San Francisco Bay Conservation and Development Commission

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Transmitted Via Electronic Mail

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Via email: <TByler@sfcjpa.org>

SUBJECT: Notice of Preparation of a Draft Environmental Impact Report for the *Strategy to Advance Flood Protection, Ecosystems and Recreation along San Francisco (SAFER) Bay* Project, in East Palo Alto and Menlo Park, San Mateo County (BCDC Inquiry File No. MC.MC.7415.026; SCH #2022040504)

Dear Tess Byler:

Thank you for the opportunity to comment on the Notice of Preparation (NOP) of a Draft Environmental Impact Report (DEIR) for the *Strategy to Advance Flood Protection, Ecosystems and Recreation along San Francisco (SAFER) Bay Project*, received in our office on April 25, 2022. The proposed project is located along seven miles of San Francisco Bay shoreline in the cities of Menlo Park and East Palo Alto. It is divided into eight segments stretching from the Menlo Park/Redwood City border to the East Palo Alto/Palo Alto border. The project is intended to protect people, property and infrastructure from current tidal flooding and projected sea level rise through engineered and natural features that aim to enhance shoreline ecosystems and improve recreational opportunities.

The San Francisco Bay Conservation and Development Commission (Commission) is a responsible agency for this project and will rely on the DEIR when it considers the project. Our staff has prepared comments outlining specific Commission issues or policies that should be addressed either in the DEIR or through the Commission permitting process as appropriate, based on the project details in the NOP. As we receive additional details on the project, we will be able to provide more detailed responses and can work closely with the project proponents to ensure the project is consistent with Commission laws and policies.

The comments below are based on the McAteer-Petris Act and the Commission's San Francisco Bay Plan (Bay Plan). Commission staff has initially identified and summarized several policies and policy areas that are likely to apply to the project, however we also encourage you to review the McAteer-Petris Act and Bay Plan directly to ensure the project design complies with all relevant sections of these documents.

Commission Jurisdiction

Portions of the project would be located within the Commission's jurisdiction. In the proposed project area, there are three distinct jurisdiction types, defined in detail in the McAteer-Petris Act (Section 66610) and summarized as follows:

a. San Francisco Bay, being all areas that are subject to tidal action, including all sloughs, and specifically, the marshlands lying between mean high tide and five feet above mean sea level; tidelands (land lying between mean high tide and mean low tide); and submerged lands (land lying below mean low tide);

b. A shoreline band consisting of all territory located between the shoreline of San Francisco Bay (as defined above) and a line 100 feet landward of and parallel with that line, but excluding any portions of salt ponds as described below; and

c. Salt ponds, consisting of all areas which have been diked off from the bay and have been used during the three years from [approximately 1966 to November 11, 1969] for the solar evaporation of bay water in the course of salt production.

The Commission's jurisdiction also includes all areas formerly subject to tidal action that have been filled since September 17, 1965. Within its jurisdiction, Commission permits are required for activities that involve placing fill, extracting materials, or making any substantial change in use of any water, land or structure. Permits are issued if the Commission finds the activities to be consistent with the McAteer-Petris Act and the policies of the Bay Plan.

The DEIR should provide a detailed and complete project description, clarify where the project would occur within the Commission's Bay, 100-foot shoreline band, and salt ponds jurisdictions, and identify the Commission's permitting role and the federal government's permitting role.

Wildlife Refuge Priority Use Area

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; these priority use areas are designated on the Bay Plan Maps. As shown on Map 7, there are multiple areas of the project site classified as a "Wildlife Refuge" Priority Use Area, including Faber Tract Marsh; Laumeister Marsh; Ravenswood Ponds R1, R2, and SF2; and other areas on the site as indicated on the Map. Pursuant to the Commission's authority under the McAteer-Petris Act and the Bay Plan, these areas must be reserved for wildlife refuge purposes, and any activities therein must be consistent with Bay Plan policies describing appropriate uses and other considerations for wildlife protection and wildlife refuges, including policies related to Public Access; Recreation; and Fish, Other Aquatic Organisms, and Wildlife, as described further below.

The DEIR should discuss those areas of the project site that are designated for wildlife refuge priority use, the consistency of any proposed uses with this designation and, if there are inconsistencies, how the project proponents plan to resolve them.

