SAN FRANCISQUITO CREEK
JOINT POWERS AUTHORITY

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SAFER BAY NOP COMMENT LOG

	Commenter	Date Received	COMMENTS
1	Native American Heritage Commission	April 27, 2022	On file at https://ceqanet.opr.ca.gov/2022040504
2	South Bay Saltponds Restoration Authority (SBSPRA)	June 2, 2022	
3	San Francisco Public Utilities Commission	June 6, 2022	
4	City of Palo Alto	June 6, 2022	
5	City of East Palo Alto	June 9, 2022	
6	California Department of Fish and Wildlife	June 10, 2022	On file at https://ceqanet.opr.ca.gov/2022040504
7	Ravenswood Shores Business District, LLC	June 13, 2022	Added two comments later that day, compiled together
8	Caltrans	June 14, 2022	On file at https://ceqanet.opr.ca.gov/2022040504
9	State Lands Commission	June 15, 2022	On file at https://ceqanet.opr.ca.gov/2022040504
10	Sierra Club	June 15, 2022	Attached RSBD Specific Plan Update NOP comments and SBSPRA comments
11	Harvest Properties	June 15, 2022	
12	Midpeninsula Open Space District	June 15, 2022	
13	BCDC	June 15, 2022	On file at https://ceqanet.opr.ca.gov/2022040504
14	Citizens to Complete the Refuge	June 15, 2022	
15	SF Water Board	June 15, 2022	

NOTES:
The NOP was published on 4/25/2022 (SCH Number 2022040504) and the comment period ended on 6/15/2022.

Comments are compiled in the order received.

Verbal comments and those submitted via Q&A at the virtual Public Scoping Meeting held on May 19, 2022 are provided after the above comments.

NATIVE AMERICAN HERITAGE COMMISSION

NAHC HEADQUARTERS
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NAHC.ca.gov

April 27, 2022

Tess Byler, CHG
San Francisquito Creek Joint Powers Authority
2100 Geng Road, Suite 210
Palo Alto, CA 94303

Re: 2022040504, Strategy to Advance Flood Protection, Ecosystems and Recreation along San Francisco (SAFER) Bay Project, San Mateo County

Dear Ms. Byler:

The Native American Heritage Commission (NAHC) has received the Notice of Preparation (NOP), Draft Environmental Impact Report (DEIR) or Early Consultation for the project referenced above. The California Environmental Quality Act (CEQA) (Pub. Resources Code §21000 et seq.), specifically Public Resources Code §21084.1, states that a project that may cause a substantial adverse change in the significance of a historical resource, is a project that may have a significant effect on the environment. (Pub. Resources Code § 21084.1; Cal. Code Regs., tit.14, §15064.5 (b) (CEQA Guidelines §15064.5 (b)). If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, an Environmental Impact Report (EIR) shall be prepared. (Pub. Resources Code §21080 (d); Cal. Code Regs., tit. 14, § 5064 subd.(a)(1) (CEQA Guidelines §15064 (a)(1)). In order to determine whether a project will cause a substantial adverse change in the significance of a historical resource, a lead agency will need to determine whether there are historical resources within the area of potential effect (APE).

CEQA was amended significantly in 2014. Assembly Bill 52 (Gatto, Chapter 532, Statutes of 2014) (AB 52) amended CEQA to create a separate category of cultural resources, "tribal cultural resources" (Pub. Resources Code §21074) and provides that a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment. (Pub. Resources Code §21084.2). Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource. (Pub. Resources Code §21084.3 (a)). **AB 52 applies to any project for which a notice of preparation, a notice of negative declaration, or a mitigated negative declaration is filed on or after July 1, 2015.** If your project involves the adoption of or amendment to a general plan or a specific plan, or the designation or proposed designation of open space, on or after March 1, 2005, it may also be subject to Senate Bill 18 (Burton, Chapter 905, Statutes of 2004) (SB 18). **Both SB 18 and AB 52 have tribal consultation requirements**. If your project is also subject to the federal National Environmental Policy Act (42 U.S.C. § 4321 et seq.) (NEPA), the tribal consultation requirements of Section 106 of the National Historic Preservation Act of 1966 (154 U.S.C. 300101, 36 C.F.R. §800 et seq.) may also apply.

The NAHC recommends consultation with California Native American tribes that are traditionally and culturally affiliated with the geographic area of your proposed project as early as possible in order to avoid inadvertent discoveries of Native American human remains and best protect tribal cultural resources. Below is a brief summary of portions of AB 52 and SB 18 as well as the NAHC's recommendations for conducting cultural resources assessments.

Consult your legal counsel about compliance with AB 52 and SB 18 as well as compliance with any other applicable laws.

AB 52

AB 52 has added to CEQA the additional requirements listed below, along with many other requirements:

1. Fourteen Day Period to Provide Notice of Completion of an Application/Decision to Undertake a Project: Within fourteen (14) days of determining that an application for a project is complete or of a decision by a public agency to undertake a project, a lead agency shall provide formal notification to a designated contact of, or tribal representative of, traditionally and culturally affiliated California Native American tribes that have requested notice, to be accomplished by at least one written notice that includes:

- **a.** A brief description of the project.
- **b.** The lead agency contact information.
- **c.** Notification that the California Native American tribe has 30 days to request consultation. (Pub. Resources Code §21080.3.1 (d)).
- **d.** A "California Native American tribe" is defined as a Native American tribe located in California that is on the contact list maintained by the NAHC for the purposes of Chapter 905 of Statutes of 2004 (SB 18). (Pub. Resources Code §21073).

2. Begin Consultation Within 30 Days of Receiving a Tribe's Request for Consultation and Before Releasing a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report: A lead agency shall begin the consultation process within 30 days of receiving a request for consultation from a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project. (Pub. Resources Code §21080.3.1, subds. (d) and (e)) and prior to the release of a negative declaration, mitigated negative declaration or Environmental Impact Report. (Pub. Resources Code §21080.3.1(b)).

- **a.** For purposes of AB 52, "consultation shall have the same meaning as provided in Gov. Code §65352.4 (SB 18). (Pub. Resources Code §21080.3.1 (b)).

3. Mandatory Topics of Consultation If Requested by a Tribe: The following topics of consultation, if a tribe requests to discuss them, are mandatory topics of consultation:

- **a.** Alternatives to the project.
- **b.** Recommended mitigation measures.
- **c.** Significant effects. (Pub. Resources Code §21080.3.2 (a)).

4. Discretionary Topics of Consultation: The following topics are discretionary topics of consultation:

- **a.** Type of environmental review necessary.
- **b.** Significance of the tribal cultural resources.
- **c.** Significance of the project's impacts on tribal cultural resources.
- **d.** If necessary, project alternatives or appropriate measures for preservation or mitigation that the tribe may recommend to the lead agency. (Pub. Resources Code §21080.3.2 (a)).

5. Confidentiality of Information Submitted by a Tribe During the Environmental Review Process: With some exceptions, any information, including but not limited to, the location, description, and use of tribal cultural resources submitted by a California Native American tribe during the environmental review process shall not be included in the environmental document or otherwise disclosed by the lead agency or any other public agency to the public, consistent with Government Code §6254 (r) and §6254.10. Any information submitted by a California Native American tribe during the consultation or environmental review process shall be published in a confidential appendix to the environmental document unless the tribe that provided the information consents, in writing, to the disclosure of some or all of the information to the public. (Pub. Resources Code §21082.3 (c)(1)).

6. Discussion of Impacts to Tribal Cultural Resources in the Environmental Document: If a project may have a significant impact on a tribal cultural resource, the lead agency's environmental document shall discuss both of the following:

- **a.** Whether the proposed project has a significant impact on an identified tribal cultural resource.
- **b.** Whether feasible alternatives or mitigation measures, including those measures that may be agreed to pursuant to Public Resources Code §21082.3, subdivision (a), avoid or substantially lessen the impact on the identified tribal cultural resource. (Pub. Resources Code §21082.3 (b)).

7. Conclusion of Consultation: Consultation with a tribe shall be considered concluded when either of the following occurs:

a. The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource; or

b. A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached. (Pub. Resources Code §21080.3.2 (b)).

8. Recommending Mitigation Measures Agreed Upon in Consultation in the Environmental Document: Any mitigation measures agreed upon in the consultation conducted pursuant to Public Resources Code §21080.3.2 shall be recommended for inclusion in the environmental document and in an adopted mitigation monitoring and reporting program, if determined to avoid or lessen the impact pursuant to Public Resources Code §21082.3, subdivision (b), paragraph 2, and shall be fully enforceable. (Pub. Resources Code §21082.3 (a)).

9. Required Consideration of Feasible Mitigation: If mitigation measures recommended by the staff of the lead agency as a result of the consultation process are not included in the environmental document or if there are no agreed upon mitigation measures at the conclusion of consultation, or if consultation does not occur, and if substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource, the lead agency shall consider feasible mitigation pursuant to Public Resources Code §21084.3 (b). (Pub. Resources Code §21082.3 (e)).

10. Examples of Mitigation Measures That, If Feasible, May Be Considered to Avoid or Minimize Significant Adverse Impacts to Tribal Cultural Resources:

a. Avoidance and preservation of the resources in place, including, but not limited to:

i. Planning and construction to avoid the resources and protect the cultural and natural context.

ii. Planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.

b. Treating the resource with culturally appropriate dignity, taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:

i. Protecting the cultural character and integrity of the resource.

ii. Protecting the traditional use of the resource.

iii. Protecting the confidentiality of the resource.

c. Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.

d. Protecting the resource. (Pub. Resource Code §21084.3 (b)).

e. Please note that a federally recognized California Native American tribe or a non-federally recognized California Native American tribe that is on the contact list maintained by the NAHC to protect a California prehistoric, archaeological, cultural, spiritual, or ceremonial place may acquire and hold conservation easements if the conservation easement is voluntarily conveyed. (Civ. Code §815.3 (c)).

f. Please note that it is the policy of the state that Native American remains and associated grave artifacts shall be repatriated. (Pub. Resources Code §5097.991).

11. Prerequisites for Certifying an Environmental Impact Report or Adopting a Mitigated Negative Declaration or Negative Declaration with a Significant Impact on an Identified Tribal Cultural Resource: An Environmental Impact Report may not be certified, nor may a mitigated negative declaration or a negative declaration be adopted unless one of the following occurs:

a. The consultation process between the tribes and the lead agency has occurred as provided in Public Resources Code §21080.3.1 and §21080.3.2 and concluded pursuant to Public Resources Code §21080.3.2.

b. The tribe that requested consultation failed to provide comments to the lead agency or otherwise failed to engage in the consultation process.

c. The lead agency provided notice of the project to the tribe in compliance with Public Resources Code §21080.3.1 (d) and the tribe failed to request consultation within 30 days. (Pub. Resources Code §21082.3 (d)).

The NAHC's PowerPoint presentation titled, "Tribal Consultation Under AB 52: Requirements and Best Practices" may be found online at: http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation_CalEPAPDF.pdf

SB 18

SB 18 applies to local governments and requires local governments to contact, provide notice to, refer plans to, and consult with tribes prior to the adoption or amendment of a general plan or a specific plan, or the designation of open space. (Gov. Code §65352.3). Local governments should consult the Governor's Office of Planning and Research's "Tribal Consultation Guidelines," which can be found online at: https://www.opr.ca.gov/docs/09_14_05_Updated_Guidelines_922.pdf.

Some of SB 18's provisions include:

1. Tribal Consultation: If a local government considers a proposal to adopt or amend a general plan or a specific plan, or to designate open space it is required to contact the appropriate tribes identified by the NAHC by requesting a "Tribal Consultation List." If a tribe, once contacted, requests consultation the local government must consult with the tribe on the plan proposal. **A tribe has 90 days from the date of receipt of notification to request consultation unless a shorter timeframe has been agreed to by the tribe.** (Gov. Code §65352.3 (a)(2)).

2. No Statutory Time Limit on SB 18 Tribal Consultation. There is no statutory time limit on SB 18 tribal consultation.

3. Confidentiality: Consistent with the guidelines developed and adopted by the Office of Planning and Research pursuant to Gov. Code §65040.2, the city or county shall protect the confidentiality of the information concerning the specific identity, location, character, and use of places, features and objects described in Public Resources Code §5097.9 and §5097.993 that are within the city's or county's jurisdiction. (Gov. Code §65352.3 (b)).

4. Conclusion of SB 18 Tribal Consultation: Consultation should be concluded at the point in which:

- **a.** The parties to the consultation come to a mutual agreement concerning the appropriate measures for preservation or mitigation; or
- **b.** Either the local government or the tribe, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached concerning the appropriate measures of preservation or mitigation. (Tribal Consultation Guidelines, Governor's Office of Planning and Research (2005) at p. 18).

Agencies should be aware that neither AB 52 nor SB 18 precludes agencies from initiating tribal consultation with tribes that are traditionally and culturally affiliated with their jurisdictions before the timeframes provided in AB 52 and SB 18. For that reason, we urge you to continue to request Native American Tribal Contact Lists and "Sacred Lands File" searches from the NAHC. The request forms can be found online at: http://nahc.ca.gov/resources/forms/.

NAHC Recommendations for Cultural Resources Assessments

To adequately assess the existence and significance of tribal cultural resources and plan for avoidance, preservation in place, or barring both, mitigation of project-related impacts to tribal cultural resources, the NAHC recommends the following actions:

1. Contact the appropriate regional California Historical Research Information System (CHRIS) Center (http://ohp.parks.ca.gov/?page_id=1068) for an archaeological records search. The records search will determine:

- **a.** If part or all of the APE has been previously surveyed for cultural resources.
- **b.** If any known cultural resources have already been recorded on or adjacent to the APE.
- **c.** If the probability is low, moderate, or high that cultural resources are located in the APE.
- **d.** If a survey is required to determine whether previously unrecorded cultural resources are present.

2. If an archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey.

- **a.** The final report containing site forms, site significance, and mitigation measures should be submitted immediately to the planning department. All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum and not be made available for public disclosure.

b. The final written report should be submitted within 3 months after work has been completed to the appropriate regional CHRIS center.

3. Contact the NAHC for:

a. A Sacred Lands File search. Remember that tribes do not always record their sacred sites in the Sacred Lands File, nor are they required to do so. A Sacred Lands File search is not a substitute for consultation with tribes that are traditionally and culturally affiliated with the geographic area of the project's APE.

b. A Native American Tribal Consultation List of appropriate tribes for consultation concerning the project site and to assist in planning for avoidance, preservation in place, or, failing both, mitigation measures.

4. Remember that the lack of surface evidence of archaeological resources (including tribal cultural resources) does not preclude their subsurface existence.

a. Lead agencies should include in their mitigation and monitoring reporting program plan provisions for the identification and evaluation of inadvertently discovered archaeological resources per Cal. Code Regs., tit. 14, §15064.5(f) (CEQA Guidelines §15064.5(f)). In areas of identified archaeological sensitivity, a certified archaeologist and a culturally affiliated Native American with knowledge of cultural resources should monitor all ground-disturbing activities.

b. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the disposition of recovered cultural items that are not burial associated in consultation with culturally affiliated Native Americans.

c. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the treatment and disposition of inadvertently discovered Native American human remains. Health and Safety Code §7050.5, Public Resources Code §5097.98, and Cal. Code Regs., tit. 14, §15064.5, subdivisions (d) and (e) (CEQA Guidelines §15064.5, subds. (d) and (e)) address the processes to be followed in the event of an inadvertent discovery of any Native American human remains and associated grave goods in a location other than a dedicated cemetery.

If you have any questions or need additional information, please contact me at my email address: Cody.Campagne@nahc.ca.gov.

Sincerely,

Cody Campagne

Cody Campagne
Cultural Resources Analyst

cc: State Clearinghouse

South Bay Salt Pond Restoration Project

Restoring the Wild Heart of the South Bay

June 3, 2022

Tess Byler, Senior Project Manager
San Francisquito Creek Joint Powers Authority
2100 Geng Road
Palo Alto, CA, 94303
tbyler@sfcjpa.org

Dear Ms. Byler and colleagues,

Thank you for the opportunity to attend the scoping meeting and provide scoping comments on the Notice of Preparation for the San Francisquito Creek Joint Powers Authority's (SFCJPA) Strategy to Advance Flood Protection, Ecosystems and Recreation along San Francisco (SAFER) Bay Project.

