San Francisco Bay Regional Water Quality Control Board

August 30, 2022

Sent via electronic mail: No hardcopy to follow

City of Dublin, Community Development Department
ATTN: Amy Million, Principal Planner (amy.million@dublin.ca.gov)
100 Civic Plaza
Dublin, CA 94568

Subject: San Francisco Bay Regional Water Quality Control Board Comments on the Draft Environmental Impact Report for the SCS Dublin Development Project, City of Dublin, Alameda County, California
SCH No. 2022040022

Dear Ms. Million:

San Francisco Bay Regional Water Quality Control Board (Water Board) staff appreciates the opportunity to review the *Draft Environmental Impact Report for the SCS Dublin Development Project* (DEIR). The DEIR evaluates the potential environmental impacts associated with implementing the At Dublin Development Project (Project). The 76.2-acre Project site is generally bound by Tassajara Road, Interstate 580, Brannigan Street and Gleason Drive. The project site is located in the Eastern Dublin Specific Plan (EDSP) area and has Planned Development Zoning adopted with the EDSP. The Project site is surrounded by commercial uses to the west, southwest and southeast, a public park to the northwest, and residential uses to the north, northwest and east. The Project applicant (SCS Development Company) is proposing to amend the General Plan and Eastern Dublin Specific Plan to accommodate a mixed-use development that would allow up to 454,500 square feet of commercial uses and up to 680 residential units. The Project is a revision of the previously proposed At Dublin Project. A DEIR for the At Dublin Project was prepared and circulated for public review in 2018.

Summary

As is discussed below, the DEIR does not provide an adequate discussion of potential mitigation measures for Project impacts to wetlands. The DEIR also requires additional detail with respect to hydromodification management associated with the Project's new impervious surfaces in portions of the Project that will drain to the water quality/detention basin that was constructed as part of the Dublin Ranch Drainage Master Plan Improvements. Also, the proposed fill of 0.66 acres of seasonal wetlands is a relatively large impact to waters of the State for a single project, and the Project

applicant should not assume that the Water Board will issue a permit for the fill of all of the wetlands present at the Project site.

Comment 1. The DEIR does not describe concrete mitigation measures for the fill of wetlands at the Project site or provide sufficient detail on measures to mitigate the Project's impacts on Hydromodification.

The current Project is a revision of the previously proposed At Dublin Project. On July 25, 2018, Water Board staff provided comments on the DEIR for At Dublin (See Attachment). In that comment letter, we noted deficiencies in the discussion of mitigation for the Project's proposed impacts to wetlands and deficiencies in the discussion of measures to be implemented to mitigate hydromodification impacts associated with the Project's new impervious surfaces. In the four years since the circulation of the Draft EIR for the At Dublin Project, these deficiencies have not been addressed. Please review the comments in the attached July 25, 2018, comment letter and provide full responses to them prior to adopting a Final EIR for the SCS Dublin Project.

Comment 2. The Project applicant should not assume that the Water Board will approve the fill of all 0.66 acres of wetlands at the Project site.

The Project site contains 0.66 acres of seasonal wetlands and proposes to fill all of these wetlands. This is a large amount of fill for a single project.

When the Water Board receives an application for certification and/or WDRs, staff reviews the project to verify that the project proponent has taken all feasible measures to avoid impacts to waters of the State (these impacts usually consist of the placement of fill in waters of the State). Where impacts to waters of the State cannot be avoided, projects are required to minimize impacts to waters of the State to the maximum extent practicable (i.e., the footprint of the project in waters of the state is reduced as much as possible). Compensatory mitigation is then required for those impacts to waters of the state that cannot be avoided or minimized. Avoidance and minimization of impacts is a prerequisite to developing an acceptable project and identifying appropriate compensatory mitigation for an approved project's impacts. Avoidance and minimization cannot be used as compensatory mitigation. After avoidance and minimization of direct impacts to waters of the State have been maximized for the proposed project, the necessary type and quantity of compensatory mitigation for the remaining impacts to waters of the State are assessed on a case-by-case basis.