Commission Law and Bay Plan Policies Relevant to the Project

Bay Fill

Section 66605 of the McAteer-Petris Act 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 Act, fill is limited to water-oriented uses 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 Bay Plan policies were recently amended to allow greater amounts of fill in the Bay for habitat enhancement, restoration, or sea level rise adaptation of habitat. Such projects must be designed to: 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 indicate the amount of fill that would be placed and extracted in the Commission's jurisdiction for the project overall and for each specific project area, as well as the uses associated with the proposed new fill for each specific area. Depending on the amount of net total fill proposed and the uses proposed on fill, the Commission may require fill removal or habitat restoration elsewhere, in accordance with Bay Plan policies related to mitigation (described further below).

Public Access and Recreation

Section 66602 of the McAteer-Petris Act states, in part, "that maximum feasible public access, consistent with a proposed project, should be provided." In addition, the Bay Plan includes a number of relevant policies related to Public Access and Recreation. The Public Access policies provide that maximum feasible public access to and along the waterfront, and on permitted fills, should be provided in and through every new development in the Bay or on the shoreline, whether it be for housing, industry, port, airport, public facility, wildlife area, or other use for wildlife and restoration areas.

Additional Public Access policies focus on minimizing impacts from public access on wildlife; avoiding significant adverse impacts from sea level rise and flooding; ensuring the access is accessible, inclusive, and appropriate for the local community culture and environment; consulting the Public Access Design Guidelines in design of the public access area; and other important considerations. Furthermore, the policies provide that the Design Review Board, composed of design and planning professionals, should advise the Commission on the design and adequacy of proposed public access.

In addition to the Public Access Policies, the Bay Plan Recreation policies describe requirements for recreation areas, including that diverse and accessible recreational facilities should be well distributed around the shores of the Bay; should present opportunities for people of all races,

cultures, ages and income levels; should be compatible with wildlife and adjacent land uses; and should be clearly posted with signs and easily available from nearby public streets or other public areas. Trails that can be used as part of the Bay Trail should be developed and placed as close to the shore as feasible, considering protection of wildlife and habitat and risks associated with flooding and sea level rise.

There are also Recreation policies related specifically to waterfront parks and wildlife refuges, including that interpretive information should be provided about wildlife, habitat, and related elements; that where feasible and appropriate, opportunities for environmental education, community service, volunteer, and related programs should be provided; and that historic buildings in waterfront parks and water refuges should be preserved and made accessible to the public where appropriate.

Please see multiple comments below related to public access and recreation that should be addressed in the DEIR.

Maximum Feasible Public Access. To allow the Commission to evaluate consistency of the project with the laws and policies summarized above, please describe in detail the existing and proposed (i.e. new or enhanced) public access areas, amenities, and recreation opportunities, and how these project components have been designed to conform with our laws and policies. In addition, the DEIR should analyze the number and type of new users expected at the site, their expected impacts to existing public access areas, and whether the proposed new or enhanced public access areas is expected to accommodate these users and/or mitigate for any public access impacts; providing this information will help the Commission determine whether the public access proposed with the project is the maximum feasible consistent with the proposed project.

Design Review Board Review. Furthermore, due to the large scale of this project and its importance to regional public access, the project is likely to require review by BCDC's Design Review Board (DRB). The first DRB review typically occurs during the pre-application process, with a potential need for additional reviews thereafter. Our staff will work directly with the project team on this.

Existing Public Access. Please note that there are multiple existing public access areas at or near the project site, some of which are BCDC-required public access and/or form part of the Bay Trail, including trails along Faber Tract and Laumeister Marsh, Cooley Landing, Ravenswood Open Space Preserve, and Pond SF2. The project should be designed to minimize adverse impacts to these areas during construction, and should include use of well-managed, phased public access detours or closures where necessary. Commission staff will be happy to help you identify these areas and existing permit requirements, and review proposed detour or closure plans.

Trail Network and Connectivity. Please describe the entire proposed trail network and how it will be designed to be accessible and maximize connectivity with adjacent trails, parking, and public transportation. New or improved trails that are appropriate for the Bay Trail should be designed to current Bay Trail standards, and should be planned in close coordination with BCDC

and relevant staff from the Metropolitan Transportation Commission. Please also describe why there is such a large range in the amount of new and improved trails (1 to 2.5 miles according to the NOP).