As we have discussed in multiple meetings, the collaborating entities behind the South Bay Salt Pond Restoration Project (SBSPRP) – most notably the U.S. Fish and Wildlife Service's (USFWS) Don Edwards San Francisco Bay National Wildlife Refuge (Refuge), which is the landowner of the Ravenswood pond complex portion of the SBSPRP – are supportive of the SFCJPA's overall mission and goals for the SAFER Bay Project, portions of which would take place on Refuge lands.

However, there are several points and details in the text and figure in the Notice of Preparation – and that were discussed in the May 19 Scoping Meeting – that we wanted to be sure were clarified and addressed in the Draft Environmental Impact Report (EIR). Our comments on those matters are listed below; please include these considerations in the analysis of the feasibility and environmental impacts of different alternatives in the EIR.

Please note that none of these points are intended as opposition to the overall SAFER Bay Project. Rather, they are intended to inform and advance the next steps in project planning, the development and screening of project alternatives, the CEQA and NEPA processes, and the various rights-of-way and easement agreements that will need to be developed between the Refuge and the SFCJPA as those parts of the project move toward implementation.

<u>Overarching Comment</u>

Any portion of the SAFER Bay Project that occurs on Refuge lands must comport with federal law and policy about the mission of the National Wildlife Refuge System. Specifically, that mission is to "administer a national network of lands and waters for the conservation, management and, where appropriate, restoration of the fish, wildlife and plant resources and their habitats within the United States for the benefit of present and future generations of Americans" (National Wildlife Refuge System Administration Act of 1966, as amended [16 U.S.C. 668dd-668ee]).

The Don Edwards San Francisco Bay National Wildlife Refuge was established by Congress on June 30, 1972, for the following purposes:

- "...for the preservation and enhancement of highly significant wildlife habitat...for the protection of migratory waterfowl and other wildlife, including species known to be threatened with extinction, and to provide an opportunity for wildlife-oriented recreation and nature study..." (86 Stat. 399, dated June 30, 1972).
- "...particular value in carrying out the national migratory bird management program" 16 U.S.C. 667b (An Act Authorizing the Transfer of Certain Real Property for Wildlife, or other purposes).
- "...to conserve (A) fish or wildlife which are listed as endangered species or threatened species....or (B) plants ..." 16 U.S.C. 1534 (Endangered Species Act of 1973).
- "...for the development, advancement, management, conservation, and protection of fish and wildlife resources ..." 16 U.S.C. 742f(a)(4) "...for the benefit of the United States Fish and Wildlife Service, in performing its activities and services. Such acceptance may be subject to the terms of any restrictive or affirmative covenant, or condition of servitude ..." 16 U.S.C. 742f (b)(1) (Fish and Wildlife Act of 1956).

The priority public uses of a National Wildlife Refuge include wildlife observation, interpretation, photography, environmental education, hunting and fishing. Any recreational activities considered on engineered levees in or through the Refuge should be appropriate, wildlife-compatible uses such as pedestrian and bicycle trails for public wildlife viewing and interpretation, where appropriate.

Specific Comments

1. Any public uses, structures, and/or facilities in the Refuge and associated with the SAFER Bay Project would need to be evaluated and approved under a Compatibility Determination supported by a NEPA-compliant project. We realize that the SAFER Bay Project's NEPA coverage will be provided in a subsequent permitting process, and so the timing of these steps is important to consider now.
2. As part of ensuring compatibility with Refuge purposes, the following points should be considered in the Draft EIR and subsequent NEPA/permitting document:
    - Construction-related short-term impacts are a major source of potential adverse impacts to the Refuge and its surroundings. The Draft EIR should describe best management practices, avoidance and minimization measures, and mitigation measures that can be taken to reduce these impacts. Construction activities would need to be planned and timed to cause the least disturbance to Refuge operations, wildlife and habitats.
    - The anticipated impacts of each alternative under consideration should be listed in tables and quantified wherever possible.
    - The Draft EIR should contain and identify a Preferred Alternative that is appropriate to implement on Refuge lands.
3. Any engineered levee or other feature on Refuge lands would need a Right-of-Way permit issued by the USFWS.
4. One of the points of discussion at the scoping meeting included use of Refuge lands for the construction of a "loop road" or other built feature for establishing a roadway for private vehicle use through or within the Refuge. While it may be acceptable to build a levee through part of the Refuge to manage flood waters or establish separation between different types of wildlife habitats, a levee-top roadway intended for use as a thoroughfare for private vehicles is not a compatible or appropriate use of the Refuge's congressionally mandated purpose or the mission of the National Wildlife Refuge System. As discussed in several meetings, alternatives that include establishing a transportation corridor for private vehicles will not be appropriate or compatible with the purpose of the National Wildlife Refuge.

5. Figure 1 in the NOP as well as the discussion in the text and in the scoping meeting consistently describe Ravenswood Ponds R1 and R2 as being restored to tidal marsh. That is certainly a possibility, but it is only one of the possible futures for these two ponds under the SBSPRP's multi-phase implementation plan and the guiding documents and programmatic permits for our project. Under our Adaptive Management Plan, we have to weigh the needs of a range of different endangered, threatened, and other special-status species as each phase of the project is implemented and strike a balance between tidal marsh restoration and various types of managed pond enhancements that will bring benefits and impacts to these different species. We have not yet reached a point where we can evaluate what to do with Ponds R1 and R2. They may indeed be restored to tidal marsh, but they may instead be retained and enhanced as ponds for other species. We strongly encourage the SAFER Bay Project team to include every combination of these different habitat outcomes for these ponds in the EIR, so that the alternative selected and advanced is consistent with the decisions and needs of the SBSPRP and the Refuge.
6. Figure 1 includes a habitat transition zone in Pond R2. We are not necessarily opposed to including this feature at this location, but it may not be necessary or desirable if that pond is kept as a managed pond. And even in the tidal marsh restoration scenario, it may not provide much additional habitat value in that location. We encourage you to consider alternatives both with and without that feature.
7. The SBSPRP's Phase 2 construction is underway at Ravenswood Ponds R3, R4, R, and S5, near the western end of the SAFER Bay Project. If construction is completed in 2022 as planned (or even shortly thereafter), the three different habitat types, flood management systems, and public access features will be in place and operational early in 2023. The landscape will be radically different than it is in the existing aerial photos and maps. It is important that the EIR not make any inferences or conduct any description of the existing conditions based on images or data that exist of the current configuration. We are happy to work with your project team to review and clarify what will soon be the existing condition as these locations.

Again, my colleagues and I have intent and motivation to participate in and support this project's development, environmental clearance, and permitting. We look forward to the next steps in our collaboration.

Please feel free to contact me at dave.halsing@scc.ca.gov or 650-814-0588.
Most sincerely,

Dave Halsing, Executive Project Manager
South Bay Salt Pond Restoration Project
California State Coastal Conservancy
1515 Clay St., 10th Floor
Oakland, CA, 94612

NOP - Strategy to Advance Flood Protection, Ecosystems and Recreation along San Francisco (SAFER) Bay Project

Wilson, Joanne <jwilson@sfwater.org>

Mon 6/6/2022 4:36 PM

To: Tess Byler <tbyler@sfcjpa.org>

Cc: Ramirez, Tim <TRamirez@sfwater.org>;Natesan, Ellen <ENatesan@sfwater.org>;Rando, Casey <crando@sfwater.org>;Russell, Rosanna S <RSRussell@sfwater.org>;Cheung, Angela <ACheung@sfwater.org>;Wayne, Lisa B <LBWayne@sfwater.org>;Read, Emily <ERead@sfwater.org>;Herman, Jane <jherman@sfwater.org>;Li, Annie (PUC) <ali@sfwater.org>;Feng, Stacie <SFeng@sfwater.org>;Gabriel, Ryan L <RGabriel@sfwater.org>;Rodgers, Heather <HeRodgers@sfwater.org>;Wong, Christopher J <CJWong@sfwater.org>;Mendoza, Jonathan S <JSMendoza@sfwater.org>;DeGraca, Andrew <adegraca@sfwater.org>

Hello Ms. Byler: Thank you for this opportunity to provide comments on behalf of the San Francisco Public Utilities Commission (SFPUC) on the Notice of Preparation (NOP) of an Environmental Impact Report (EIR) for the above-referenced project pursuant to the California Environmental Quality Act (CEQA).

SFPUC's Ravenswood site is located in the City of Menlo Park and the City of East Palo Alto, south of the Dumbarton Bridge and along the San Francisco Bay with an entrance/egress on University Avenue. This site is critical for water operations and a vital part of a regional water system that supplies water to 2.5 million water customers in the Bay Area. The City and County of San Francisco, through its SFPUC, has owned the land in the project area since 1930. The SFPUC facilities in, under and on the land include the Bay Tunnel, a valve house, large water transmission pipelines, appurtenances, and other facilities including a water quality building and materials and equipment storage on site. Access to pipelines, valve structures and the tunnel portal at the SFPUC's Ravenswood site must be maintained at all times. National security protocols limit third-party access to the lands on which the SFPUC has its utility operations. Assuming that the SFPUC may grant access to its secured facilities for the project, the project proponent should understand that any use of the SFPUC lands will first require a written agreement and payment of a use fee prior to the commencement of the project on SFPUC lands.

The SFPUC has policies that limit third-party uses and improvements on San Francisco property due to the presence of high-pressure, subsurface water transmission lines and appurtenances and other infrastructure located above-grade. Please see the attached
Interim Water Pipeline ROW Use Policy and Integrated Vegetation Management Policy for more information about land use restrictions on the ROW. A written agreement for a secondary use on SFPUC property may occur only if the SFPUC determines that the
secondary use does not in any way interfere with, endanger, or damage existing or future SFPUC operations, security, or facilities.

The SFPUC prohibits any use on its ROW property that:
1. Cannot be removed promptly or otherwise would conflict with the SFPUC's ability to construct, maintain, operate, or conduct emergency repairs of its facilities.

2. Would conflict with SFPUC legal obligations related to SFPUC parcels subject to easements or other agreements held by adjoining landowners or third parties. Further research by the SFPUC's Real Estate Services is needed, but it is possible that certain SFPUC parcels may not be available for the proposed use.

3. Would conflict with the resolution of unauthorized third-party encroachments that currently exist on some SFPUC ROW parcels.

4. Would create an unreasonable burden for the SFPUC (or its ratepayers) in the use of its property for utility purposes. The SFPUC reasonably anticipates that its property will be available for future utility infrastructure and capital projects. Revocable licenses and leases issued by the SFPUC contain standard language requiring any lessee or licensee of SFPUC lands to mitigate the effects for the disruption of its land uses, including recreational use, on SFPUC lands, even if the SFPUC is causing the disruption of
these land uses. This includes required mitigation under the California Environmental Quality Act (CEQA).

5. Is otherwise inconsistent with SFPUC plans and policies (see attached).

This list is not exhaustive. The SFPUC retains the right to disallow any use that, at the SFPUC's sole discretion, may interfere with, endanger or damage existing or future SFPUC operations, security, or facilities.

In addition to the above comments, please provide the following specific information in the draft EIR:

1. Please identify the SFPUC's Ravenswood site in Figure 1

2. The project boundaries are unclear; please revise the project site map.

3. The location of proposed project improvements, such as levees, is unclear. Please revise the project site map so that we can understand exactly what improvements and/or alterations are proposed on SFPUC property and how they might affect SFPUC infrastructure and operations..

4. In the list of "Permits and Approvals", please add the SFPUC (on behalf of the City and County of San Francisco). Any improvements proposed on SFPUC property would require written authorization (a discretionary action) and the SFPUC must be identified as a responsible agency in the EIR. If the proposed project were to go forward on SFPUC property, the SFPUC would be required to draft responsible agency findings pursuant to CEQA.

5. We are researching whether the marshy area at the SFPUC's Ravenswood property was a mitigation site for an SFPUC capital improvement project under the Water System Improvement Project (WSIP). We will verify this information, and if there is an existing SFPUC mitigation site, provide comments on the draft EIR on the implications of this for the SAFER project.

SFPUC Project Review Process

Proposed projects and other activities on any San Francisco property must undergo the Project Review Process if the project will include construction; digging or earth moving; clearing; installation; the use of hazardous materials; other disturbance to watershed
and ROW resources; or the issuance of new or revised leases, licenses and permits. This review is done by the SFPUC's Project Review Committee (Committee).

The Committee is a multidisciplinary team with expertise in natural resources management, environmental regulatory compliance, engineering, water quality and real estate. Projects and activities are vetted by the Committee for consistency with SFPUC plans and policies.

In reviewing a proposed project, the Committee may conclude that modifications or avoidance and minimization measures are necessary. Large and/or complex projects may require several project review sessions to review the project at significant planning and
design stages.

To initiate the Project Review process, please download and fill out a Project Review application at

Project Review and Land Use - Bay Area | SFPUC. Please submit the completed application to projectreview@sfwater.org and it will be scheduled for the next
available Project Review meeting.

Thank you for considering these comments. If you have any questions or require more information, please contact me.

Sincerely,

Joanne Wilson

Joanne Wilson
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Regional Water System
Services of the San Francisco Public Utilities Commission

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SFPUC Interim Water Pipeline Right of Way Use Policy for San Mateo, Santa Clara, and Alameda Counties

Approved January 13, 2015

by

SFPUC Resolution No. 15-0014

as an amendment to the SFPUC Real Estate Guidelines

SFPUC Water Pipeline Right of Way Use Policy for San Mateo, Santa Clara, and Alameda Counties

As part of its utility system, the San Francisco Public Utilities Commission (SFPUC) operates and maintains hundreds of miles of water pipelines. The SFPUC provides for public use on its water pipeline property or right of way (ROW) throughout Alameda, Santa Clara, and San Mateo counties consistent with our existing plans and policies. The following controls will help inform how and in which instances the ROW can serve the needs of third parties—including public agencies, private parties, nonprofit organizations, and developers—seeking to provide recreational and other use opportunities to local communities.

Primarily, SFPUC land is used to deliver high quality, efficient and reliable water, power, and sewer services in a manner that is inclusive of environmental and community interests, and that sustains the resources entrusted to our care. The SFPUC's utmost priority is maintaining the safety and security of the pipelines that run underneath the ROW.

Through our formal Project Review and Land Use Application and Project Review process, we may permit a secondary use on the ROW if it benefits the SFPUC, is consistent with our mission and policies, and does not in any way interfere with, endanger, or damage the SFPUC's current or future operations, security or facilities.[1] No secondary use of SFPUC land is permitted without the SFPUC's consent.

These controls rely on and reference several existing SFPUC policies, which should be read when noted in the document. Being mindful of these policies while planning a proposed use and submitting an application will ease the process for both the applicant and the SFPUC. These controls are subject to change over time and additional requirements and restrictions may apply depending on the project.

The SFPUC typically issues five-year revocable licenses for use of our property, with a form of rent and insurance required upon signing.[2]

Note: The project proponent is referred to as the "Applicant" until the license agreement is signed, at which point the project proponent is referred to as the "Licensee."

[1] SFPUC Guidelines for the Real Estate Services Division, Section 2.0.
[2] SFPUC Guidelines for the Real Estate Services Division, Section 3.3.

I. *Land Use, Structures, and Compliance with Law*

The following tenets govern the specifics of land use, structures, and accessibility for a project. Each proposal will still be subject to SFPUC approval on a case-by-case basis.

A. SFPUC Policies. The Applicant's proposed use must conform to policies approved by the SFPUC's Commission, such as the SFPUC's Land Use Framework (http://sfwater.org/index.aspx?page=586).

B. Americans with Disabilities Act Compliance. The Applicant must demonstrate that a Certified Access Specialist (CASp) has reviewed and approved its design and plans to confirm that they meet all applicable accessibility requirements.

