

# San Francisco Bay Conservation and Development Commission

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Transmitted Via Electronic Mail

March 25, 2024

Governor's Office of Planning & Research

**Mar 26 2024**

**STATE CLEARINGHOUSE**

Hayes Morehouse  
Water Pollution Control Manager  
City of San Leandro Water Pollution Control Plant  
3000 Davis Street  
San Leandro, CA 94577  
Via email: <[hmorehouse@sanleandro.org](mailto:hmorehouse@sanleandro.org)>

**SUBJECT:** Draft Initial Study/Mitigated Negative Declaration for the *San Leandro Water Pollution Control Plant Treatment Wetland and Shoreline Resilience Project*, in the City of San Leandro, Alameda County (BCDC Inquiry File No. AL.SL.7220.1; SCH # 2024020945)

Dear Mr. Morehouse:

Thank you for the opportunity to comment on the Draft Initial Study/Mitigated Negative Declaration (Draft IS/MND) for the *San Leandro Water Pollution Control Plant Treatment Wetland and Shoreline Resilience Project*, received in our office on March 6, 2024. The project would be located at 3000 Davis Street in the City of San Leandro, Alameda County. It would involve converting a 6.9-acre wastewater storage basin into a multi-benefit freshwater treatment wetland. The primary purpose is to reduce the loading of wastewater-borne nitrogen, phosphorus, and other contaminants, such as pharmaceutical compounds, into San Francisco Bay.

The San Francisco Bay Conservation and Development Commission (Commission) is a responsible agency for this project and will rely on the Draft IS/MND when it considers the project. Our staff has prepared comments outlining specific Commission issues or policies that should be addressed through the Commission permitting process as appropriate. 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. Within and adjacent to the proposed project area, there are two distinct jurisdiction types, defined in detail in the McAteer-Petris Act (Section 66610) and summarized as follows:

- a. San Francisco Bay (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

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.

Based on the information provided in the Draft IS/MND and previous discussions between our agencies, we understand that project work in the Commission's jurisdiction will be limited to the 100-foot shoreline band, and no work will occur in the Bay. Please let us know if this is incorrect, or if it changes in the future.

## **Existing Permits and Permit Type**

There is an existing BCDC permit for this site, No. M1972.030.01. Based on the information provided so far, your project is likely to qualify for a non-material amendment to this permit.

## **Commission Law and Bay Plan Policies Relevant to the Project**

### *Bay Fill*

As stated previously, our understanding is that no work will occur in the Bay jurisdiction, therefore Commission laws and policies related to Bay Fill will not apply, unless the project changes to include work in the Bay. The project should include best management practices, such as erosion and sedimentation controls, spill prevention and clean up procedures, and delineation and protection of adjacent tidal wetland areas, to ensure that no impacts occur to the Bay during construction.

### *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.

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.

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

**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 public access at the site; expected project impacts on that public access and how these impacts would be mitigated; any proposed new public access areas and amenities, such as interpretive signage or other site furnishings; and how these project components have been designed to conform with our laws and policies.

**Existing Public Access.** Please note that there is an existing BCDC-required public access area at or adjacent to the site (BCDC Permit No. M2008.013.00, issued to the Port of Oakland, East Bay Regional Parks District, and the City of San Leandro), including a public trail (designated Bay Trail) along the northwest edge of the proposed freshwater treatment wetland area. The project will need to be designed to avoid or minimize impacts to this public access, and any proposed public access enhancements should be compatible with this access.

**Wildlife Impacts.** Please describe how public access areas and amenities would be designed to avoid or minimize impacts to sensitive wildlife. For example, if interpretive signage is installed, it should be designed to minimize perching opportunities for avian predators of sensitive species that may be found in the area. Please also address whether habitat protection fencing may be necessary between the Bay Trail and the proposed treatment wetland. Any such fencing, if proposed, should be designed to minimize impacts on views to the Bay.

**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.

Hayes Morehouse  
City of San Leandro Water Pollution Control Plant  
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*Relevant policies related to Climate Change and Sea Level Rise*

The Bay Plan Public Access policies state, 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,” and that “Any public access provided as a condition of development should either be required to remain viable in the event of future sea level rise or flooding, or equivalent access consistent with the project should be provided nearby.”


When you are able, please provide analysis of how any proposed public access areas or amenities would be designed to be resilient or adaptable to sea level rise throughout the expected life of the project.

In addition, Bay Plan Shoreline Protection Policy No. 8 states that “All contamination remediation projects in the Bay or along the Bay shoreline 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 project involves capping historical contaminants at the site. Please analyze whether future groundwater rise linked to sea level rise may pose a risk of remobilizing capped contaminants, and describe how this risk would be mitigated in the project design.

Thank you for providing the staff with an opportunity to review the Draft IS/MND for the *San Leandro Water Pollution Control Plant Treatment Wetland and Shoreline Resilience Project*. We recognize the importance and scope of this project and hope these comments aid you in finalizing the environmental document and your BCDC permit application. 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](mailto:schuyler.olsson@bcdc.ca.gov).

Sincerely,

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SCHUYLER OLSSON

Senior Environmental Scientist (Specialist)

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