Wildlife Impacts. Please describe sensitive wildlife and habitat at the site, and how public access areas and amenities would be designed to avoid or minimize impacts on these areas. The project proponents should also coordinate closely with appropriate agencies, including the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the California Department of Fish and Wildlife, to ensure that public access areas and amenities are designed and managed appropriately.

Public Access Improvements. To the extent feasible at this stage of the design, please identify locations and types for proposed public access improvements, including furnishings, signage, and other amenities, and how these improvements would be maintained and designed to be accessible to persons with disabilities.

Public access funding. Please describe how construction and maintenance of public access areas and improvements would be funded both initially and in the long term.

Please also see the section below related to Climate Change and Safety of Fills, which discusses concerns related to flooding and sea level rise that are relevant to public access and recreation.

Appearance Design, and Scenic Views

The Bay Plan includes policies related to Appearance, Design, and Scenic Views that are applicable to the project. These policies provide, among other requirements, that maximum effort should be made to provide, enhance, or preserve views of the Bay and shoreline, especially from public areas; that planning waterfront development should include participation by professionals knowledgeable of the Commission's concerns, such as landscape architects, urban designers, or architects; and that vista points should be provided and made accessible to the public.

The DEIR should describe how the project would maximize views to the Bay and take maximum advantage of the shoreline setting. Proposed structures, including levees, floodwalls, and fencing, should be designed to avoid or minimize visual barriers to the Bay. If there are areas where unavoidable and significant adverse impacts to existing Bay views would occur, the project should include proposed alternative enhancements to public access and/or views to the Bay to mitigate for this loss. In particular, it appears that a proposed floodwall near Infinity Auto Salvage (Figure 6) would be approximately 4.7 feet higher than the road, which would result in significant adverse Bay view impacts; the DEIR should discuss impacts to Bay views in this area and any alternative options to minimize or mitigate for these impacts.

Please also describe whether habitat protection fencing would be proposed between trails and transition zones or other habitat areas, and how impacts on views to the Bay would be minimized.

Salt Ponds and Mitigation

Based on the project description in the NOP, we understand that the project is likely to include tidal restoration of existing diked salt ponds, and potentially some managed pond enhancement for western snowy plover habitat, as compensatory mitigation for unavoidable impacts to tidal wetlands and aquatic habitats. The Bay Plan includes policies on both Salt Ponds and Mitigation that are relevant for this activity.

Salt Pond Policy No. 3 states, in part, that any project that would restore, enhance, or convert salt ponds should include clear and specific long-term and short-term biological and physical goals, success criteria, a monitoring program, and provisions for long-term maintenance and management needs. The policy provides further guidance on project design and evaluation, including in relation to anticipated habitat types, flood management, mosquito abatement, non-native species, siting and design of appropriate public access, avoiding adverse effects on wildlife, and various water quality protection measures.

The Bay Plan also has policies related to mitigation that will apply to the project. Policy 1 states, in part, that projects should be designed to avoid adverse impacts to Bay resources. Whenever adverse impacts cannot be avoided, they should be minimized to the greatest extent practicable. Finally, measures to compensate for unavoidable adverse impacts should be required. Mitigation is not a substitute for meeting the other requirements of the McAteer-Petris Act.

The remaining policies provide additional requirements for projects that require compensatory mitigation, among them that "…mitigation projects should be sited and designed within a Baywide ecological context, as close to the impact site as practicable," that "communities surrounding both the project and the compensatory mitigation site should be meaningfully involved in an equitable and culturally-relevant manner," that "resource restoration should be selected over creation where practicable" and that "transition zones and buffers should be included in mitigation projects where feasible and appropriate."

Similar to Salt Pond Policy No. 3, Mitigation Policy No. 8 requires, in part, that mitigation projects include clear project goals; clear and measurable performance standards; a monitoring and reporting plan designed to identify potential problems early and determine appropriate remedial actions; a contingency plan to ensure the success of the mitigation project; and provisions for the long-term maintenance, management and protection of the mitigation site.

We understand that the ratio of restored marsh vs. enhancement of managed ponds for snowy plover habitat is still being evaluated in collaboration with the South Bay Salt Ponds Restoration Project. The DEIR should describe and analyze in detail alternatives for the compensatory mitigation restoration program that are being considered, taking into account the policies summarized above. A strong rationale should be provided for the preferred ratio once selected, based on expected near-term impacts and long-term ecological benefits for each option. Please note that additional mitigation may be required if the Commission determines that the project would not be self-mitigating.