C. Environmental Regulations. The SFPUC's issuance of a revocable license for use of the ROW is subject to compliance with the California Environmental Quality Act (CEQA). The Applicant is responsible for assessing the potential environmental impacts under CEQA of its proposed use of the ROW. The SFPUC must be named as a Responsible Agency on any CEQA document prepared for the License Area. In addition, the Applicant shall provide to SFPUC a copy of the approved CEQA document prepared by the Applicant, the certification date, and documentation of the formal approval and adoption of CEQA findings by the CEQA lead agency. The SFPUC will not issue a license for the use of the ROW until CEQA review and approval is complete.

D. Crossover and Other Reserved Rights. For a ROW parcel that bisects a third party's land, the Applicant's proposed use must not inhibit that party's ability to cross the ROW. The Applicant must demonstrate any adjoining owner with crossover or other reserved rights approves of the proposed recreational use and that the use does not impinge on any reserved rights.

E. Width. The License Area must span the entire width of the ROW.
   - *For example, the SFPUC will not allow a 10-foot wide trail license on a ROW parcel that is 60 feet wide.*

F. Structures. Structures on the ROW are generally prohibited. The Licensee shall not construct or place any structure or improvement in, on, under or about the entire License Area that requires excavation, bored footings or concrete pads that are greater than six inches deep.

   i. Structures such as benches and picnic tables that require shallow (four to six inches deep) cement pads or footings are generally permitted on the ROW. No such structure may be placed directly on top of a pipeline or within 20 feet of the edge of a pipeline.

   ii. The SFPUC will determine the permitted weight of structures on a case-by-case basis.

- *When the SFPUC performs maintenance on its pipelines, structures of significant weight and/or those that require footings deeper than six inches are very difficult and time-consuming to move and can pose a safety hazard to the pipelines. The longer it takes the SFPUC to reach the pipeline in an emergency, the more damage that can occur.*

G. Paving Materials. Permitted trails or walkways should be paved with materials that both reduce erosion and stormwater runoff (e.g., permeable pavers).

H. License Area Boundary Marking. The License Area's boundaries should be clearly marked by landscaping or fencing, with the aim to prevent encroachments.

I. Fences and Gates. Any fence along the ROW boundary must be of chain-link or wooden construction with viewing access to the ROW. The fence must include a gate that allows SFPUC access to the ROW.[3] Any gate must be of chain-link construction and at least 12 feet wide with a minimum 6-foot vertical clearance.

II. *Types of Recreational Use*

Based on our past experience and research, the SFPUC will allow simple parks without play structures, community gardens and limited trails.

A. Fulfilling an Open Space Requirement. An applicant may not use the ROW to fulfill a development's open space, setback, emergency access or other requirements.[4] In cases where a public agency has received consideration for use of SFPUC land from a third party, such as a developer, the SFPUC may allow such recreational use if the public agency applicant pays full Fair Market Rent.

B. Trail Segments. At this time, the SFPUC will consider trail proposals when a multi-jurisdictional entity presents a plan to incorporate specific ROW parcels into a fully connected trail. Licensed trail segments next to unlicensed parcels may create a trail corridor that poses liability to the SFPUC. The SFPUC will only consider trail proposals where the trail would not continue onto, or encourage entry onto, another ROW parcel without a trail and the trail otherwise meet all SFPUC license requirements.

III. *Utilities*

A. Costs. The Licensee is responsible for all costs associated with use of utilities on the License Area.

[3] SFPUC Right of Way Requirements.
[4] SFPUC Guidelines for the Real Estate Services Division, Section 2.0.

B. Placement. No utilities may be installed on the ROW running parallel to the SFPUC's pipelines, above or below grade.[5] With SFPUC approval, utilities may run perpendicular to the pipelines.

C. Lights. The Licensee shall not install any light fixtures on the ROW that require electrical conduits running parallel to the pipelines. With SFPUC approval, conduits may run perpendicular to and/or across the pipelines.

- Any lighting shall have shielding to prevent spill over onto adjacent properties.

D. Electricity. Licensees shall purchase all electricity from the SFPUC at the SFPUC's prevailing rates for comparable types of electrical load, so long as such electricity is reasonably available for the Licensee's needs.

IV. *Vegetation*

A. The Applicant shall refer to the SFPUC Integrated Vegetation Management Policy for the *minimum* requirements concerning types of vegetation and planting. (http://www.sfwater.org/index.aspx?page=431.) The Licensee is responsible for all vegetation maintenance and removal.

B. The Applicant shall submit a Planting Plan as part of its application.

(Community garden applicants should refer to Section VII.C for separate instructions.)

i. The Planting Plan should include a layout of vegetation placement (grouped by hydrozone) and sources of irrigation, as well as a list of intended types of vegetation. The SFPUC will provide an area drawing including pipelines and facilities upon request.

ii. The Applicant shall also identify the nursery(ies) supplying plant stock and provide evidence that each nursery supplier uses techniques to reduce the risk of plant pathogens, such as Phytophthora ramorum.

V. *Measures to Promote Water Efficiency*[6]

A. The Licensee shall maintain landscaping to ensure water use efficiency.

B. The Licensee shall choose and arrange plants in a manner best suited to the site's climate, soil, sun exposure, wildfire susceptibility and other factors. Plants with similar water needs must be grouped within an area controlled by a single irrigation valve

[5] SFPUC Land Engineering Requirements.
[6] SFPUC Rules and Regulations Governing Water Service to Customers, Section F.

C. Turf is not allowed on slopes greater than 25 percent.

D. The SFPUC encourages the use of local native plant species in order to reduce water use and promote wildlife habitat.

E. Recycled Water. Irrigation systems shall use recycled water if recycled water meeting all public health codes and standards is available and will be available for the foreseeable future.

F. Irrigation Water Runoff Prevention. For landscaped areas of any size, water runoff leaving the landscaped area due to low head drainage, overspray, broken irrigation hardware, or other similar conditions where water flows onto adjacent property, walks, roadways, parking lots, structures, or non-irrigated areas, is prohibited.

VI. *Other Requirements*

A. Financial Stability. The SFPUC requires municipalities or other established organizations with a stable fiscal history as Licensees.

   i. Applicants must also demonstrate sufficient financial backing to pay rent, maintain the License Area, and fulfill other license obligations over the license term.

B. Smaller, community-based organizations without 501(c)(3) classifications must partner with a 501(c)(3) classified organization or any other entity through which it can secure funding for the License Area over the license term. Maintenance. The Licensee must maintain the License Area in a clean and sightly condition at its sole cost.[7] Maintenance includes, but is not limited to, regular weed abatement, mowing, and removing graffiti, dumping, and trash.

C. Mitigation and Restoration. The Licensee will be responsible, at its sole cost, for removing and replacing any recreational improvements in order to accommodate planned or emergency maintenance, repairs, replacements, or projects done by or on behalf of the SFPUC. If the Licensee refuses to remove its improvements, SFPUC will remove the improvements I at the Licensee's sole expense without any obligation to replace them.

D. Encroachments. The Licensee will be solely responsible for removing any encroachments on the License Area. An encroachment is any improvement on SFPUC property not approved by the SFPUC. Please read the SFPUC ROW Encroachment Policy for specific requirements. If the Licensee fails to remove encroachments, the SFPUC will remove them at Licensee's sole expense. The Licensee must regularly patrol the License Area to spot encroachments and remove them at an early stage.

[7] SFPUC Framework for Land Management and Use.

E. Point of Contact. The Licensee will identify a point of contact (name, position title, phone number, and address) to serve as the liaison between the Licensee, the local community, and the SFPUC regarding the License Agreement and the License Area. In the event that the point of contact changes, the Licensee shall immediately provide the SFPUC with the new contact information. Once the License Term commences, the point of contact shall inform local community members to direct any maintenance requests to him or her. In the event that local community members contact the SFPUC with such requests, the SFPUC will redirect any requests or complaints to the point of contact.

F. Community Outreach.

i. Following an initial intake conversation with the SFPUC, the Applicant shall provide a Community Outreach Plan for SFPUC approval. This Plan shall include the following information:

1. Identification of key stakeholders to whom the Applicant will contact and/or ask for input, along with their contact information;

2. A description of the Applicant's outreach strategy, tactics, and materials

3. A timeline of outreach (emails/letters mailing date, meetings, etc.); and

4. A description of how the Applicant will incorporate feedback into its proposal.

ii. The Applicant shall conduct outreach for the project at its sole cost and shall keep the SFPUC apprised of any issues arising during outreach.

iii. During outreach, the Applicant shall indicate that it in no way represents the SFPUC.

G. Signage. The SFPUC will provide, at Licensee's cost, a small sign featuring the SFPUC logo and text indicating SFPUC ownership of the License Area at each entrance. In addition, the Licensee will install, at its sole cost, an accompanying sign at each entrance to the License Area notifying visitors to contact the organization's point of contact and provide a current telephone number in case the visitors have any issues. The SFPUC must approve the design and placement of the Licensee's sign.

VII. *Community Gardens*

The following requirements also apply to community garden sites. As with all projects, the details of the operation of a particular community garden are approved on a case-by-case basis.

A. The Applicant must demonstrate stable funding. The Applicant must provide information about grants received, pending grants, and any ongoing foundational support.

B. The Applicant must have an established history and experience in managing urban agriculture or community gardening projects. Alternatively, the Applicant may demonstrate a formal partnership with an organization or agency with an established history and experience in managing urban agriculture or community gardening projects

C. During the Project Review process, the Applicant shall submit a Community Garden Planting Plan that depicts the proposed License Area with individual plot and planter box placements, landscaping, and a general list of crops that may be grown in the garden.

D. The Applicant shall designate a Garden Manager to oversee day-to-day needs and serve as a liaison between the SFPUC and garden plot holders. The Garden Manager may be distinct from the point of contact, see Section VI.E.

E. The Licensee must ensure that the Garden Manager informs plot holders about the potential for and responsibilities related to SFPUC repairs or emergency maintenance on the License Area. In such circumstances, the SFPUC is not liable for the removal and replacement of any features on the License Area or the costs associated with such removal and replacement.

F. The Licensee must conduct all gardening within planter boxes with attached bottoms that allow for easy removal without damaging the crops.

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Regional Water System
Services of the San Francisco Public Utilities Commission

AMENDMENT TO THE

RIGHT OF WAY INTEGRATED VEGETATION MANAGEMENT POLICY

Approved January 13, 2015

by

SFPUC Resolution No. 15-0014

12.000 RIGHT OF WAY INTEGRATED VEGETATION MANAGEMENT POLICY

12.001 General

The San Francisco Public Utilities Commission ("SFPUC") is responsible for the delivery of potable water and the collection and treatment of wastewater for some 800,000 customers within the City of San Francisco; it is also responsible for the delivery of potable water to 26 other water retailers with a customer base of 1.8 million. **The following policy is established to manage vegetation on the transmission, distribution and collection systems within the SFPUC Right of Way ("ROW") so that it does not pose a threat or hazard to the system's integrity and infrastructure or impede utility maintenance and operations.**

The existence of large woody vegetation[1], hereinafter referred to as vegetation, and water transmission lines within the ROW are not compatible and, in fact, are mutually exclusive uses of the same space. Roots can impact transmission pipelines by causing corrosion. The existence of trees and other vegetation directly adjacent to pipelines makes emergency and annual maintenance very difficult, hazardous, and expensive, and increases concerns for public safety. The risk of fire within the ROW is always a concern and the reduction of fire ladder fuels within these corridors is another reason to modify the vegetation mosaic. In addition to managing vegetation in a timely manner to prevent any disruption in utility service, the SFPUC also manages vegetation on its ROW to comply with local fire ordinances enacted to protect public safety.

One of the other objectives of this policy is to reduce and eliminate as much as practicable the use of herbicides on vegetation within the ROW and to implement integrated pest management (IPM).

12.002 Woody Vegetation Management

1.0 Vegetation of any size or species will not be allowed to grow within certain critical portions of the ROW, pumping stations or other facilities as determined by a SFPUC qualified professional, and generally in accordance with the following guidelines.

1.1 Emergency Removal

SFPUC Management reserves the right to remove any vegetation without prior public notification that has been assessed by a SFPUC qualified professional as an immediate threat to transmission lines or other utility infrastructure, human life and property due to acts of God, insects, disease, or natural mortality.

1.2 Priority Removal

Vegetation that is within 15 feet of the edge of any pipe will be removed and the vegetative debris will be cut into short lengths and chipped whenever possible. Chips will be spread upon the site where the vegetation was removed. Material that cannot be chipped will be hauled away to a proper disposal site.

[1] Woody vegetation is defined as all brush, tree and ornamental shrub species planted in (or naturally occurring in) the native soil having a woody stem that at maturity exceeds 3 inches in diameter.

If vegetation along the ROW is grouped in contiguous stands[2], or populations, a systematic and staggered removal of that vegetation will be undertaken to replicate a natural appearance. Initial removal[3] will be vegetation immediately above or within 15 feet of the pipeline edges; secondary vegetation[4] within 15 to 25 feet from pipelines will then be removed.

1.3 Standard Removal

Vegetation that is more than 25 feet from the edge of a pipeline and up to the boundary of the ROW will be assessed by a SFPUC qualified professional for its age and condition, fire risk, and potential impact to the pipelines. Based on this assessment, the vegetation will be removed or retained.

1.4 Removal Standards

Each Operating Division will develop its own set of guidelines or follow established requirements in accordance with local needs.

2.0 All stems of vegetation will be cut flush with the ground and where deemed necessary or appropriate, roots will be removed. All trees identified for removal will be clearly marked with paint and/or a numbered aluminum tag.

3.0 Sprouting species of vegetation will be treated with herbicides where practicable, adhering to provisions of Chapter 3 of the San Francisco Environment Code.

4.0 Erosion control measures, where needed, will be completed before the work crew or contractors leave the work site or before October 15 of the calendar year.

5.0 Department personnel will remove in a timely manner any and all material that has been cut for maintenance purposes within any stream channel.

6.0 All vegetation removal work and consultation on vegetation retention will be reviewed and supervised by a SFPUC qualified professional. All vegetation removal work and/or treatment will be made on a case-by-case basis by a SFPUC qualified professional.

7.0 Notification process for areas of significant resource impact that are beyond regular and ongoing maintenance:

7.1 County/City Notification – The individual Operating Division will have sent to the affected county/city a map showing the sections of the ROW which will be worked, a written description of the work to be done, the appropriate removal time for the work crews, and a contact person for more information. This should be done approximately 10 days prior to start of work. Each Operating Division will develop its own set of guidelines in accordance with local need.

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[2] A stand is defined as a community of trees possessing sufficient uniformity in composition, structure, age, arrangement, or condition to be distinguishable from adjacent forest communities to form a management unit.
[3] Initial removal is defined as the vegetation removed during the base year or first year of cutting.
[4] Secondary vegetation is defined as the vegetative growth during the second year following the base year for cutting.

7.2 Public Notification – The Operating Division will have notices posted at areas where the vegetation is to be removed with the same information as above also approximately 10 days prior to removal. Notices will also be sent to all property owners within 300 feet of the removal site. Posted notices will be 11- by 17-inches in size on colored paper and will be put up at each end of the project area and at crossover points through the ROW. Questions and complaints from the public will be handled through a designated contact person. Each Operating Division will develop its own set of guidelines in accordance with local needs.

12.003 Annual Grass and Weed Management

Annual grasses and weeds will be mowed, disked, sprayed or mulched along the ROW as appropriate to reduce vegetation and potential fire danger annually. This treatment should be completed before July 30 of each year. This date is targeted to allow the grasses, forbs and weeds to reach maturity and facilitate control for the season.

12.004 Segments of ROW that are covered by Agricultural deed rights

The only vegetation that may be planted within the ROW on those segments where an adjacent owner has Deeded Agricultural Rights will be: non-woody herbaceous plants such as grasses, flowers, bulbs, or vegetables.

12.005 Segments of ROW that are managed and maintained under a Lease or License

Special allowance may be made for these types of areas, as the vegetation will be maintained by the licensed user as per agreement with the City, and not allowed to grow unchecked. Only shallow rooted plants may be planted directly above the pipelines.

