



San Francisco Bay Regional Water Quality Control Board

Date

October 8, 2023

Governor's Office of Planning & Research

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Oct 09 2023

STATE CLEARINGHOUSE

City of Livermore
ATTN: Ashley Vera, Associate Planner (asvera@livermoreca.gov)
1052 S. Livermore Avenue
Livermore, CA 94550

Subject: San Francisco Bay Regional Water Quality Control Board Comments on the Draft Environmental Impact Report for the SMP 38/SMP 39/SMP 40 Project, City of Livermore, Alameda County, California
SCH No. 2023010091

Dear Ms. Vera:

San Francisco Bay Regional Water Quality Control Board (Water Board) staff appreciates the opportunity to review the *Draft Environmental Impact Report for the SMP 38/SMP 39/SMP 40 Project* (DEIR). The DEIR evaluates the potential environmental impacts associated with implementing the SMP 38/SMP 39/SMP 40 Project (Project).

The Project site consists of nine parcels identified by Assessor's Parcel Numbers (APNs) 904-1-7-21; 904-1-2-12; 904-1-7-32; 904-3-1-4; 904-10-2-2, -3, -5, -7, and -8, totaling 217.04 acres in unincorporated Alameda County. The Project site is generally located west of Isabel Avenue/State Route (SR) 84, north of Stanley Boulevard, south of West Jack London Boulevard, and east of El Charro Road. On SMP 38, the proposed Project includes a Sphere of Influence (SOI) Amendment. On SMP 39 the proposed Project includes development of six industrial buildings consisting of 755,500 sf of new building space, and associated improvements. On SMP 40, the Project includes development of two industrial buildings consisting of up to 759,275 sf of new building space and associated improvements. A number of approvals would be required for development of SMP 39 and SMP 40, including a SOI Amendment for SMP 39, General Plan Amendment, Pre-zoning and Annexation, Zoning Map Amendment/Planned Development, Vesting Tentative Subdivision Maps, a Pre-Annexation Agreement, and Development Agreement. In addition, the Project would include annexation of four

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additional parcels (APNs 904-10-2-3, -5, -7, and -8) located east of SMP 40. Development of SMP 38 and additional annexation parcels is not proposed at this time.

Summary

As is discussed below, the discussion in the DEIR of stormwater management from the developed Project site indicates that the currently proposed treatment measures for stormwater runoff water quality treatment are not consistent with the Water Board's current permit for stormwater runoff. In addition, the discussion of mitigation measures for post-construction hydrograph modification (hydromodification) does not address the requirements to prevent the generation of erosive flows in post-construction stormwater runoff. Discussions of stormwater management in the DEIR must be completely revised prior to the adoption of the Final EIR for the Project.

Comment 1. The text of the DEIR suggests that current post-construction stormwater treatment proposals are not MRP-compliant.

Text on page 3-14 of Section 3.5, Project Components, describes the stormwater treatment that is proposed for SMP 39:

Stormwater from the new impervious areas within SMP 39 would be collected and treated pursuant to the requirements listed in the City of Livermore's Municipal Separate Storm Sewer System (MS4) Permit. The eastern half of the site would be discharged directly to the existing storm drain system with Jack London Boulevard through new service laterals connected to each lot. The remaining western portion would be routed through a three-acre-foot detention pond before discharging to a new 18- to 24-inch public storm drain line that runs approximately 600 feet north along the western property line of City of Livermore parcel APN-904-3-1-1 and connect to the existing storm drain system of West Jack London Boulevard.

The MS4 Permit that is referred to in the quoted text is the Water Board's National Pollutant Discharge Elimination System (NPDES) Municipal Regional Permit (MRP) for the management of stormwater runoff (Order R2-2022-0013; NPDES Permit No. CAS612008). The MRP requires that projects provide adequate water quality treatment for post-construction stormwater runoff and hydromodification mitigation for stormwater flows that flow over new and recreated impervious surfaces.