Fish, Other Aquatic Organisms and Wildlife

The policies in this Bay Plan section address the benefits of fish, other aquatic organisms and wildlife, and the importance of protecting the Bay's subtidal habitats, native, threatened or endangered species, and species that are candidates for listing as endangered or threatened. Policy No. 1 requires that the Bay's tidal marshes, tidal flats and subtidal habitat be conserved, restored and increased "to the greatest extent feasible." The DEIR should address how the construction and use of the proposed project would meet these policies and avoid or minimize impacts to special-status species and habitat in the Bay. The project proponents should continue coordinating with appropriate wildlife resource agencies, including the California Department of Fish and Wildlife, the National Marine Fisheries Service, and the U.S. Fish and Wildlife Service.

Tidal Marshes and Tidal Flats

Bay Plan policies in this section provide limitations on projects that would substantially harm tidal marshes or tidal flats and guidance on the restoration of these habitats. Among the policies, Policy No. 3 requires that projects avoid or minimize impacts to transition zones between tidal and upland habitats, and should provide new transition zones where feasible and appropriate. Policy No. 5 states that to the extent feasible, habitat projects should be sustained by natural processes; increase habitat connectivity; restore hydrological connections; provide opportunities for endangered species recovery; and provide opportunities for landward migration of Bay habitats. Policy Nos. 6, 7, and 8 include other important design considerations for tidal marsh restoration projects, including the need for a well-designed monitoring and adaptive management plan and for maximizing the capacity of restoration projects to adapt with sea level rise. Policy No. 10 states that based on scientific ecological analysis, project need, and consultation with the relevant federal and state resource agencies, fill may be authorized for habitat enhancement, restoration, or sea level rise adaptation of habitat.

The DEIR should discuss in detail any filling or other activities that would occur in tidal marshes or tidal flats; the anticipated effects on these habitats, how the impacts will be avoided, minimized and mitigated for; and analysis of the potential impacts and benefits of project alternatives that may involve more or less fill in wetland areas. Commission staff recognize that some fill may be necessary to restore habitat areas, provide transition zones, and allow for sea level rise adaptation of habitat. Any fill for habitat proposed as part of the project should be designed with a balance that will minimize near-term adverse impacts to, and maximize long-term net benefits for, Bay habitats and native species.

Water Quality

The policies in this Bay Plan section 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. The DEIR should address how the construction and use of

the proposed project would be designed to control stormwater runoff and pollution to the Bay. The DEIR should also identify the role of the State and Regional Water Boards in reviewing and approving the project.

Policy No. 4 requires that, "[w]hen approving a project in an area polluted with toxic or hazardous substances, the Commission should coordinate with appropriate local, state and federal agencies to ensure that the project will not cause harm to the public, to Bay resources, or to the beneficial uses of the Bay." Moreover, Shoreline Protection Policy No. 8 states that "contamination remediation projects…should integrate the best available science on sea level rise, storm surge, and associated groundwater level changes into the project design in order to protect human and ecological health by preventing the mobilization of contaminants into the environment and preventing harm to the surrounding communities."

The DEIR should identify whether any portions of the project site are polluted with toxic or hazardous substances, any anticipated effects associated with such contaminants including with future sea level rise anticipated through the life of the project, how these risks would be addressed, and the role other agencies will take in the review.

Finally, 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. flood walls) where appropriate and practicable. The DEIR should identify the approach the project will take in terms of shoreline protection at the site, and discuss where the use of vegetation in favor of hard shoreline protection would be appropriate and feasible.

Environmental Justice and Social Equity

The proposed project would take place in and adjacent to communities classified as having high levels of vulnerability based on social and environmental factors, according to BCDC's Community Vulnerability Mapping Tool and the CalEnviroScreen tool. As such, relevant Bay Plan policies on Environmental Justice and Social Equity will apply to the project. These policies require, in part, that equitable, culturally-relevant community outreach and engagement be conducted by 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. The policies also state that potential disproportionate impacts on vulnerable communities should be identified and addressed in collaboration with the potentially impacted communities. In addition, Shoreline Protection Policy No. 2, Public Access Policy No. 5, and Mitigation Policy No. 3 require appropriate and meaningful community outreach for these portions of the project.