Within the above segments, the cost of vegetation maintenance and removal will be borne by the tenant or licensee exclusively. In a like fashion, when new vegetative encroachments are discovered they will be assessed by a SFPUC qualified professional on a case-by-case basis and either be permitted or proposed for removal.

The following is a guideline for the size at maturity of plants (small trees, shrubs, and groundcover) that may be permitted to be used as landscape materials. Note: All distance measurements are for mature trees and plants measured from the edge of the drip-line to the edge of the pipeline.

- Plants that may be permitted to be planted directly above existing and future pipelines: shallow rooted plants such as ground cover, grasses, flowers, and very low growing plants that grow to a maximum of one foot in height at maturity.
- Plants that may be permitted to be planted 15–25 feet from the edge of existing and future pipelines: shrubs and plants that grow to a maximum of five feet in height at maturity.
- Plants that may be permitted to be planted 25 feet or more from the edge of existing and future pipelines: small trees or shrubs that grow to a maximum of twenty feet in height and fifteen feet in canopy width.

Trees and plants that exceed the maximum height and size limit (described above) may be permitted within a leased or licensed area provided they are in containers and are above ground. Container load and placement location(s) are subject to review and approval by the SFPUC.

Low water use plant species are encouraged and invasive plant species are not allowed.

All appurtenances, vaults, and facility infrastructure must remain visible and accessible at all times. All determinations of species acceptability will be made by a SFPUC qualified professional.

The above policy is for general application and for internal administration purposes only and may not be relied upon by any third party for any reason whatsoever. The SFPUC reserves the right at its sole discretion, to establish stricter policies in any particular situation and to revise and update the above policy at any time.

PLANNING & DEVELOPMENT SERVICES

CITY OF PALO ALTO
250 Hamilton Avenue, 5th Floor
Palo Alto, CA 94301
(650) 329-2441

June 6, 2022

Tess Byler, Senior Project Manager
San Francisquito Creek Joint Powers Authority
2100 Geng Road, Suite 210
Palo Alto, CA 94303
Email: tbyler@sfcjpa.org

RE: Notice of Preparation of Environmental Impact Report, Strategy to Advance Flood Protection, Ecosystems and Recreation along San Francisco (SAFER) Bay

Thank you for including the City of Palo Alto in the environmental review process for the above-referenced project.

Project Understanding
The Project, *Strategy to Advance Flood Protection, Ecosystems and Recreation along San Francisco (SAFER) Bay*, would be located within multiple parcels within the City of East Palo Alto and Menlo Park. The Project includes actions within the Don Edwards National Wildlife Refuge (Refuge), including Refuge-managed land in Laumeister and Faber Tract Marshes, which are not located within the City of Palo Alto's jurisdiction, but that are owned by the City of Palo Alto (specifically APNS 063-580-090 and 063-580-100). The City understands that the SAFER Bay Project is intended to provide resiliency to coastal flooding and sea level rise in East Palo Alto and Menlo Park as well as habitat and recreation improvements. Construction of the Project is proposed to occur in phases. Improvements within the South of Bay Road reach, which would be partially located on land owned by the City of Palo Alto, are proposed to begin in 2025. The EIR will consider the creation of broad, gently sloped tidal marsh-upland transition zones and trail modifications that elevate the Bay Trail, reducing the trail's exposure to flooding. Overall, the project includes more than 550 acres of habitat restoration and 1 to 2.5 miles of new or modified trails.

The City of Palo Alto provides the following comments in response to the Notice of Preparation.

Recreation

- For reaches that are proposed to be evaluated at a Project level, the EIR must provide figures that clearly show the trail alignment. The figures and text should clearly indicate the width of the proposed trail. Per California Manual on Uniform Traffic Control Device standards, shared use paths are at least eight feet wide, preferably 10 feet.
- Indicate the proposed surface material for the Bay Trail. All portions of the Bay Trail that are currently paved must be replaced in kind. Because this is an important regional bicycle trail connection, the City supports improving the Bay Trail with paving where feasible. In areas where paving is not feasible, any proposed surfacing material must be bicycle friendly. The EIR should discuss long-term maintenance of the trail, especially where surface improvements are planned. The EIR should clearly identify the responsible parties for the long-term maintenance of the trail pavement and any associated accessories (i.e. benches, bollards, trash bins, etc.) that are to be placed on the trail.

Vegetation Management and Maintenance

- Vegetation management along the current Bay Trail in the South of Bay Road reach has been challenging because the areas adjacent the trail are filled with tall, invasive weeds (e.g. fennel, mustard, Lepidium). The EIR should discuss what type of vegetation is proposed adjacent the trail. The City recommends that the SFCJPA consider an integrated design approach to weed management. Specifically, the design should consider proposing dense, native plants along the trail. Select native plant species that can outcompete the invasive species and require less maintenance (i.e. won't require mowing or grow into the trail). If the project involves planting plants right up to the edge of the trail (within 3') the design should consider proposing dense, native low-growing plants (e.g. Frankenia, marsh heather, salt grass, etc.)
- Clarify whether there is proposed irrigation to establish the plants and, if so, the source of the irrigation. Identify the proposed maintenance period to ensure vegetation is established as well as who will be responsible for maintaining the vegetation post-planting and long-term.
- Would the proposed levee within the South of Bay Road be a horizontal levee, ecotone levee, earthen levee, or flood wall? It is unclear from the figures in the NOP what is proposed for this reach. The EIR must describe in detail who will be responsible for long-term maintenance of any proposed structure or irrigation system. A conceptual maintenance agreement should be required prior to finalizing the project design.
- In the past, the City has identified undermining of the Bay Trail due to ground burrowing rodents (e.g. ground squirrels). The City recommends that the proposed Bay Trail be designed in a manner that helps to prevent issues with ground burrowing rodents by using an integrated pest management approach in its design.

Cultural and Tribal Cultural Resources

- If Archeological or Tribal Cultural Resources are uncovered during construction on property owned by the City of Palo Alto, the City shall be notified of the discovery. Any proposed mitigation for the South of Bay Road reach, which is partially proposed on land owned by the City, should specify this requirement.

Coordination

The City requests that the SFCJPA continue to coordinate with the City of Palo Alto throughout the SAFER Bay EIR process as this project could affect the analysis and conclusions of the City's Sea Level Rise Adaptation Plan project.

Approvals

Because the project is not located within the City of Palo Alto's jurisdiction, it is not anticipated that permits from the City would be required. However, Council approval would be required for any proposed easements to construct and maintain flood infrastructure on the City's property. Additionally, the City recommends coordinating with its Airport department regarding permits that may be required from the FAA for work within the vicinity of the Palo Alto Airport.

Should you have any questions regarding this letter and the City's comment, please contact Claire Raybould at (650) 329-2116 or Claire.Raybould@cityofpaloalto.org or Jonathan Lait at Jonathan.Lait@cityofpaloalto.org.

Sincerely,

DocuSigned by:

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Jonathan Lait
Director, Planning & Development Services

CITY OF EAST PALO ALTO
Office of the City Manager

June 7, 2022

San Francisquito Creek Joint Powers Authority
Attn.: Ms. Margaret Bruce, Executive Director
2100 Geng Road, Suite 210
Palo Alto, CA 94303

Subject: Comments to the Notice of Preparation for the SAFER Bay Project

Dear Ms. Bruce;

The City supports the SAFER Bay Project (Project).

This comment letter documents the City's concerns about the information contained in the Notice of Preparation (NOP) dated April 22, 2022.

General Plan and Ravenswood Business District (RBD) Specific Plan

The City is responsible for regulating land use within its boundaries.

The Project levees and improvements are proposed within the RBD Specific Plan (Specific Plan) area. As identified in the General Plan, the RBD is high priority for the City for future redevelopment. The General Plan and Specific Plan recognize the value of the Bay, specifically the Ravenswood Open Space Preserve and the Palo Alto Baylands Natural Preserve. The City's policies place great importance on the connected public open spaces within this area and making sure that new development is compatible and provides benefits to the community. The City has concerns about the impact of the proposed levee on future development and the ability to implement the Specific Plan goals. The parks and trails provide space for active and passive recreation and enhance the visual appearance of the City. The levee may limit the ability to realize these goals. The General Plan also values community involvement. Policy 1.7 encourages public involvement in every aspect of park and open space acquisition, design, construction and programming. The City requests that the SFCJPA work with East Palo Alto to design a levee system that will not limit the ability to implement the City's goals and policies regarding the RBD. The City would appreciate greater coordination to ensure that both the SFCJPA and City's goals are met, including presentations to the City Council regarding how the City's concerns are being addressed, not less than quarterly. The coordination should also include greater public involvement.

As part of the planning application process, the City will require, as a condition of approval, certain landowners to dedicate construction, maintenance, and public access easements for the levee and Bay Trail. The location of the easements will consider recreational uses and shoreline access improvements in the 100 feet shoreline band proposed by the landowners. The City is

concerned that the proposed levee alignment will be inconsistent with the landowner-provided easements.

The Specific Plan includes the Loop Road that connects to University Avenue to Bay Road. A proposed levee alignment shows the Loop Road, Bay Trail, and levee in a narrow corridor between the University Village subdivision and the railroad right-of-way. The City is concerned that the proposed improvements will not fit within the narrow corridor.

A levee alignment in the North of Bay Road reach shows the Bay Trail relocated onto the 2020 Bay Road property, EPA Waterfront property, and Infinity Auto Salvage property. The City is concerned that high-speed bicycles on the relocated Bay Trail may be inconsistent with the pedestrian areas proposed as part of the recreational uses and shoreline access improvements on the properties.

Parks Master Plan and Martin Luther King Jr. Park Master Plan

Proximity and access to high-quality parks, green spaces, and recreation areas have positive and long-lasting impacts on individual and community health. Research confirms that living close to a park significantly increases how frequently residents exercise, and reduces cardiovascular disease, and childhood obesity rates.

Unfortunately, East Palo Alto's park system is scarred with the historic impacts of inequitable investment and racialized land-use decisions that have concentrated environmental injustice and lack of public investment in the City compared to neighboring cities. East Palo Alto is "park poor."

For today's population of close to 30,000 people, the City currently only has approximately 24 acres of accessible public park land. To achieve the minimal goal of 3.0 park acres per 1000 people, the Parks Master Plan has the challenge of identifying an additional 66 park acres. The General Plan's population projection for 2035 adds more than 7,000 new residents, increasing the total park area deficit in the future to 112 acres. Overall, the Bay Trail and the shoreline park opportunities identified as part of future developments are critical to ensuring the City provides the park and open spaces needed to ensure residents have options for recreation and improved physical and mental health and wellness.

The existing Bay Trail and its adjacent open spaces along the City's perimeter are critical public park resources for the community today. It is important for the levee improvement project to identify the trailheads and access points planned for the Bay Trail and to maximize the number of access points between the community and the new Bay Trail.

In addition, the open spaces and shoreline band areas identified in the RBD Specific Plan and Martin Luther King, Jr. Park Master Plan are critical future opportunities to meet the community's park needs today and in the future. The planned improvements at Martin Luther King, Jr. Park include expansion to the west towards the Bay. The City is concerned that the Project will not consider the future park improvements.

Throughout many phases of community engagement efforts for the future of East Palo Alto's shoreline, a common theme has included the opportunity to expand public access as part of the redevelopment and infrastructure improvements. The design of the 3-to-1 levee slopes along the City-facing perimeter should include opportunities for adjacent properties to back-fill and

meet the new Bay Trail grade, creating an accessible, gradual slope that maximizes the area available for usable public access and recreation. Those areas could also be designed to provide more open space and recreational uses.

Climate Action Plan

The levee is critical to support the City's planned resiliency and adaptation to sea level rise. The City is concerned about how the SFCJPA will implement the levee to ensure critical infrastructure is fully protected from sea level rise and mitigates anticipated impacts into the future. The levee design shall adhere to the 'Citys Climate Action Plan, <https://www.cityofepa.org/econdev/page/climate-action-plan> concurrently under public review. Design standards shall ensure guidance provided by the California Ocean Protection Council (OPC) and San Mateo County's Sea-Level Rise Vulnerability Assessment are followed. <http://seachangesmc.org/vulnerability-assessment/>

According to San Mateo County's Assessment, the City of East Palo Alto has 335 acres of land at risk in the baseline scenario, 714 acres in the mid-level scenario, and 992 acres in the high-end scenario. Nearly 60 percent of East Palo Alto's population and almost all of the City's wetlands are vulnerable to sea level rise under the mid-level scenario. Critical infrastructure and community-serving facilities included energy and water infrastructure, local roadways, schools, emergency shelters, and parks would also be impacted by sea level rise. Design considerations of the planned levee shall result in infrastructure which equates to resiliency across all sea level rise risks including increased wave action, rising groundwater tables and saltwater intrusion, increased erosion (i.e., landward shoreline retreat) and changes in sediment supply in lands pertaining to the proposed project.

Vehicle Access to Levee and Bay Trail

Vehicle access points to the top of the levee should be provided for maintenance vehicles, police vehicles, fire vehicles/equipment, and ambulances. The City is concerned that the levee may not be sufficiently wide to allow vehicles to safely drive on the levee due to the steep embankment. The City is concerned that the levee/Bay Trail may not be sufficiently wide to allow for vehicles, pedestrians and cyclists to pass moving and/or parked vehicles. The City also is concerned that the levee may have an inadequate number of access points for vehicles, that the levee pavement section may not be designed for vehicle traffic, and that the geometric design of the Bay Trail may not accommodate vehicles, especially near the PG&E poles and towers and the existing Bay Trail alignment near Runnymede Street.

Pedestrian, Cyclists, and Persons with Disabilities Access to Bay Trail

Along the Bay shoreline, BCDC's land use authority relates primarily to public access. The Commission bases the approval of a project primarily on whether the development provides maximum feasible public access, consistent with the project. The City shares the BCDC's goals regarding providing maximum feasible access to the shoreline. The City's priorities regarding public access are identified in the 2007 East Palo Alto Bay Access Master Plan. The City is concerned that the maximum feasible public access to the Bay shoreline is provided.

Existing access points to the Bay Trail are located at Daphne Way, O'Connor Street, Cypress Street, Garden Street, Runnymede Street, Weeks Street, Bay Road, and Martin Luther King, Jr.

Park, etc. The Project should maintain existing access points to the Bay Train and these should be reconstructed by the Project.

The landowners in the RBD development plan to significantly increase the shoreline access on their properties.

New and feasible access points to the Bay Trail should be considered at Beech Street, Stevens Avenue, Fordham Street, Rutgers Street, and Tulane Avenue which terminate near the existing or relocated Bay Trail. The City is concerned that new access points may not be considered near the existing or relocated Bay Trail.

The City is concerned that ADA compliant access to the Bay Trail will not be provided.

Contaminated Soil and Groundwater

Contaminated soil and groundwater are well-known and documented issues in areas from the Weeks Street terminus, north along East Palo Alto's shoreline to Fordham Street. Additionally, imported topsoil in northern properties of the City from Demeter Street to Fordham Street have been documented to include PCBs and other constituents of concern. The City recommends that the following Permitting agencies shall be included in design review for these areas to ensure appropriate remediation: California Department of Toxic Substances Control, the Environmental Protection Agency, and the Bay Area Air Quality Control Board.

A levee alignment crosses the Infinity Auto Salvage property, as well as other properties that may have contaminated soil and/or ground water. If the Project acquires any property in fee and the eventual property owner is the City, the City is concerned about the City's liability associated with the contaminated soil and/or groundwater on the properties.

Tidal Marsh Overlooks on Bay Trail

An overlook can provide a place for cyclists and pedestrians to stop and clear the Bay Trail, view the marshes, sit at a bench and rest, and read educational and information signage. The City is concerned that the Project will not provide overlooks for people to clear the trail, rest, and enjoy various amenities.

Lighting of Bay Trail for Public Safety

As part of the City's public outreach effort for the City's Park Master Plan, residents identified adding lighting to increase visibility at night as the most important and best means to address public safety concerns at parks.