Under both the Clean Water Act and the *San Francisco Bay Basin Water Quality Control Plan* (Basin Plan), projects are required to avoid impacts to waters of the U.S. and waters of the State, in conformance with U.S. Environmental Protection Agency's CWA 404(b)(1) Guidelines (Guidelines). The Guidelines provide guidance in evaluating the circumstances under which the fill of jurisdictional waters may be permitted. Projects must first exhaust all opportunities, to the maximum extent practicable, to avoid, and then to minimize impacts to jurisdictional waters. Only after all options for avoidance and minimization of impacts have been exhausted, is it appropriate to develop mitigation for adverse impacts to waters of State. Since mixed use

development is not a water dependent project, it is assumed that impacts to waters of the State can be avoided.

The Water Boards only allow compensatory mitigation to be implemented for those impacts to waters of the State that cannot be avoided and/or minimized; “avoidance and minimization” in the context of reviewing applications for WDRs refers to minimizing the proposed project’s footprint in waters of the State. The current Project proposes to fill all waters of the State that are present at the Project site. It is unusual for the Water Board to issue permits for projects that include no avoidance or minimization of impacts to waters of the State. The Project applicant is encouraged to revise the DEIR to explore an alternative that avoids complete fill of waters of the State incorporates some preserved wetlands into the Project’s landscaping and open space.

Conclusion

The DEIR does not provide sufficient detail with respect to mitigation for Project impacts to wetlands. The DEIR should be revised to provide specific mitigation measures for all impacts to waters of the State. These mitigation measures should be in-kind and on-site mitigation measures to the maximum extent possible. The amount of proposed mitigation should include mitigation for temporal losses of any impacted waters of the State. If mitigation is out-of-kind and/or off-site, then the amount of the proposed mitigation should be increased. Proposed mitigation measures should include designs with sufficient detail to show that any created wetlands will have sufficient hydrology to sustain wetland hydrology and vegetation without human intervention. A proposed program for monitoring the success of the mitigation features should also be included with the mitigation proposal(s). In addition, before the Water Board issues a permit that authorizes the fill of all 0.66 acres of wetlands, we must be provided with an alternatives analysis that demonstrates that avoidance of some or all of the wetlands at the Project site is infeasible. Finally, the DEIR should include a discussion of compliance with HM requirements in Parcels PA-2 and PA-3.

If the DEIR is adopted without providing concrete mitigation proposals for impacts to wetlands, it is likely that the DEIR will not be adequate to support the issuance of Waste Discharge Requirements for the Project.

If you have any questions, please contact me at (510) 622-5680, or via e-mail at brian.wines@waterboards.ca.gov.

Sincerely,

Brian K. Wines

Brian Wines
Water Resources Control Engineer
South and East Bay Watershed Section

Attachment: July 25, 2018, Comment Letter on the DEIR for the At Dublin Project

cc: State Clearinghouse (state.clearinghouse@opr.ca.gov)
CDFW, Attn: Marcia Grefsrud (marcia.grefsrud@wildlife.ca.gov)

CALIFORNIA
Water Boards

EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIQUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

San Francisco Bay Regional Water Quality Control Board

July 25, 2018

Sent via electronic mail: No hardcopy to follow

City of Dublin, Community Development Department
ATTN: Amy Million, Principal Planner (amy.million@dublin.ca.gov)
100 Civic Plaza
Dublin, CA 94568

Subject: San Francisco Bay Regional Water Quality Control Board Comments on the Draft Environmental Impact Report for the At Dublin Development Project, City of Dublin, Alameda County, California
SCH No. 2018012027

Dear Ms. Million:

San Francisco Bay Regional Water Quality Control Board (Water Board) staff appreciates the opportunity to review the *Draft Environmental Impact Report for the At Dublin Development Project* (DEIR). The DEIR evaluates the potential environmental impacts associated with implementing the At Dublin Development Project (Project). The 76.2-acre Project site is generally bound by Tassajara Road, Interstate 580, Brannigan Street and Gleason Drive. The project site is located in the Eastern Dublin Specific Plan (EDSP) area and has Planned Development Zoning adopted with the EDSP. The Project site is surrounded by commercial uses to the west, southwest and southeast, a public park to the northwest, and residential uses to the north, northwest and east. The Project applicant (Shea Properties, in partnership with SCS Development Company) is proposing to amend the General Plan and Eastern Dublin Specific Plan to accommodate a mixed-use development that would allow up to 454,500 square feet of commercial uses and up to 680 residential units.