The project proponents should conduct meaningful community engagement throughout the project planning, design, and permitting, and should describe these efforts in detail in the DEIR and associated permit application materials. In the BCDC permit application process, we will require a detailed description of all community engagement that occurred during design, including the following information:

- the number and types of outreach activities, including a description of how the activities were designed to be accessible and relevant for local communities;
- the estimated number of groups and individuals reached, including a description of how those groups and individuals represent relevant local community interests;
- a description of any potential disproportionate impacts on local communities identified during project design, and how these impacts have been or will be addressed; and
- any concerns raised during outreach activities, including a description of whether and how those concerns have been (or will be) addressed, and a description and rationale for any community concerns you do not currently plan to address.

You may also wish to consult our Frequently Asked Questions webpage on these policies here. In addition, please see mapping resources of community vulnerability and community-based organizations here.

Safety of Fills and Climate Change

The Bay Plan has several policies relevant for the project related to climate change, sea level rise, and safety of fills. Climate Change Policy No. 2 requires, in part, that "a risk assessment should be prepared by a qualified engineer,…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….A range of sea level rise projections for mid-century and end of century based on the best scientific data available should be used...[the] assessment should identify all types of potential flooding, degrees of uncertainty, consequences of defense failure, and risks to existing habitat from proposed flood protection devices. "

Policy No. 3 states that where such risk 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 developed to address sea level rise impacts beyond mid-century through the life of the project.

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 engineers. The policy states that, "adequate 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. 5, 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."

For the project site, the DEIR should identify the Mean Higher High Water, the 100-year-flood elevation, mid- and end-of-century rise in sea level projections, 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 also describe how the project has been designed for adapting to, tolerating, and managing 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. For example, the DEIR should indicate whether the levees and floodwalls could be raised in the future if needed, taking into account spatial constraints, whether the underlying soils would support additional fill, and other limitations. The DEIR should indicate whether any proposed long-term adaptation strategies would adversely affect or reduce in size public access areas, and possible ways to minimize or mitigate for these effects.

In addition, the DEIR should include a discussion of groundwater at the site, how it is expected to impact the levees and floodwalls both at construction and with future sea level rise, and how any risks from groundwater rise would be addressed.

The project may need to go before the Commission's Engineering Criteria Review Board (ECRB), which reviews projects "for the adequacy of their specific safety provisions, and make[s] recommendations concerning these provisions [and] prescribe[s] an inspection system to assure placement and maintenance of fill according to approved designs." Our staff will work with you to determine whether ECRB review and early guidance is necessary.

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. Policy No. 1 describes important technical requirements for shoreline protection projects, including related to flooding and sea level rise. 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." New shoreline protection projects should also 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 in detail all existing and proposed shoreline protection features at the site, including an analysis of their potential to adversely impact natural resources and public access, and how the impacts would be avoided, minimized, or mitigated for. Commission staff appreciates that the project would include softer habitat transition zones in many areas. In areas where hard, non-natural shoreline protection features (such as floodwalls) are proposed, the DEIR should describe and analyze the feasibility of using natural or nature-based alternatives as described in the policies above.

Public Trust

The public trust doctrine holds that navigable waters and tidal lands are the property of the state and must be protected for public use and enjoyment. The Bay Plan policies on public trust lands states, in part, that when taking actions on such land, the Commission "should assure that the action is consistent with the public trust needs for the area and, in the case of lands subject to legislative grants, would also assure that the terms of the grant are satisfied and the project is in furtherance of statewide purposes." Public trust uses cited in the Bay Plan include commerce, navigation, fisheries, wildlife habitat, recreation and open space.

The DEIR should indicate where the State's public trust requirements apply to the proposed project and discuss how the project affects and would be consistent with the public trust.

Thank you for providing the staff with an opportunity to review the NOP for the DEIR for the *Strategy to Advance Flood Protection, Ecosystems and Recreation along San Francisco (SAFER) Bay Project*. We recognize the importance and scope of this project and hope these comments aid you in preparation of the DEIR. We look forward to working with you and the project sponsors as the project is developed and through the permitting stage. If you have any questions regarding this letter or the Commission's policies and permitting process, please do not hesitate to contact me at 415-352-3668 or schuyler.olsson@bcdc.ca.gov.

Sincerely,

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