Lighting on the Bay Trail will help address residents' safety concerns and increase utilization of the Bay Trail in the City. Lighting would also benefit the cyclist safety as many commute to work via the Bay Trail before and after dark.

City Storm Drain Facilities

Storm drain facilities, including drainage pipes, outfalls, ditches, swales, retention basins, pump stations, and overland sheet flows convey storm water from the City to Bay. The City is concerned that the Project may obstruct storm water or reduce the capacity of the facilities.

Minimizing Construction Impacts

Impacts to residents, business, and infrastructure during the construction of the Project.is of concern.

Parking within the City is limited. The Project should provide on-site parking for all construction personnel, construction offices/trailers, and staging areas for materials and equipment. The City may implement a Resident Parking Permit program that would limit parking on streets to residents.

Damage to city streets and impacts to traffic due to trucking and hauling, especially hauling of embankment material is a major concern. Project shall adhere to the requirements of Municipal Code Section 8.28 including allowable haul routes determined by the Public Works Director.

Staging or lining up trucks before loading or offloading materials should take place on-site or on private property as a contract requirement. No staging of trucks will be permitted on City streets.

Minimizing the construction noise disturbing residents is a priorirty. Hours of construction activity shall be limited to hours described in Municipal Code Section 15.04.125 unless further limited by the Public Works Director. For example, installing sheet piles may be limited to hours from 9 am to 4 pm. Any deviations from the allowable hours of construction activity shall be approved by the Public Works Director.

Settlement of nearby structures due to construction activities needs to be avoided. The Project should implement of settlement monitoring program to address settlement concerns, complaints, and claims.

Well planned Bay Trail detours will improve cyclists' experience during construction. The City is concerned that the design of detours may not be included in the construction contracts. The detour design should include creating Class II bikeways where Class II bikeways are not feasible.

Public Notices including door hangers, social meetings postings, or websites are essential to informing the public about changes to their daily life. The Project should develop a comprehensive public outreach plan for construction activities.

The Project should consider phasing construction within a reach as opposed to closing an entire reach for the duration of construction. As construction windows may be limited for environmental reasons, the construction contract should ensure the Bay Trail is useable when no construction is permitted due to environmental restrictions to the greatest extent feasible.

Stormwater pollution generated by the Project is a concern of the City. The construction contract should require daily sweeping of City streets, including haul routes, inlet protection, and site watering to minimize airborne dust.

The City is concerned about the Contractor importing contaminated soil for construction. An independent lab should be hired by the SFCJPA to test material, as opposed to the Contractor sampling and testing the material.

City Permits

The Project will require City Permits, which may include the following:

1. Encroachment Permit(s). (Municipal Code Sections 13.06.200 and 13.06.280)
2. Hauling /Oversize Load Transportation Permit(s) (Municipal Code Sections 8.28 and 10.36)
3. Grading Permit(s) (Municipal Code Section 15.48)
4. Tree Removal Permit(s) (Municipal Code Section 18.28)

City Streets

The proposed levee is near the cul-de-sacs on Weeks Street, Runnymede Street, Garden Street, Cypress Street, Beech Street, and O'Connor Street. The cul-se-sacs are essential for allowing vehicles, especially fire vehicles/equipment, to turn around. The City is concerned that the levee may adversely impact existing cul-de-sacs.

Any modifications to the City streets shall comply with the City's design and construction standards, as well as the City's adopted Green Infrastructure Plan. Green Infrastructure | City of East Palo Alto (cityofepa.org) <https://www.cityofepa.org/publicworks/page/green-infrastructure>

Storm Water Pump Station Improvements

The City will improve the Storm Water Pump Station (Pump Station) near O'Connor Street. The improvements will include (a) installing a new above ground diesel fuel storage tank on the north side of pump station at the elevation of the existing Bay Trail; and (b) removing the existing underground fuel storage tanks on the east side of the Pump Station. The City is concerned that the Project will not consider the future improvements at the Pump Station.

Bay Trail and Levee Maintenance

The portions of the existing Bay Trail within the City are maintained by the City, City of Palo Alto, and Mid-Peninsula Regional Open Space District. The City is concerned about any increase in human resources and/or financial resources that would be necessary for the post-construction maintenance of the Bay Trail and Tidal Marsh Transition Zones by the City.

The proposed 3:1 levee embankment side-slopes will be difficult for workers to safely maintain due to the steepness. Embankment side-slopes not steeper than 4:1 are industry standard (See Caltrans Highway Design Manual). If 3:1 side-slopes are required by the Project, the City is concerned that low to no maintenance plantings will not be installed on the side-slopes to minimize maintenance of the embankment slopes.

Future Levee Construction

Sea level rise may require an increase to top of levee elevation. Increasing the top of levee requires increasing the width of the levee embankment footprint. The City wishes to avoid filling the tidal marsh transition zone if the top of levee elevation must be increased. Permitting and construction of a project within the tidal marsh transition zones is more difficult than compared

to a project on the landward side of the levee. The City is concerned that adequate space on the landward side of the levee will not be provided for the additional embankment width required to increase the top of levee elevation, if required.

Levee Crossings at Bay Road and Railroad Crossings

The levee will pass over Bay Road and the Union Pacific Railroad tracks near University Avenue. The City is concerned about how the SFCJPA will implement the levee at Bay Road and the Railroad Crossing crossings including effectiveness and impact to the roads and railroads when deployed and not deployed.

The City looks forward to working with the SFCJPA to implement the Project.

Sincerely,

Patrick Heisinger

Patrick Heisinger
Interim City Manager

State of California – Natural Resources Agency
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director

June 8, 2022

Tess Byler, Senior Project Manager
San Francisquito Creek Joint Powers Authority
2100 Geng Road, Suite 201
Palo Alto, CA 94303
tbyler@sfcjpa.org

Subject: Strategy to Advance Flood Protection, Ecosystems and Recreation Along San Francisco Bay, Notice of Preparation of a Draft Environmental Report, SCH No. 2022040504, San Mateo County

Dear Ms. Byler:

The California Department of Fish and Wildlife (CDFW) received a Notice of Preparation (NOP) of a Draft Environmental Report (DEIR) from the San Francisquito Creek Joint Powers Authority (SFCJPA) for the Strategy to Advance Flood Protection, Ecosystems and Recreation Along San Francisco Bay (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.[1]

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

[1] CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

CDFW is also responsible for marine biodiversity under the Marine Life Protection Act in coastal marine waters of California, and ensuring fisheries are sustainably managed under the Marine Life Management Act. Pursuant to our jurisdiction, CDFW has the following comments and recommendations regarding the Project.

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

REGULATORY REQUIREMENTS

California Endangered Species Act

Please be advised that a CESA Incidental Take Permit (ITP) must be obtained if the Project has the potential to result in "take" of plants or animals listed under CESA, either during construction or over the life of the Project. Issuance of a CESA Permit is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain a CESA Permit.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially restrict the range or reduce the population of a threatened, rare, or endangered species. (Pub. Resources Code, §§ 21001, subd. (c), 21083; CEQA Guidelines, §§ 15380, 15064, and 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency's FOC does not eliminate the Project proponent's obligation to comply with Fish and Game Code section 2080.

Lake and Streambed Alteration

CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et. seq., for Project activities affecting lakes or streams and associated riparian habitat. Notification is required for any activity that may substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated riparian or wetland resources; or deposit or dispose of material where it may pass into a river, lake, or stream. Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to notification requirements. CDFW, as a

Responsible Agency under CEQA, will consider the CEQA document for the Project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement (or ITP) until it has complied with CEQA as a Responsible Agency.

PROJECT DESCRIPTION SUMMARY

Proponent: SFCJPA

Objectives: The objectives of the Project are: 1) to reduce the risk of flooding within the cities of East Palo Alto and Menlo Park from San Francisco Bay waters, including consideration of up to 3.5 feet of future sea level rise, and support the communities' objective to be removed from the Federal Emergency Management Agency (FEMA) floodplain; 2) enable climate change adaptation using tidal marsh areas for flood protection, to sustain marsh habitat, and to facilitate marsh restoration associated with the South Bay Salt Ponds Restoration Project and other restoration efforts; 3) expand opportunities for recreation and community connectivity in collaboration with the Bay Trail Program and efforts to enhance local trails; 4) minimize future maintenance requirements; and 5) partner with other agencies and organizations pursuing similar goals and objectives.

Primary Project activities include shoreline protection (installation of levees, floodwalls, and other flood risk reduction structures); habitat restoration, creation, and enhancement (tidal marsh restoration, tidal marsh-upland transition zone habitat, and western snowy plover breeding habitat enhancement); and recreation (improvements to existing recreational access to the shoreline and potentially new trails).

Location: The Project is located in San Mateo County, immediately west of San Francisco Bay along approximately seven miles of the shoreline from the Menlo Park/Redwood City border south to the East Palo Alto/Palo Alto border. The Project includes actions within the Don Edwards National Wildlife Refuge (Refuge), including Refuge-managed land in Laumeister and Faber Tract Marshes (owned by the City of Palo Alto) and Ravenswood Open Space Preserve (owned by the Midpeninsula Open Space District); the San Francisco Public Utilities Commission; the Cargill Corporation, and within the Caltrans State Route 84 right-of-way approach to the Dumbarton Bridge.

Timeframe: The Project is to be constructed in phases, anticipated to begin in 2025 and to be completed by 2030. The DEIR will contain both project-level and program-level evaluations.

MARINE BIOLOGICAL SIGNIFICANCE

The San Francisco Bay-Delta is the second largest estuary in the United States and supports numerous aquatic habitats and biological communities. It encompasses 479 square miles, including shallow mudflats. This ecologically significant ecosystem

supports both state and federally threatened and endangered species and sustains important commercial and recreational fisheries.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the SFCJPA in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Based on the potential for the Project to have a significant impact on biological resources, CDFW concludes that an EIR at the project-level and programmatic-level (depending on the phase of the project) is appropriate for the Project.

I. Project Description and Related Impact

Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by CDFW or U.S. Fish and Wildlife Service (USFWS)?

COMMENT #1 – Flood Wall and Levee Construction

Issue: The NOP discusses the proposed construction of flood walls in addition to or separate from levees within the Project area. The installation of flood walls, depending on materials and equipment used, could pose potential impacts to aquatic and terrestrial species that inhabit the ponds, adjacent sloughs, and bay habitat. The DEIR should include clear descriptions of the methods that will be used to create flood walls as well as equipment required for construction.

Specific impact: Flood wall construction activities such as pile driving in or near inundated areas could result in injury or mortality to aquatic species generated by excessive hydroacoustic pressures.

Why impact would occur: Under water sound generated from activities like pile driving have been shown to take State listed species due to a variety of factors, including behavioral modifications and both auditory and non-auditory injury or mortality. The Fisheries Hydroacoustic Working Group's *Agreement in Principle for Interim Criteria for Injury to Fish from Pile Driving Activities* (attached) specifies hydroacoustic levels that exceed 206 decibels (dB) peak pressure or accumulated sound exposure levels of 183 dB or 187 dB (depending on the size of the fish), can cause injury and/or mortality.

Evidence impact would be significant: Injury or mortality to fish resulting from activities such as pile driving may further population declines of fish species already at risk due to loss of bay habitat and exposure to pollutants.

Recommended Potentially Feasible Mitigation Measures

Mitigation Measure #1: Hydroacoustic Impact Discussion

If flood wall construction will be in or near inundated areas, a hydroacoustic impact discussion for activities such as pile driving, should be included in the DEIR.

COMMENT #2 – Water Pumping and Flood Gates

Issue: The NOP discusses the potential for flood risk reduction structures to be incorporated into areas where it is not feasible to raise the elevation. These structures could include flood gates or improvements to pump stations. The DEIR should discuss the locations in which flood risk reduction structures and pump stations are present and whether the flood protection elements proposed could pose potential impacts to special-status fish species, such as the federal candidate and State threatened longfin smelt.

Specific impact: In areas where longfin smelt are present, water intake structures could pose potential impacts such entrainment and/or impingement. Additionally, flood gates could trap fish in areas that may not be suitable habitat during various times of the day or year.

Why impact would occur: Fish may be more susceptible to predation or could become trapped within unsuitable environmental conditions for a full tidal cycle without an option to return to unconfined habitats.

Evidence impact would be significant: Injury or mortality to fish resulting from predation or exposure to unsuitable environmental conditions may further population declines of fish species already at risk due to loss of bay habitat and exposure to pollutants.

Recommended Potentially Feasible Mitigation Measures

Mitigation Measure #1: Screening

To prevent or minimize entrainment or impinge risk, water intake structures are generally screened to meet CDFW and National Marine Fisheries Service screening criteria (attached). The DEIR should discuss whether current intake structures are screened and whether intake structure improvements will include screens that meet resource agency requirements.

COMMENT #3 – Public Access

Issue: The NOP discusses the inclusion of 1.0-2.5 miles of new or improved trails, including creation of new sections of the Bay Trail and placement of existing sections of the Bay Trail atop new levees where they will be less susceptible to flooding. The DEIR will need to discuss potential impacts of visitor use along the trails to nearby breeding, roosting, or foraging shorebirds, including special-status species such as the federal and State endangered and State fully protected California Ridgway's rail (*Rallus obsoletus obsoletus*), the State threatened and State fully protected California black rail (*Laterallus jamaicensis coturniculus*), and the federal threatened and State species of special concern (SSC) western snowy plover (*Charadrius nivosus nivosus*).

Specific impact: Nest abandonment or reduced frequency or duration of care for young, as well as decreased time spent foraging and roosting, resulting in reduced health or vigor of all life stages may occur as a result of the Project.

Why impact would occur: Inclusion of new trails will increase the number and proximity of visitors to the Project site. In addition, placing trails on top of levees will increase the visibility of visitors, which may be perceived as threats to breeding, roosting, and foraging shorebirds. Signage and fencing associated with recreational access may provide perching opportunities to avian predators. All of these factors may reduce the time shorebirds spend performing activities associated with breeding, roosting, and foraging, in favor of increasing avoidance behaviors.

Evidence impact would be significant: Loss of emergent saline wetland habitat and upland refugia in San Francisco Bay has contributed to declines in local populations of both rail species. Increased contact with humans at coastal nesting and overwintering sites has reduced populations of western snowy plover. All three species are susceptible to both terrestrial and avian predation pressure. Project impacts, including increased conflicts associated with recreation may further population declines of these species, including cumulative impacts resulting in the restriction in the range of these species.

Recommended Potentially Feasible Mitigation Measures

Mitigation Measure #1: Shorebird Habitat Assessment

The DEIR should include an updated habitat assessment for shorebirds, including California Ridgway's rail, California black rail, and western snowy plover within and adjacent to the Project Area. Specific information on current habitat use by these species may be available by contacting staff at the Don Edwards National Wildlife Refuge.

Mitigation Measure #2: Rail Surveys

A CDFW and USFWS-approved biologist should conduct protocol-level surveys of California Ridgway's rail in all suitable habitat adjacent to the Project using the 2015 *California Clapper Rail Survey Protocol* to determine where California Ridgway's rail are onsite in each year of construction. CDFW staff are available to work with you to incorporate calls of California black rail into the protocol to ensure that both species are sufficiently surveyed.

Mitigation Measure #3: Trail Alignment, Seating, and Signage

The DEIR should describe how the placement of additional trails, modifications of existing trails to be placed atop levees, and placement of any associated seating and signage will avoid and minimize impacts to shorebirds using adjacent habitat. Consideration should be given to placement of trail alignments away from known breeding habitat, as well as use of seasonal trail closures and/or vegetative screening where appropriate to reduce visitor disturbance to shorebirds. Interpretive signage and seating associated with recreational trails should be sized, configured, and placed appropriately to reduce predator perching opportunities.

COMMENT #4 – Transition Zone Habitat

Issue: The NOP discusses the construction of broad, gently sloped tidal salt marsh-upland transition zone habitat on the bayward slope of certain segments in association with levees, floodwalls, and hybrid features adjacent to existing and/or restored tidal salt marsh. The NOP mentions the benefits of such transition zones, such as provision of high-tide refugia for tidal marsh species and special-status marsh plants, increased habitat diversity, and sea level rise resilience. The DEIR will need to discuss the specific impacts to existing tidal marsh habitat and tidal marsh terrestrial and aquatic species that may result by placement of salt marsh-upland transition zone habitat.

