to Project construction. The DEIR does not provide a timeline for the relocation of Line D or a written commitment from the District to realign Line D. Since Line D's current location will be impacted by Project implementation, the DEIR should treat the current location as the baseline condition for CEQA review and discuss the impacts to Line D that would be associated with Project implementation, as well as providing specific mitigation measures that are capable of reducing those impacts to a less than significant level.

**4. The DEIR Lacks a Protocol for Screening Imported Soil to the Site**

Section 2.2.3, Grading, Fill, and Drainage, states that 252,000 cubic yards of clean imported fill will be placed over 29 acres of the Project site. However, the DEIR does not include a screening procedure for assessing if imported fill is clean. The Project drains to Mowry Slough. The San Francisco Bay Basin Water Quality Control Plan (Basin Plan) defines the beneficial uses of waters of the State. The beneficial uses assigned to Mowry Slough in the Basin Plan include wildlife habitat and the preservation of rare and endangered species. Text on page 3-77 of the DEIR notes that the Project site is within 300 feet of potential salt marsh harvest mouse habitat. Constituents in imported fill soil may be carried into wildlife habitat via soil particles transported in stormwater runoff or by leaching into the shallow groundwater at the Project site, which is in communication with surface waters in Mowry Slough. Therefore, soils should be screened using the Master Quality Assurance Project Plan for Don Edwards San Francisco Bay National Wildlife Refuge (Master QAPP) (U.S. Fish and Wildlife Service and H.T. Harvey & Associates, Revised October 6, 2021). The Master QAPP was developed by the USFWS, the Bay Conservation and Development Commission (BCDC), and the Water Board to screen soils for placement in areas that provide habitat for wildlife or are adjacent to wildlife habitat.

Since the Project proposes to develop the site for residential use, imported soils should also be screened using the Water Board's Tier 1 Environmental Screening Levels (ESLs). The DEIR should be revised to include screening protocols for imported fill. To ensure that imported soil will not pose a risk to wildlife, including special status species, or future residents at the Project site, these Project-specific screening levels should be the lower of the screening levels in the Master QAPP and the Tier 1 ESLs.

**5. The Project will Divert Clean Fill that Could be Used to Provide Sea Level Resilience for the Bay's Tidal Marshes**

In order for Bay wetlands and mudflats to grow vertically as sea level rises, sufficient sediment is necessary to be incorporated into the wetlands and mudflats. The recently completed study, Sediment for Survival, Strategy for the Resilience of Bay Wetlands in the Lower San Francisco Estuary (SFEI, April 2021), concluded that over the next 80 years Bay Area communities will need to greatly supplement nature's supply of sediment to sustain healthy wetlands and mudflats and the essential services that they provide to people and wildlife. The study estimated that the Bay's wetlands and mudflats will need more than 450 million cubic yards of sediment between now and 2100 to maintain current tidal wetlands and mudflats, as well as areas that have been purchased and are slated for restoration. The diversion of 252,000 cubic yards of clean fill to a development project will contribute to the regional deficit of sediment necessary to sustain the Bay Area's wetlands and mudflats.

**6. The Effectiveness of the Proposed Predator Management Plan and Program has Not Been Properly Assessed**

Mitigation Measure BIO-8 consists of the future development of a Predator Management Plan and Program during Project construction. It is not clear why a draft Predator Management Plan and Program has not been included for review in the DEIR. During CEQA review of the Transit Oriented Development in Newark's Area 2 Specific Plan, the biological mitigation measures included the development of a Predator Management Plan and Program for the new residential developments in Area 2. Since most of the residential developments in Area 2 have been constructed, Predator Management Plans and Programs should have been completed for those residential developments. Please revise the DEIR for Mowry Village to include the Predator Management Plans and Programs that were developed for projects in Area 2.

In Water Board comments on CEQA documents for projects in Area 2, we have asked for studies to confirm the effectiveness of the Predator Management Plans and Programs in protecting wildlife, including special status species, from predation associated with residential development. Please revise the DEIR to include a discussion of all studies that have been conducted to assess the effectiveness of Predator Management Plans and Programs in Area 2.

**7. Imported Fill will Exacerbate Coastal Squeeze**

This discussion of Project impacts under Impact HYD-3 includes a reference to potential exacerbation of coastal squeeze on page 3-177 of the DEIR.

The proposed project could have the potential to exacerbate coastal squeeze which is defined as the loss of natural habitats or deterioration of their quality arising from placement of structures along the shoreline, preventing the landward transgression of those habitats that would naturally occur in

response to sea level rise. However, given the baseline condition of the project site as already developed with existing structures, development of the proposed project would not exacerbate potential coastal squeeze impacts beyond what is already present. Therefore, this would not be a driving impact for the proposed project.

As is noted above, the Project proposes to place 252,000 cubic yards of imported fill over 29 acres of the Project site. This fill will raise the elevation of the 29-acre Project site by about four feet. Housing and supporting infrastructure will be constructed over the elevated site.

The DEIR makes the assertion that, “given the baseline condition of the project site as already developed with existing structures, development of the proposed project would not exacerbate potential coastal squeeze impacts beyond what is already present”. This assertion does not acknowledge the impact of raising the surface elevation of the 29-acre site by several feet. In addition, residential development of the site will place significantly more structures on the site than are present at the current auto-dismantling and salvage facility. Therefore, the current text of the DEIR fails to adequately assess the Project’s potential to contribute to coastal squeeze.

Questions related to Toxics Cleanup Division comments should be directed to Cherie McCaulou at (510) 622-2342 or [Cherie.mccaulou@waterboards.ca.gov](mailto:Cherie.mccaulou@waterboards.ca.gov). Questions related to Watershed Management Division comments should be directed to Brian Wines at (510) 622-5680 or [brian.wines@waterboards.ca.gov](mailto:brian.wines@waterboards.ca.gov).

Sincerely,

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