Water quality treatment for stormwater runoff must be provided using Low Impact Development (LID) principles. For most new development projects, LID-compliant water quality is provided through the construction, operation, and maintenance of bioretention areas, which use filtration, adsorption, chemical process, and biological processes to remove suspended and dissolved contaminants from stormwater runoff. However, the discussion of stormwater treatment for SMP 39 does not discuss the provision of LID treatment measures for runoff from the Projects new impervious surfaces. A reference is made to discharging runoff from the western portion of SMP 39 to a three-acre-foot detention pond. However, detention ponds, which only provide water quality treatment through the settlement of suspended contaminants, do not provide LID-compliant water

quality treatment, since they have much lower removal rates for suspended contaminants than the removal rates provided by bioretention areas. In addition, detention ponds do not treat dissolved contaminants. No treatment is mentioned for runoff from the eastern portion of SMP 39.

Text on page 3-17 of Section 3.5, Project Components, describes the stormwater treatment that is proposed SMP 40:

According to the Stormwater Quality Control Plan that has been prepared for the SMP 40 site, stormwater from impervious areas within SMP 40 would flow to a number of catch basin filtration inserts located throughout the SMP 40 site. The catch basins would connect a new network of stormwater lines to three 96-inch underground storage vaults located west of Building 1, within the internal drive aisle, between the dock doors and trailer parking. The storage vaults would be placed five feet underground and surrounded by rock. Stormwater from the storage vaults would be routed north and west to the existing detention basin located northwest of Building 1, within the Oaks Business Park, before being ultimately directed into a portion of the Arroyo Mocho Bypass Channel.

The stormwater quality treatment proposed for SMP 40 is not MRP-compliant LID treatment. LID treatment should mimic the treatment of runoff provided by undeveloped lands, with highly permeable treatment soil matrices used to minimize the amount of surface area necessary to treat stormwater runoff. To the maximum extent feasible, LID treatment should operate via gravity flow so that it continues to function without intense human maintenance. Reliance on pumping collected water from vaults into treatment areas is not consistent with LID treatment principles. In some cases of small, infill developments that are heavily constrained by existing development, it may be necessary to pump some runoff into treatment devices. However, since SMP 40 is currently undeveloped it is possible to design a MRP-compliant treatment system that avoids the need to pump collected runoff into bioretention areas. Also, catch basin filtration inserts and detention basins are not MRP-compliant. The stormwater treatment system for SMP 40 must be completely redesigned to be MRP-compliant. The redesigned stormwater system must rely on gravity flow to discharge runoff to properly-sized bioretention areas.

The discussion of LID techniques on pages 4.5-10 and 4.5-11 of the DEIR is good, but the discussion of actual proposed treatment measures in Section 3.5 of the DEIR is not consistent with LID techniques.

Comment 2. The DEIR does not propose an actual mitigation project for impacts to Arroyo Mocho resulting from Trail Connection Option 2 in SMP 40.

Text on page 4.3-32 in Section 4.3-3, Have a substantial adverse effect on any riparian habitat or other sensitive natural community, of Section 4.3, Biological Resources, discusses mitigation for the Project's impacts to riparian habitat along Arroyo Mocho that would result from implementation of Trail Connection Option 2. However, Section

4.3-3 does not actually describe mitigation measures, but only proposes to develop mitigation measures when a permit is requested from the California Department of Fish and Wildlife.

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. Therefore, the DEIR lacks an adequate discussion of proposed mitigation measures for the Project's impacts to Arroyo Mocho and its associated riparian habitat.

In addition, the discussion of impacts and mitigation in this section refers to the Water Board's authority under Section 401 of the Clean Water Act. Since the proposed impacts in Arroyo Mocho will be above the ordinary high water mark, there is no nexus to federal authority at the trail crossing of Arroyo Mocho. The Water Board will regulate impacts to Arroyo Mocho above the ordinary high water mark under its Porter-Cologne Act authority.