Specific impact: Depending on the type of flood protection infrastructure selected, there may be placement of fill material in existing high quality salt marsh habitat (and thus, conversion of habitat type) to create transition zone habitat.

Why impact would occur: Fill and habitat conversion would reduce the amount of high-quality habitat currently available for tidal marsh species (such as California Ridgway's rail, California black rail, and the federal and State endangered and State fully protected salt-marsh harvest mouse (*Reithrodontomys raviventris*).

Evidence impact would be significant: Reduction of suitable habitat for special-status tidal marsh species may further population decline of these species already at

risk due to historical losses of tidal marsh habitat, as well as the cumulative impacts of further restricting the range of these species.

Recommended Potentially Feasible Mitigation Measures

Mitigation Measure #1: Set Back Levees

The DEIR should consider the ability of the Project to set back levees (away from the Bay) in areas of existing high quality tidal salt marsh habitat to reduce the placement of fill material and habitat conversion. The DEIR should clearly identify and describe any constraints that would make setting back of levees infeasible, where and why placement of fill into existing high-quality habitat may be the only feasible alternative, and how the Project is minimizing impacts to existing high-quality habitat and its associated species.

Mitigation Measure #2: Upland Refugia Assessment

The DEIR should provide an assessment of the need for upland refugia habitat in existing high quality tidal marsh habitat and whether alternative upland refugia options (such as marsh mounds) may be appropriate in lieu of broad transition slopes in certain locations to minimize impacts to existing tidal marsh habitat.

Mitigation Measure #3: Ecological Cost and Benefit Assessment

The DEIR should provide a thorough analysis of the ecological costs and benefits (both short-term and long-term) of construction of transition zone habitat on existing marsh habitat to associated terrestrial and aquatic species, including whether bayward expansion of transition zone habitat can provide desired marsh transgression space and sea level rise resilience for tidal marsh species over the long-term.

Mitigation Measure #4: Habitat Transition Zone for Aquatic Species

In addition to discussing terrestrial habitat transition zones, the DEIR should discuss whether any submerged habitat zones are being proposed for fish and/or invertebrates.

II. Mitigation Measures and Impacts

Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by CDFW or USFWS?

COMMENT #5 – Special-Status Fish and Wildlife Species

Issue: Without appropriate mitigation measures, the Project could potentially have a significant impact on the following special-status fish and wildlife species (in addition to the species already mentioned in comments above), including but not limited to:

- White-tailed kite (*Elanus leucurus*; State fully protected)
- California least tern (*Sternula antillarum browni*; federal and State endangered and State fully protected)
- Brown pelican (*Pelecanus occidentalis californicus*; State fully protected)
- Salt-marsh wandering shrew (*Sorex vagrans halicoetes*; SSC)
- Northern harrier (*Circus hudsonius*; SSC)
- Saltmarsh common yellowthroat (*Geothlypis trichas sinuosa*; SSC)
- Alameda song sparrow (*Melospiza melodia pusillula*; SSC)
- Yellow rail (*Coturnicops noveboracensis*; SSC)
- Longfin smelt (*Spirinchus thaleichthys*; federal candidate and State threatened)
- Central California Coast steelhead (*Oncorhynchus mykiss*; federal threatened; Central California Coast and Central Valley Evolutionarily Significant Units)
- Green sturgeon (*Acipenser medirostris*; federal threatened; southern Distinct Population Segment)
- White Sturgeon (*A. transmontanus*; SSC)

Several species with important commercial/recreational fisheries value and habitat value for spawning and rearing could potentially be present near Project activities. These include:

- Pacific herring (*Clupea pallasii*)
- Crangon shrimp (*Crangon* spp.)
- Surfperches (*Embiotocidae*)

Specific impact: Direct mortality through crushing of adults or young or individuals within nests, loss of nests, capture, nest abandonment, loss of potential nesting habitat, loss of potential foraging habitat resulting in reduced reproductive success (loss or reduced health or vigor of eggs or young), inadvertent entrapment or

entrainment, impingement, lack of water resulting in reduced reproductive success or desiccation of eggs.

Why impact would occur: The Project may include construction of levees and/or floodwalls, restoration or construction of trails, installation of flood gates, improvements to pump stations, and habitat restoration that may include tidal marsh and/or managed pond habitat conversion. The Project will include impacts such as noise, groundwork, and operation and movement of equipment and workers that would have the potential to disturb foraging, roosting, and nesting. Temporary water diversion structures may need to be constructed to dewater wetted areas of the Project.

Evidence impact would be significant: The species listed above are either fully protected species under California Fish and Game Code (§ 3511, § 4700 or § 5050), listed under the federal Endangered Species Act (ESA) or CESA and may also be designated as rare, threatened or endangered under §15380, subds. (c)(1) and (c)(2), or designated by CDFW as SSC and are at conservation risk and may be experiencing serious population declines or range retractions. In addition, take of nesting birds, birds in the orders Falconiformes or Strigiformes, and migratory nongame birds as designated in the Migratory Bird Treaty Act is a violation of Fish and Game Code (§ 3503, § 3503.5, and § 3513).

Recommended Potentially Feasible Mitigation Measures

Mitigation Measure #1: Habitat Assessment

The DEIR should include results of a through habitat assessment conducted by a qualified biologist to determine the locations and quality of suitable habitat for special-status species within the vicinity of the Project site.

Mitigation Measure #2: Special-Status Surveys

Focused surveys for special-status species using appropriate protocols should be conducted by qualified biologists at the Project site prior to any Project-related construction. If Project activities are to take place during the avian nesting season, an additional pre-Project activity survey for active nests should be conducted by a qualified biologist no more than seven days prior to the start of Project activity. See Mitigation Measure #2 under Comment #1 above regarding the protocol for rail surveys.

Mitigation Measure #3: Seasonal Work Windows

The DEIR should include species-appropriate seasonal work windows to avoid and minimize impacts to special-status species. The following are examples of seasonal

work windows that may be appropriate to implement in all or portions of the Project site, depending on the suitability of the habitat and likelihood of species presence:

- In the vicinity of nesting rails, the Project should limit construction activities to September 1-January 31 to avoid the rail breeding season.

- In the vicinity of western snowy plovers, the Project should limit construction activities to September 15-February 28 to avoid the western snowy plover breeding season.

- In-water work should be limited to June 15-November 30 to minimize impacts to salmonids in the Project area.

Mitigation Measure #4: Buffers

The DEIR should include species-appropriate buffers to avoid and minimize impacts to special-status species. For example, a 700-foot no-work buffer should be implemented between construction activities and any current-year breeding rail detections if construction cannot be avoided during the rail breeding season. If establishing a 700-foot buffer around breeding rail detections is not feasible, noise reducing modifications to equipment as well as portable acoustic barriers/blankets placed near noise sources may be appropriate to reduce auditory and visual impacts to breeding rails. Note that these features may be appropriate regardless of time of year to minimize impacts to foraging rails as well.

For other species of nesting birds, CDFW recommends implementing appropriate buffers around active nests based on species, behavior of birds, ambient noise levels, type of construction activities, topography, and other site-specific factors that may affect nesting bird disturbance levels. It is advised that buffers remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or on-site parental care for survival. Variance from these buffers is possible when there is compelling biological or ecological reason to do so, such as when the Project site would be concealed from a nest site by topography. CDFW recommends that a qualified avian biologist advise and support any variance from established buffers.

Mitigation Measure #5: Non-Mechanized Hand Tools

CDFW recommends the use of non-mechanized hand tools for any necessary vegetation removal activities in habitat suitable for salt-marsh harvest mouse to the maximum extent practicable. Use of mechanized hand tools has resulted in mortality and/or injury to this and other species during vegetation removal for other projects in the Bay Area.

Mitigation Measure #6: In-Water Work Avoidance

CDFW recommends avoiding in-water work to the extent practicable. If in-water work cannot be avoided, conducting in-water work and placing material at low tide when fish are unlikely to be present may reduce the risk of take of special-status fish species.

Mitigation Measure #7: Take Authorizations

If known or expected occurrences of State-listed wildlife species are present at a Project site or the species is identified during surveys and full avoidance of take is not feasible, the Project proponent should apply to CDFW pursuant to Fish and Game Code § 2081(b) for take authorization through issuance of an Incidental Take Permit (ITP). Fully protected species may not be taken or possessed at any time, except for necessary scientific research, including efforts for recovery. Under the CDFW's Cutting the Green Tape Program, a Restoration Management Permit (RMP) consolidates take authorizations needed for voluntary habitat restoration projects into a single streamlined permit and can include take authorization for CESA-listed and State fully protected species. CDFW staff can work with you to help determine whether a RMP may be appropriate for this Project. More information about the Cutting the Green Tape Program can be found at the following link: https://wildlife.ca.gov/Conservation/Watersheds/Cutting-Green-Tape.

COMMENT #6 – Special-Status Plant Species

Issue: Without appropriate mitigation measures, the Project could potentially have a significant impact on the following special-status plant species, including but not limited to:

- Coastal marsh milk vetch (*Astragalus pycnostachyus* var. *pycnostachyus*) – California Rare Plant Rank 1B.2
- Alkali milk vetch (*A. tener* var. *tener*) – California Rare Plant Rank 1B.2
- San Joaquin spearscale (*Atriplex joaquiniana*) – California Rare Plant Rank 1B.2
- Congdon's tarplant (*Centromadia parryi* ssp. *condonii*) – California Rare Plant Rank 1B.1
- Point Reyes salt bird's beak (*Chloropyron maritimum* ssp. *plustre*) – California Rare Plant Rank 1B.2
- California seablite (*Suaeda californica*) – Federal endangered and California Rare Plant Rank 1B.1

- Saline clover (*Trifolium hydrophilum*) – California Rare Plant Rank 1B.2
- Hairless popcorn flower (*Plagiobothrys glaber*) – California Rare Plant Rank 1A

Specific impact: Direct mortality or inability to reproduce.

Why impact would occur: Implementation of the Project could include grading and heavy equipment use associated with the construction of floodwalls, levees, trails, and transition zone habitat, as well as with restoration/enhancement of tidal marsh and managed pond habitat. Dewatering of stream channels may also be necessary.

Evidence impact would be significant: Special-status plant species are typically narrowly distributed and often endemic species, susceptible to habitat loss and habitat fragmentation resulting from development, vehicle and foot traffic, and introduction of non-native plant species.

Recommended Potentially Feasible Mitigation Measures

Mitigation Measure #1: Special-Status Plant Focused Surveys

The Project site should be surveyed for special-status plant species by a qualified botanist following protocol-level surveys. Protocol-level surveys, which are intended to maximize detectability, may include identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period.

Mitigation Measure #2: Special-Status Plant Avoidance

Direct and indirect impacts to special-status plant species should be avoided through delineation and establishment of a no-disturbance buffer of at least 50 feet from the outer edge of the plant population or specific habitat type required by special-status plant species.

Mitigation Measure #3: Seed Collecting/Planting

If complete avoidance of impacts to special-status plants is not possible, CDFW recommends collecting seed (if appropriate) and planting at an approved off-site location or providing seed to an acceptable seed banking facility certified by the Center for Plant Conservation for long-term conservation storage.

III. Editorial Comments and/or Suggestions

Figure 1 of the NOP shows seven cross-section locations on an aerial figure of the Project site but does not label them in accordance with the figure numbers of the

subsequent cross-sections themselves. There are eight cross-sections provided in the NOP, and it appears that two of the cross-sections (Figures 3 and 4) refer to the tech campus trail. In addition, Figure 8 (Conceptual Cross-Section of Integrated Floodwall and Transition Zone Habitat Creation) and 9 (Conceptual Cross-Section of Levee with Transition Zone Habitat Creation) are both are labeled as South of Bay Road. It is unclear whether these are two different potential scenarios for the same location, or whether Figure 8 is located adjacent to Laumeister Marsh and Figure 9 is located adjacent to Faber Tract Marsh (as both Laumeister Marsh and Faber Tract Marsh are both located south of Bay Road). The DEIR should show specific cross-section figure numbers in Figure 1 to ensure they can easily be cross-referenced to the appropriate corresponding cross-section figures. In addition, each cross-section figure should include enough detail to clearly describe its location within the Project.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDB). The CNNDB field survey form can be filled out and submitted online at the following link: https://wildlife.ca.gov/Data/CNDDB/Submitting-Data. The types of information reported to CNDDB can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/Plants-and-Animals.

ENVIRONMENTAL DOCUMENT FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the environmental document filing fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

CONCLUSION

CDFW appreciates the opportunity to comment on the NOP to assist the SFCJPA in identifying and mitigating Project impacts on biological resources.

If you have any questions for staff in the Bay Delta Region, please contact Ms. Tami Schane, Senior Environmental Scientist (Specialist), at (415) 710-0711 or Tami.Schane@wildlife.ca.gov; or Ms. Brenda Blinn, Senior Environmental Scientist

(Supervisory), at (707) 339-0334 or Brenda.Blinn@wildlife.ca.gov. For questions for staff in Marine Region, please contact Mr. Arn Aarreberg, Environmental Scientist, at (707) 791-4195 or Arn.Aarreberg@wildlife.ca.gov; or Mr. Eric Wilkins, Senior Environmental Scientist (Supervisory), at (805) 594-6172 or Eric.Wilkins@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Erin Chappell
B77E9A6211EF486...
Erin Chappell
Regional Manager
Bay Delta Region

DocuSigned by:
343995CB95354BC...
Craig Shuman
Regional Manager
Marine Region

ATTACHMENTS

1. Agreement in Principle for Interim Criteria for Injury to Fish from Pile Driving Activities

2. Department of Fish and Game Fish Screening Criteria

ec: Office of Planning and Research, State Clearinghouse, Sacramento

Tami Schane, CDFW Bay Delta Region – Tami.Schane@wildlife.ca.gov
Brenda Blinn, CDFW Bay Delta Region – Brenda.Blinn@wildlife.ca.gov
Craig Weightman, CDFW Bay Delta Region – Craig.Weightman@wildlife.ca.gov
Wesley Stokes, CDFW Bay Delta Region – Wesley.Stokes@wildlife.ca.gov
Arn Aarreberg, CDFW Marine Region – Arn.Aarreberg@wildlife.ca.gov
Eric Wilkins, CDFW Marine Region – Eric.Wilkins@wildlife.ca.gov
Becky Ota, CDFW Marine Region – Becky.Ota@wildlife.ca.gov

NOAA's Fisheries Northwest and Southwest Regions	U.S. Fish and Wildlife Service Regions 1 & 8	California/Washington/ Oregon Departments of Transportation	California Department of Fish and Game	U.S. Federal Highway Administration

MEMORANDUM

June 12, 2008

From: Fisheries Hydroacoustic Working Group

Subject: Agreement in Principle for Interim Criteria for Injury to Fish from Pile Driving Activities

To: Applicable Agency Staff

The signatory agencies, identified below, have agreed in principle to use the attached Interim Criteria for Injury to Fish from Pile Driving Activities. The agreement was concluded at a meeting in Vancouver, Washington on June 10-11, 2008 with key technical and policy staff from the Federal Highway Administration, NOAA Fisheries, U.S. Fish and Wildlife Service, the Departments of Transportation from California, Oregon, and Washington; and national experts on sound propagation activities that affect fish and wildlife species of concern. The agreed upon criteria identify sound pressure levels of 206 dB peak and 187 dB accumulated sound exposure level(SEL) for all listed fish except those that are less than 2 grams. In that case, the criteria for the accumulated SEL will be 183 dB.

These criteria will apply to all new projects beginning no later than 60 days from the date of this memorandum. During the interim 60 day period, the Transportation Agencies will work with the Services to identify projects currently in the consultation process and reach agreement on which criteria will be used to assess project effects.