Summary

As is discussed below, the DEIR does not provide an adequate discussion of potential mitigation measures for Project impacts to wetlands. The DEIR also requires additional detail with respect to hydromodification management associated with the Project's new impervious surfaces in portions of the Project that will drain to the water quality/detention basin that was constructed as part of the Dublin Ranch Drainage Master Plan Improvements.

Comment 1. The DEIR does not describe concrete mitigation measures for the fill of wetlands at the Project site.

The discussion of biological communities in Section 7.3.3 of the DEIR notes that 0.66 acres of seasonal wetlands occur as five separate topographic depressions and one flat-to-sloping area

where seasonal inundation and/or saturation occurs during the rainy season. The proposed mitigation for impacts to those wetlands is presented in MM BIO-3.1 Wetland Mitigation Plan.

> Prior to obtaining the first site grading, building or other permit for development activities involving ground disturbance, the project applicant shall prepare the documentation acceptable to the Community Development Department that demonstrates compliance with the following: The project applicant shall the acquire the appropriate applicable permit(s) (e.g. Section 404, Section 401, Porter-Cologne) from the respective regulating agency(s) (i.e. USACE and/or RWQCB). A wetland mitigation plan shall be prepared that will establish suitable compensatory mitigation based on the concept of no net loss of wetland habitat values or acreages, to the satisfaction of the regulatory agencies. This may include the creation, restoration, and/or enhancement of off-site wetlands prior to project ground disturbance. Mitigation areas shall be established in perpetuity through dedication of a conservation easement (or similar mechanism) to an approved environmental organization and payment of an endowment for the long-term management of the site. The wetland mitigation plan shall be subject to the approval of the applicable regulatory agency (USACE and/or RWQCB) and the City.

Mitigation Measure MM BIO-3.1, Wetland Mitigation Plan, does not actually include a wetland mitigation plan; it only requires the future development of a wetland mitigation plan. Developing a wetland mitigation plan for impacts to 0.66 acres of wetlands is not a simple process. It is necessary to find sufficient land with the proper hydrology to sustain a minimum of 0.66 acres of mitigation wetlands. Another project in the Dublin area, with a similar quantity of wetland impacts, has been working for about two years to develop an acceptable wetland mitigation plan, and is still several months away from securing all necessary approvals for the mitigation site.

Please note that the required amount of wetland mitigation will depend on the similarity of the impacted wetlands to the mitigation proposal, the uncertainty associated with successful implementation of the mitigation project, and the distance between the site of the impact and the site of the mitigation wetland. In-kind mitigation for the fill of wetlands consists of the creation of new wetlands. If the mitigation consists of restoration or enhancement of wetlands, the amount of mitigation will be greater than if the mitigation consists of wetland creation. If there are uncertainties with respect to the availability of sufficient water to support seasonal wetlands or sufficiently impermeable soils to sustain saturation, then the amount of mitigation would also have to be greater. Finally, the amount of required mitigation increases as the distance between the impact site and the mitigation site increases.

In a CEQA document, a project's potential impacts and proposed mitigation measures should be presented in sufficient detail for readers of the CEQA document to evaluate the likelihood that the proposed remedy will actually reduce impacts to a less than significant level. CEQA requires that mitigation measures for each significant environmental effect be adequate, timely, and resolved by the lead agency. In an adequate CEQA document, mitigation measures must be feasible and fully enforceable through permit conditions, agreements, or other legally binding instruments (CEQA Guidelines Section 15126.4). Mitigation measures to be identified at some future time are not acceptable. It has been determined by court ruling that such mitigation measures would be improperly exempted from the process of public and governmental scrutiny which is required under the California Environmental Quality Act. The current text of the DEIR does not demonstrate that it is feasible to mitigate all potentially significant impacts to wetlands

that may result from project implementation to a less than significant level. Impacts to the jurisdictional waters at the project site, as well as proposed mitigation measures or such impacts, will require review under CEQA before the Water Board can issue permits for those proposed impacts.