Please note that the required amount of mitigation will depend on the similarity of the impacted water of the state to the provided mitigation water of the State, 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 water. In-kind mitigation for the fill of open waters consists of the creation of new open waters. If the mitigation consists of restoration or enhancement of open waters, the amount of mitigation will be greater than if the mitigation consists of the creation of open waters. If there are uncertainties with respect to the availability of sufficient water to support a mitigation water or sufficiently impermeable soils to sustain ponding, 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.

Without a description of a viable mitigation project, the DEIR does not demonstrate that the Project's impacts to waters of the State can be mitigated to a less than significant level.

Comment 3. The discussion of stormwater treatment in Section 4.5-2 of the DEIR does not appear to propose MRP-compliant stormwater quality treatment for SMP 39 or SMP 40.

As was noted above in Comment 1, the descriptions of proposed stormwater quality treatment measures for SMP 39 and SMP 40 do not appear to be MRP-compliant. Text

on page 4.5-24 refers to a three-acre-foot detention pond, which would be required to incorporate LID treatment features. But the text of the DEIR does not describe the proposed LID treatment features for the detention pond. In addition, this detention pond would only treat the western half of SMP 39. The DEIR does not describe any LID techniques for stormwater quality treatment for runoff from the eastern half of SMP 39.

The discussion of stormwater runoff treatment for SMP 40 relies on collecting runoff from SMP 40 in an underground storage basin and pumping the collected stormwater into treatment features. This proposal is not consistent with the description of LID techniques on pages 4.5-10 and 4.5-11 of the DEIR. SMP 40 is currently undeveloped, so there are no barriers to providing treatment for all runoff from new impervious surfaces in SMP 40 in bioretention areas. The proposed stormwater treatment system for SMP 40 must be revised to eliminate the underground storage basin and incorporate bioretention areas throughout SMP 40.

Comment 4. The discussion of stormwater runoff from impervious surfaces associated with the off-site trail connection in Section 4.5-2 shows an incomplete understanding of the sources of pollution in stormwater runoff.

The discussion of runoff from the off-site trail includes the following text:

It should also be noted that given the nature of the off-site trail connection options, pollutants such as oil and grease from vehicle leaks, traffic, and maintenance activities are not anticipated to be carried into storm drainage systems, as the trail would be used for bicycle and pedestrian activities.

The author of this sentence appears to be unaware of the significant role of the deposition of airborne contaminants on the contamination of stormwater runoff from impervious surfaces. Between storm events, airborne contaminants are continuously being deposited on impervious surfaces. In Mediterranean climates, such as the Bay Area, there are often intervals of many days or weeks between storm events. When a storm does occur, all of the airborne contaminants that have deposited on impervious surfaces since the prior storm are entrained and/or dissolved in runoff from the new storm. This results in high levels of contaminants in runoff from surfaces that are not used by motor vehicles.

Comment 5. The discussion of post-construction hydromodification focusses on flooding and does not address the hydromodification mitigation measures that are required by the MRP.

The discussion of hydromodification in Section 4.5-4 only addresses changes in post-construction runoff volumes associated with the 10-year and 100-year storm events. This discussion of hydromodification is not MRP-compliant. Hydromodification associated with increases in impervious surface areas results in flashier, higher-energy runoff from developed surfaces. These flashy, high-energy flows trigger channel incision, followed by bank failure. Much of the damage to creeks is associated with channel forming flows, which are on the order of the 2-year storm event. Therefore, the MRP requires mitigation for hydromodification of channel forming flows.

The MRP requires mitigation measures for hydromodification to control flows from 10 percent of the 2-year flow up to the 10-year flow event. Post-project runoff flows must be no greater than pre-project flows for all flows from 10 percent of the 2-year event to the 10-year event. The discussion of stormwater treatment in Section 4.5 of the DEIR does not address this requirement of the MRP.

Conclusion

Based on the information provided in the DEIR, the Project's proposed treatment for stormwater runoff water quality and mitigation for hydromodification impacts are not compliant with the requirements of the MRP. The discussion of stormwater quality and mitigation for hydromodification must be completely revised before the Final EIR is adopted. This revision must be based on a complete redesign of the proposed stormwater treatment infrastructure.

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)