The agencies agree to review the science periodically and revise the threshold and cumulative levels as needed to reflect current information. Behavioral impacts to fish and impacts to marine mammals are not addressed in this agreement. Sub-injurious effects will continue to be discussed in future meetings.

The respective agencies also agree to develop appropriate training for staff on these revised criteria, as well as a process to review and possibly refine the criteria, when appropriate.

For questions or concerns about the revised criteria, we recommend staff contact their agency environmental coordinator or agency expert on pile driving issues.

Federal Highway Administration*

*FHWA supports the use of these interim criteria in the states signing this agreement in principle. FHWA leaves the schedule for implementation to the discretion of the state DOTs in cooperation with their respective FHWA Division Offices and the Services.

NOAA Fisheries – NWR

NOAA Fisheries – SWR

US Fish and Wildlife Service Region 1

US Fish and Wildlife Service Region 8

California Department of Transportation

California Department of Fish and Game

Geo-Environmental Mgr

Oregon Department of Transportation

Washington State Department of Transportation

EXHIBIT A
DEPARTMENT OF FISH AND GAME
FISH SCREENING CRITERIA
June 19, 2000

1. STRUCTURE PLACEMENT

A. Streams And Rivers (flowing water): The screen face shall be parallel to the flow and adjacent bankline (water's edge), with the screen face at or streamward of a line defined by the annual low-flow water's edge.

The upstream and downstream transitions to the screen structure shall be designed and constructed to match the bankline, minimizing eddies upstream of, in front of, and downstream of, the screen.

Where feasible, this "on-stream" fish screen structure placement is preferred by the California Department of Fish and Game.

B. In Canals (flowing water): The screen structure shall be located as close to the river source as practical, in an effort to minimize the approach channel length and the fish return bypass length. This "in canal" fish screen location shall only be used where an "on-stream" screen design is not feasible. This situation is most common at existing diversion dams with headgate structures.

The National Marine Fisheries Service - Southwest Region "Fish Screening Criteria for Anadromous Salmonids, January 1997" shall be used for these types of installations.

C. Small Pumped Diversions: Small pumped diversions (less than 40 cubic-feet per second) which are screened using "manufactured, self-contained" screens shall conform to the National Marine Fisheries Service - Southwest Region "Fish Screening Criteria for Anadromous Salmonids, January 1997."

D. Non-Flowing Waters (tidal areas, lakes and reservoirs): The preferred location for the diversion intake structure shall be offshore, in deep water, to minimize fish contact with the diversion. Other configurations will be considered as exceptions to the screening criteria as described in Section 5.F. below.

2. APPROACH VELOCITY (Local velocity component perpendicular to the screen face)

A. Flow Uniformity: The design of the screen shall distribute the approach velocity uniformly across the face of the screen. Provisions shall be made in the design of the screen to allow for adjustment of flow patterns. The intent is to ensure uniform flow distribution through the entire face of the screen as it is constructed and operated.

B. Self-Cleaning Screens:[1]

The U.S. Fish and Wildlife Service has selected a 0.2 feet per second approach velocity for use in waters where the Delta smelt is found. Thus, fish screens in the Sacramento-San Joaquin Delta and San Francisco Estuary should use this criterion for design purposes. In addition:

1. Streams and Rivers (flowing waters) - exposure to the fish screen shall not exceed fifteen minutes.

[1] Approach velocities in the June 19, 2000 Fish Screening Criteria that are inapplicable if delta smelt are present are omitted.

2. In Canals (flowing waters) - a bypass entrance shall be located every one-minute of travel time along the screen face.
3. Non-Flowing Waters (tidal areas, lakes and reservoirs) - The specific screen approach velocity shall be determined for each installation, based on the delta smelt life stage being protected. Velocities which exceed those described above will require a variance to these criteria (see Section 5.F. below).

C. Screens Which Are Not Self-Cleaning: The screens shall be designed with an approach velocity one-fourth that outlined in Section B. above. The screen shall be cleaned before the approach velocity exceeds the criteria described in Section B.

D. Frequency Of Cleaning: Fish screens shall be cleaned as frequently as necessary to prevent flow impedance and violation of the approach velocity criteria. A cleaning cycle once every 5 minutes is deemed to meet this standard.

E. Screen Area Calculation: The required wetted screen area (square feet), excluding the area affected by structural components (i.e., pore space or open area), is calculated by dividing the **maximum** diverted flow (cubic-feet per second) by the allowable approach velocity (feet per second). Example:

1.0 cubic-feet per second / 0.2 feet per second = 5.0 square feet of pore space

Unless otherwise specifically agreed to, this calculation shall be done at the **minimum** stream stage.

3. SWEEPING VELOCITY (Velocity component parallel to screen face)

A. In Streams And Rivers: The sweeping velocity should be at least two times the allowable approach velocity.

B. In Canals: The sweeping velocity shall exceed the allowable approach velocity. Experience has shown that sweeping velocities of 2.0 feet per second (or greater) are preferable.

C. Design Considerations: Screen faces shall be designed flush with any adjacent screen bay piers or walls, to allow an unimpeded flow of water parallel to the screen face.

4. SCREEN OPENINGS

A. Porosity: The screen surface shall have a minimum open area of 27 percent. We recommend the maximum possible open area consistent with the availability of appropriate material, and structural design considerations.

The use of open areas less than 40 percent shall include consideration of increasing the screen surface area, to reduce slot velocities, assisting in both fish protection and screen cleaning.

B. Round Openings: Round openings in the screening shall not exceed 3.96mm (5/32in). In waters where steelhead rainbow trout fry are present, this dimension shall not exceed 2.38mm (3/32in).

C. Square Openings: Square openings in screening shall not exceed 3.96mm (5/32in) measured diagonally. In waters where steelhead rainbow trout fry are present, this dimension shall not exceed 2.38mm (3/32in) measured diagonally.

D. Slotted Openings: Slotted openings shall not exceed 2.38mm (3/32in) in width. In waters where steelhead rainbow trout fry are present, this dimension shall not exceed 1.75mm (0.0689in).

5. SCREEN CONSTRUCTION

A. Material Selection: Screens may be constructed of any rigid material, perforated, woven, or slotted that provides water passage while physically excluding fish. The largest possible screen open area which is consistent with other project requirements should be used. Reducing the screen slot velocity is desirable both to protect fish and to ease cleaning requirements. Care should be taken to avoid the use of materials with sharp edges or projections which could harm fish.

B. Corrosion and Fouling Protection: Stainless steel or other corrosion-resistant material is the screen material recommended to reduce clogging due to corrosion. The use of both active and passive corrosion protection systems should be considered. Consideration should be given to anti-fouling material choices, to reduce biological fouling problems. Care should be taken not to use materials deemed deleterious to fish and other wildlife.

C. Project Review and Approval: Plans and design calculations, which show that all the applicable screening criteria have been met, shall be provided to the Department before written approval can be granted by the Regional Manager, Bay Delta Region.

The approval shall be documented in writing to the project sponsor, with a copy to the Deputy Director, Resource Management and Policy Division. Such approval may include a requirement for post-construction evaluation, monitoring and reporting.

D. Assurances: All fish screens constructed after the effective date of these criteria shall be designed and constructed to satisfy the current criteria. Owners of existing screens, approved by the Department prior to the effective date of these criteria, shall not be required to upgrade their facilities to satisfy the current criteria unless:

1. The controlling screen components deteriorate and require replacement (i.e., change the opening size or opening orientation when the screen panels or rotary drum screen coverings need replacing),

2. Relocation, modification or reconstruction (i.e., a change of screen alignment or an increase in the intake size to satisfy diversion requirements) of the intake facilities, or

3. The owner proposes to increase the rate of diversion which would result in violation of the criteria without additional modifications.

E. Supplemental Criteria: Supplemental criteria may be issued by the Department for a project, to accommodate new fish screening technology or to address species-specific or site-specific circumstances.

F. Variances: Written variances to these criteria may be granted with the approval of the Regional Manager, Bay Delta Region and concurrence from the Deputy Director, Resource Management and Policy Division. At a minimum, the rationale for the variance must be described and justified in the request. Evaluation and monitoring may be required as a condition of any variance, to ensure that the requested variance does not result in a reduced level of protection for the aquatic resources.

EXHIBIT A
DEPARTMENT OF FISH AND GAME
FISH SCREENING CRITERIA
June 19, 2000

It is the responsibility of the project sponsor to obtain the most current version of the appropriate fish screen criteria. Project sponsors should contact the Department of Fish and Game and the U.S. Fish and Wildlife Service (for projects in anadromous and fresh waters) for guidance.

Copies of the current criteria are available from the Department of Fish and Game Bay Delta Region; 7329 Silverado Trail/P.O. Box 46, Yountville, CA 94599, (707) 944-5500.

Technical assistance can be obtained directly from the Habitat Conservation Branch; 1416 Ninth Street, Sacramento, CA 95814 - (916) 653-1070.

The National Marine Fisheries Service Southwest Region "Fish Screening Criteria for Anadromous Salmonids, January 1997" is available at: http://swr.ucsd.edu/hcd/fishscrn.htm and from their Southwest Region, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95402 - (707) 575-6050.

RAVENSWOOD SHORES BUSINESS DISTRICT, LLC (RSBD)
PO Box 51862, Palo Alto CA 94303
Jeff Poetsch, President -
Phone - 650-207-4994 / email - jeffcp@earthlink.net

June 13, 2022

Ms. Tess Byler, Senior Project Manager
San Francisquito Creek Joint Powers Authority
2100 Geng Road, Suite 210
Palo Alto, CA 94303

Via e-mail - tbyler@sfcjpa.org

RE: Comments to the Notice of Preparation ("NOP") for the Strategy to Advance Flood Protection, Ecosystem and Recreations along San Francisco Bay Project Environmental Impact Report

Dear Ms. Byler:

The Ravenswood Shores Business District is a California limited liability company comprised of the majority of the landowners and businesses located in the 100-acre Ravenswood Redevelopment Area of East Palo Alto. Membership includes about seventeen corporate and non-profit property owners and was established to speak with one voice for the benefit of our membership. The organization works in partnership with the City and other agencies / stakeholders such as the SFCJPA to coordinate and support necessary infrastructure improvements in the Ravenswood area of East Palo Alto. Our members include ALL of the private property owners who will be directly impacted by the construction and maintenance of the proposed levee construction in the Ravenswood.

Pursuant to the April 22, 2022 Notice of Preparation ("NOP") for the Strategy to Advance Flood Protection, Ecosystems and Recreation (SAFER) along San Francisco Bay Environmental Impact Report, on behalf of the Ravenswood Shores Business District, I wanted to raise the following issues, comments, and concerns.

1. Project Objectives - Given the soil contamination levels in several of the sites both South of Bay Road and North of Bay Road, project objectives should include the enhancement of the environmental remediation requirements of these sites and insuring that SAFER Bay Project implementation does not expose additional contamination. Contaminated soil excavation should be avoided. Any proposed levee development should comply with the current remediation orders by Regional Water Quality Control Board, the Environmental Protection Agency, and the California Department of Toxic Substances.

2 Shoreline Protection -. Several Areas along both the South of Bay Road and North of Bay Road segments, will benefit from the proposed filling of the inboard areas to raise the overall site to elevations 16' feet. As such, the inboard area is not at any risk of "levee" failures. Consideration should be given in these areas for only minor additional enhancements of the outboard segments of the shoreline protection. An example of this is best outlined in Figures 3, 6 and 7, where there is only "fill" and no levee base excavation required.

San Francisquito Creek Joint Powers Authority
SAFER Bay Project - Notice of Preparation
June 11, 2022

3. Recreation - East Palo Alto, as an economically disadvantaged community, has limited access to park and other recreation spaces. While the implementation of the SAFER Bay Project, may in some locations enhance San Francisco Bay access, in other areas, the proposed levee may encroach on planned development of open space and other City amenities.

4. Impacts on University Village Neighborhood - Generally, the University Village area of East Palo Alto is low elevation. The alignment of the levee in this area will have significant impacts on both the residences that may abut the levee as well as storm water drainage considerations. No resident will want a 17-foot levee in their back yard. And the need for adequate storm drainage collection and storage must be considered as the University Village has the potential to become a "bath tub" if alignment issues are not considered fully.

5. Ecotone Levees - Where ecotone levees are being considered, a design that pushes into the wetland areas of the project should be considered. The ecotone levee provides a significant ecological benefit for the various species inhabiting the wetlands by providing refuge during storm and flooding events. However, this benefit should not be at the sole expense of the inbound land.

It is critical in evaluation of the SAFER Bay Project, that the multiple needs and concerns of the community, the residents, the landowners, the employees in the City of East Palo Alto are given appropriate consideration to the many environmental concerns including impacts on wetlands, other habitat and area species. There are complicated issues of environmental contamination, storm water drainage, recreational access, development community benefits that must be equitably considered in the development of this project specific and programmatic project Environmental Impact Report

Thank you for your consideration of these issues.

Sincerely,

Jeff Poetsch

Jeff Poetsch, President and Executive Director
Ravenswood Shores Business District

Comments to the Notice of Preparation for the SAFER Bay Project

Jeff Poetsch <jeffcp@earthlink.net>

Wed 6/15/2022 1:49 PM

To: Tess Byler <tbyler@sfcjpa.org>

Cc: Margaret Bruce <mbruce@sfcjpa.org>

Hi Tess - I wanted to augment my June 6 letter with 2 other issues that should be addressed in the consideration of the various options for the SAFER Bay EIR analysis

North of Bay Storm Drainage - As noted in my June 6 letter the University Village area (as well as some of the sites on Demeter, Pulgas and Tara are at low elevation. Currently storm drainage is accommodated in this area by a storm drainage outflows along Purdue (which also collects the norther portion of the storm drainage from Demeter, Pulgas and Tara, a separate drainage at exiting at the east end of Stevens and then another separate drainage exiting at the northeast end of Fordham. Clearly this storm drainage, which already experiences some flooding at storm events and king tides needs to be coordinated with the level alignment and potential storm water collection. What we definitely want to avoid is necessitating pump stations at each of these storm drainage outflows - which in turn require redundancy at a very high cost.

Utility Easements - As we know, the current utility easements - both PGE and EPASD are within the areas where levees may be developed. As we have discussed, relocating any of the high voltage electrical towers is prohibitively expensive. And making sure we can accommodate effectively the EPASD sewer line which currently runs adjacent to the Bay Trail, needs to be a high priority.

Thanks for noting these comments

Jeff Poetsch
President, Ravenswood Shores Business District
650-207-4994
jeffcp@earthlink.net

California Department of Transportation

DISTRICT 4
OFFICE OF TRANSIT AND COMMUNITY PLANNING
P.O. BOX 23660, MS–10D | OAKLAND, CA 94623-0660
www.dot.ca.gov

June 14, 2022

SCH #: 2022040504
GTS #: 04-SM-2022-00438
GTS ID: 26302
Co/Rt/Pm: SM/84/28.641

Tess Tyler, Senior Project Manager
San Franciscito Creek Joint Powers Authority
2100 Geng Rd., Suite 201
Palo Alto, CA 94303

Re: SAFER Bay Project, Notice of Preparation (NOP) for a Draft Environmental Impact Report (DEIR)

Dear Tess Tyler:

Thank you for including the California Department of Transportation (Caltrans) in the environmental review process for the SAFER Bay Project. We are committed to ensuring that impacts to the State's multimodal transportation system and to our natural environment are identified and mitigated to support a safe, sustainable, integrated and efficient transportation system. The following comments are based on our review of the April 2022 NOP.

Project Understanding

The Project proposes to restore former salt production ponds, Pond R1 and Pond R2, located in the Ravenswood Complex, as part of the SAFER Bay Project. The restoration scenarios include tidal marsh or a combination of tidal marsh and managed ponds. The Project will construct levees, floodwalls and other flood protection features necessary to enable the restoration of tidal action to these ponds and includes design and construction of the pond restoration itself to mitigate the Project's impacts to jurisdictional wetlands and aquatic habitats. The Project also proposes to increase the diversity of habitat by building tidal salt marsh-upland transition zone habitat (transition zone habitat) on the bayward slope of appropriate segments of levee adjacent to existing and/or restored tidal salt marsh. In addition, the Project proposes to enhance recreational access to the shoreline by creating new sections of the Bay Trail and by placing existing sections of the Bay Trail atop new levees where they will be less susceptible to flooding.