Comment 2. The Project applicant is encouraged to make use of the Eastern Alameda Conservation Strategy in developing avoidance and minimization measures for potential impacts to special status plants and animals, and in developing mitigation for unavoidable impacts to special status species at the Project site.

The discussion of Impact BIO-5 in Section 7.5.3 of the DEIR notes that the Eastern Alameda County Conservation Strategy (EACCS) is a guidance document that is used by the City for public projects, but compliance is not mandated for private development. The EACCS was developed by representatives of the cities in eastern Alameda County, Alameda County, Zone 7 Water Agency, the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service (USFWS), the California Department of Fish and Wildlife (CDFW), and the Water Board. While the EACCS is not an adopted Habitat Conservation Plan, following the mitigation guidance in EACCS for impacts to special status species has streamlined the permitting of impacts to special status species by USFWS and CDFW. The Project applicant is encouraged to make use of EACCS in developing mitigation for unavoidable impacts to special status plant and animal species.

Comment 3. The discussion of post-construction stormwater management in the discussion of Hydrology and Water Quality does not address the need to mitigate for hydrograph modification resulting from new or replaced impervious surfaces that drain to the Dublin Ranch Drainage Master Plan water quality/detention basin.

The discussion of potential Project impacts in Section 12.5.3 includes Impact HYD-2: Increase stormwater runoff due to an increase in impervious surfaces. This discussion notes that:

> As a part of the Dublin Ranch Drainage Master Plan improvements, a water quality/detention basin was constructed at the downstream end of the Dublin Ranch Development Watershed adjacent to Interstate 580. This water quality/detention basin treats stormwater runoff for the properties that were included in the Dublin Ranch Development Watershed, including parcels PA-2 and PA-3. The stormwater quality/detention pond was constructed to meet the mandates in California Regional Water Quality Control Board San Francisco Bay Region Order No. R2-2003-0031, Waste Discharge Requirements and Water Quality Certification for Dublin Ranch Project, Dublin and Livermore, Alameda County.

Subsequent to the adoption of Order No. R2-2003-0031 in 2003, the Water Board developed the Municipal Regional Stormwater NPDES Permit (MRP). The most recent version of the MRP (Order No. R2-2015-0049) was adopted by the Water Board in November of 2015. As is noted in Section 12.4.1 of the DEIR, Provision C.3.g of the MRP requires that projects that create or recreate an acre or more of impervious surfaces are required to provide mitigation for hydromodification (HM) associated with impervious surfaces. In Alameda County, HM controls shall be designed such that post-project stormwater discharge rates and durations match pre-

project discharge rates and durations from 10 percent of the pre-project 2-year peak flow up to the pre-project 10-year peak flow. Please review HM that would be associated with development in parcels PA-2 and PA-3 to determine whether or not HM mitigation measures will be necessary for runoff from parcels PA-2 and PA-3 to comply with Provision C.3.g of the MRP.

Conclusion

The DEIR does not provide sufficient detail with respect to mitigation for Project impacts to wetlands. The DEIR should be revised to provide specific mitigation measures for all impacts to waters of the State. These mitigation measures should be in-kind and on-site mitigation measures to the maximum extent possible. The amount of proposed mitigation should include mitigation for temporal losses of any impacted waters of the State. If mitigation is out-of-kind and/or off-site, then the amount of the proposed mitigation should be increased. Proposed mitigation measures should include designs with sufficient detail to show that any created wetlands will have sufficient hydrology to sustain wetland hydrology and vegetation without human intervention. A proposed program for monitoring the success of the mitigation features should also be included with the mitigation proposal(s). In addition, the DEIR should include a discussion of compliance with HM requirements in Parcels PA-2 and PA-3.

If the DEIR is adopted without providing concrete mitigation proposals for impacts to wetlands, it is likely that the DEIR will not be adequate to support the issuance of CWA Section 401 certification for the Project.

If you have any questions, please contact me at (510) 622-5680, or via e-mail at brian.wines@waterboards.ca.gov.

Sincerely,

Brian Wines
Water Resources Control Engineer
South and East Bay Watershed Section

cc: State Clearinghouse (state.clearinghouse@opr.ca.gov)
CDFW, Attn: Marcia Grefsrud (marcia.grefsrud@wildlife.ca.gov)