Climate Change Planning
Caltrans acknowledges that this NOP recognizes the potential impacts of sea level rise may on transportation facilities located in the project area, primarily SR-84 and the Dumbarton Bridge West Approach. Executive Order (EO) S-13-08 directs State agencies planning construction projects in areas vulnerable to sea level rise to begin planning for potential impacts by considering a range of sea level rise scenarios for years 2050 and 2100. Higher water levels may increase erosion rates, change environmental characteristics that affect material durability, lead to increased groundwater levels, and change sediment movement along shores and at estuaries and rive mouths, as well as affect soil pore pressure at dikes and levees on which transportation facilities are constructed. These factors, among others, must be addressed through geotechnical and hydrological studies conducted in coordination with Caltrans. Caltrans encourages multi-agency collaboration with partner agencies to achieve multi-benefit approaches to protect bayfront development, infrastructure, and assets from sea level rise and other climate change impacts. Partnership can help distribute potential mitigation costs while balancing environmental justice concerns to achieve equitable adaptation solutions.

Caltrans requests and analysis that fully addresses the projected sea level rise of 3.5 ft and flooding concerns from such rise. Additionally, please address how the proposed flood protection measures, such as floodwalls, may conflict with existing State drainage facilities. Include all existing State and local drainage facilities on the plans. Proposed drainage/flooding design changes need to address any drainage-related conflicts. Please coordinate with Caltrans to address drainage solutions and potential drainage concerns in the project area.

Include an explanation of how the proposed flood protection facilities (floodwalls, levees, flood gates, pump stations, etc.) will be maintained and how resources (funding, personnel) for maintenance of such facilities will be allocated or made available. Consideration of regular maintenance of flood protection facilities is an integral part of a successful flood protection management plan.

Lead Agency
As the Lead Agency, the County of San Mateo is responsible for all project mitigation, including any needed improvements to the State Transportation Network (STN). The project's fair share contribution, financing, scheduling, implementation responsibilities and lead agency monitoring should be fully discussed for all proposed mitigation measures.

Equitable Access
If any Caltrans facilities are impacted by the project, those facilities must meet American Disabilities Act (ADA) Standards after project completion. As well, the project must maintain bicycle and pedestrian access during construction. These

access considerations support Caltrans' equity mission to provide a safe, sustainable, and equitable transportation network for all users.

Encroachment Permit
Please be advised that any permanent work or temporary traffic control that encroaches onto Caltrans' ROW requires a Caltrans-issued encroachment permit. As part of the encroachment permit submittal process, you may be asked by the Office of Encroachment Permits to submit a completed encroachment permit application package, digital set of plans clearly delineating Caltrans' ROW, digital copy of signed, dated and stamped (include stamp expiration date) traffic control plans, this comment letter, your response to the comment letter, and where applicable, the following items: new or amended Maintenance Agreement (MA), approved Design Standard Decision Document (DSDD), approved encroachment exception request, and/or airspace lease agreement. Your application package may be emailed to D4Permits@dot.ca.gov.

Please note that Caltrans is in the process of implementing an online, automated, and milestone-based Caltrans Encroachment Permit System (CEPS) to replace the current permit application submittal process with a fully electronic system, including online payments. The new system is expected to be available during 2022. To obtain information about the most current encroachment permit process and to download the permit application, please visit https://dot.ca.gov/programs/traffic-operations/ep/applications.

Thank you again for including Caltrans in the environmental review process. Should you have any questions regarding this letter, or for future notifications and requests for review of new projects, please email LDR-D4@dot.ca.gov.

Sincerely,

Mark Leong

MARK LEONG
District Branch Chief
Local Development Review

c: State Clearinghouse

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Established in 1938

June 15, 2022

File Ref: SCH # 2022040504

Tess Byler
San Francisquito Creek Joint Powers Authority
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Palo Alto, CA 94303

VIA REGULAR & ELECTRONIC MAIL: tbyler@sfcjpa.org

Subject: Notice of Preparation (NOP) for an Environmental Impact Report (EIR) for the Strategy to Advance Flood Protection, Ecosystems and Recreation along San Francisco Bay Project, San Mateo County

Dear Tess Byler:

The California State Lands Commission (Commission) staff has reviewed the subject NOP for an EIR for the Strategy to Advance Flood Protection, Ecosystems and Recreation along San Francisco Bay Project (Project), which is being prepared by the San Francisquito Creek Joint Powers Authority (SFCJPA). The SFCJPA, as a California public agency proposing to carry out the Project, is the lead agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.). The Commission is a trustee agency because of its trust responsibility for projects that could directly or indirectly affect State sovereign land and their accompanying Public Trust resources or uses. Additionally, because the Project involves work on State sovereign land, the Commission is also a responsible agency. Commission staff requests that the SFCJPA consult with us on preparation of the Draft EIR (DEIR) as required by CEQA section 21153, subdivision (a), and the State CEQA Guidelines section 15086, subdivisions (a)(1) and (a)(2).

Commission Jurisdiction and Public Trust Lands

The Commission has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways. The Commission also has certain residual and review authority for tidelands and submerged lands legislatively granted in trust to local jurisdictions (Pub. Resources Code, §§ 6301, 6306). All tidelands and submerged lands, granted or ungranted, as well as navigable lakes and waterways, are subject to the protections of the Common Law Public Trust.

As general background, the State of California acquired sovereign ownership of all tidelands and submerged lands and beds of navigable lakes and waterways upon its admission to the United States in 1850. The State holds these lands for the benefit of all people of the State for statewide Public Trust purposes, which include but are not limited to waterborne commerce, navigation, fisheries, water-related recreation, habitat preservation, and open space. On tidal waterways, the State's sovereign fee ownership extends landward to the ordinary high-water mark as generally indicated by the mean high tide line (MHTL), except for areas of fill or artificial accretion or where the boundary has been fixed by agreement or a court. On navigable non-tidal waterways, including lakes, the State holds fee ownership of the bed of the waterway landward to the ordinary low water mark and a Public Trust easement landward to the ordinary high-water mark, except where the boundary has been fixed by agreement or a court. Such boundaries may not be readily apparent from present day site inspections.

After review of the information contained in the NOP and our in-house records, Commission staff has determined that portions of the Project area will include State-owned sovereign land under the jurisdiction of the Commission. Therefore, a lease from the Commission will be required for any portion of the Project encroaching on State sovereign land. Please contact George Asimakopoulos, Public Land Management Specialist (see contact information below), for further information on the extent of the Commission's jurisdiction and lease application requirements. The Commission has a lease in this vicinity with the U.S. Department of the Interior, Fish and Wildlife Service including Ravenswood Slough. On August 20, 1981, the Commission authorized a General Lease – Public Agency Use, Lease No. PRC 6045.9, for the operation, management, protection, and maintenance of State sovereign land to be used in conjunction with the San Francisco Bay National Wildlife Refuge, which encompasses refuge areas in Alameda, San Mateo, and Santa Clara counties. The lease will expire August 31, 2047. The Commission has a lease in the vicinity of Flood Slough with the Menlo Park Sanitary District. On December 20, 1979, the Commission amended a Permit – Public Agency Use, No. PRC 5468.9, for the construction and maintenance of a sanitary pumping station. This lease will expire on May 31, 2044. The Project area may contain other leases or existing facilities.

Project Description

The Project will provide resiliency to coastal flooding and sea level rise in East Palo Alto and Menlo Park as well as habitat and recreation improvements. The SFCJPA is collaborating with the South Bay Salt Ponds Restoration Project to restore former salt production ponds, Pond R1 and Pond R2, located in the Ravenswood Complex, as part of the Project. The Project will construct levees, floodwalls, and other flood protection features necessary to enable the restoration of tidal action to these ponds. The Project also proposes to increase the diversity of habitat by building tidal salt marsh-upland transition zone habitat (transition zone habitat) on the bayward slope of appropriate segments of the levee adjacent to existing and/or restored tidal salt marsh. In addition, the Project proposes to enhance recreational access to the shoreline by creating new sections of the Bay Trail and by placing existing sections of the Bay Trail atop new

levees where they will be less susceptible to flooding. Consistent with CEQA, the Project EIR will contain both project-level and program-level evaluations.

Environmental Review

Commission staff requests that the consider the following comments when preparing the DEIR.

General Comments

1. Project Description: A thorough and complete Project Description should be included in the DEIR in order to facilitate meaningful environmental review of potential impacts, mitigation measures, and alternatives. The Project Description should be as precise as possible in describing the details of all allowable activities (e.g., types of equipment or methods that may be used, maximum area of impact or volume of sediment removed or disturbed, seasonal work windows, locations for material disposal, construction schedule and staging areas, etc.), as well as the details of the timing and length of activities. Thorough descriptions will facilitate Commission staff's determination of the extent and locations of its leasing jurisdiction, make for a more robust analysis of the work that may be performed, and minimize the potential for subsequent environmental analysis to be required. Please be as specific as possible regarding all proposed work within the Commission's jurisdiction waterward of the MHTL and all other land under Commission jurisdiction.

2. Permits and Approvals: Please update the Permits and Approvals table on page 11 of the NOP to state that a lease will be required from the Commission.

Biological Resources

3. The DEIR should disclose and analyze all potentially significant effects on sensitive species and habitats in and around the Project area, including special-status wildlife, fish, and plants, and if appropriate, identify feasible mitigation measures to reduce those impacts. The SFCJPA should conduct queries of the California Department of Fish and Wildlife's (CDFW) California Natural Diversity Database and U.S. Fish and Wildlife Service's (USFWS) Special Status Species Database to identify any special-status plant or wildlife species that may occur in the Project area. The DEIR should also include a discussion of consultation with the CDFW, USFWS, and the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NMFS), including any recommended mitigation measures and potentially required permits identified by these agencies.

4. Construction Noise: The DEIR should also evaluate noise and vibration impacts on fish and birds from construction, restoration, or flood control activities in the water and levee systems. Mitigation measures could include species-specific work windows as defined by CDFW, USFWS, and NMFS. Again, staff recommends early consultation with these agencies to minimize the impacts of the Project on sensitive species.

Cultural Resources

5. Title to Resources: The DEIR should also mention that the title to all archaeological sites and historic or cultural resources on or in the tide and submerged lands of California is vested in the State and under the jurisdiction of the California State Lands Commission (Pub. Resources Code, § 6313). Commission staff requests that the SFCJPA consult with Staff Attorney Jamie Garrett should any cultural resources on state lands be discovered during construction of the proposed Project. In addition, staff requests that the following statement be included in the DEIR's Mitigation and Monitoring Plan: "The final disposition of archaeological, historical, and paleontological resources recovered on State sovereign land under the jurisdiction of the California State Lands Commission must be approved by the Commission."

Hydrology and Sea Level Rise

6. In the Environmental Setting section of the DEIR, please provide detail regarding the Project area's surface hydrology features and characteristics, groundwater characteristics, history of flood events and any known land uses and structures subject to flood hazards, and any flood zone designations for the Project area. In addition to Federal Emergency Management Agency standards for sea level rise with flood protection structures, identify all coastal adaptation plans applicable to the Project area and describe how the Project will implement the sea level rise goals and objectives of these plans. Describe how proposed construction activities with levees, flood walls, and other flood protection structures will be designed to withstand future projections of sea level rise and elevated groundwater levels and enhance resiliency to restored tidal areas. Describe proposed monitoring programs and adaptive management measures to achieve restoration and flood protection goals. Describe how flood protection structures will be designed for compatibility with existing tidal restoration and habitat management goals for the Project region and will avoid adverse impacts to adjacent properties.

Recreation

7. Please provide a comprehensive description of existing recreational uses and public access to the Bay Trail and San Francisco Bay. Describe how proposed improvements to the Bay Trail will enhance public access to the Bay and uses with the trail, including protection from coastal flooding. Describe any restrictions or limitations on public access to the Project area during construction, and methods to provide notice and accommodations to the public prior to construction.

Alternatives

8. In addition to describing mitigation measures that would avoid or reduce the potentially significant impacts of the Project, the SFCJPA should identify and analyze a range of reasonable alternatives to the proposed Project that would attain most of the Project objectives while avoiding or reducing one or more of the

potentially significant impacts. (State CEQA Guidelines § 15126.6.) Alternatives to construction methods, materials, and access should be considered that minimize impacts to public use of the Bay Trail.

Environmental Justice

9. Environmental justice is defined by California law as "the fair treatment and meaningful involvement of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies." (Gov. Code § 65040.12) This definition is consistent with the Public Trust Doctrine's principle that management of trust lands is for the benefit of all people.

   The Commission adopted an updated Environmental Justice Policy and Implementation Blueprint in December 2018 to ensure that environmental justice is an essential consideration in the agency's processes, decisions, and programs. The twelve goals outlined in the Policy reflect an urgent need to address the inequities of the past, so they do not continue. Through its policy, the Commission reaffirms its commitment to an informed and open process in which all people are treated equitably and with dignity, and in which its decisions are tempered by environmental justice considerations.

   Although not legally required in a CEQA document, Commission staff suggests that the SFCJPA include a section describing the environmental justice community outreach and engagement undertaken in developing the DEIR and the results of such outreach. The California Office of Environmental Health Hazard Assessment developed the CalEnviroScreen mapping tool to assist agencies with locating census tracts near proposed projects and identifying the environmental burdens, should there be any, that disproportionately impact those communities. Environmental justice communities often lack access to the decision-making process and experience barriers to becoming involved in that process. It is crucial that these communities are consulted as early as possible in the project planning process. Commission staff strongly recommends using the CalEnviroScreen tool and then, as applicable, reaching out through local community organizations, such as the California Environmental Justice Alliance. Engaging in early outreach will facilitate more equitable access for all community members. In this manner, the CEQA public comment process can improve and provide an opportunity for more members of the public to provide input related to environmental justice. Commission staff also recommends incorporating or addressing opportunities for community engagement in mitigation measures. Commission staff will review the environmental justice outreach and associated results as part of any future Commission action.

Thank you for the opportunity to comment on the NOP for the Project. As a trustee and responsible agency, the Commission requests that you consult with us on this Project and keep us advised of changes to the Project Description and all other important developments. Please send additional information on the Project to the Commission staff listed below as the DEIR is being prepared. Please refer questions concerning

environmental review to Jason Ramos, Senior Environmental Scientist, at (916) 574-1814 or via e-mail at Jason.Ramos@slc.ca.gov. For questions concerning archaeological or historic resources under Commission jurisdiction, please contact Jamie Garrett, Staff Attorney, at Jamie.Garrett@slc.ca.gov or (916) 574-0398. For questions concerning Commission leasing jurisdiction, please contact George Asimakopoulos, Public Land Management Specialist, at (916) 574-0990, or via e-mail at george.asimakopoulos@slc.ca.gov.

Sincerely,

Nicole Dobroski, Chief
Division of Environmental Planning
and Management

CC: Office of Planning and Research
G. Asimakopoulos
J. Ramos
J. Garrett

Sierra Club comment letter re: Notice of Preparation for the San Francisquito Creek Joint Powers Authority's Environmental Impact Report

Barbara Kelsey <barbara.kelsey@sierraclub.org>
Wed 6/15/2022 12:15 PM
To: Tess Byler <tbyler@sfcjpa.org>
Cc: Jennifer Hetterly <jennifer.hetterly@sierraclub.org>;Susan DesJardin <susan.t.desjardin@gmail.com>;James Eggers <james.eggers@sierraclub.org>;Gladwyn d'Souza <godsouza@mac.com>;Eileen McLaughlin <mclaughlin.eileen@gmail.com>;Mike Ferreira <MichaelJFerreira@gmail.com>;rbd@cityofepa.org <rbd@cityofepa.org>

June 15, 2022

Tess Byler, Senior Project Manager

San Francisquito Creek Joint Powers Authority

2100 Geng Road

Palo Alto, CA 94303

tbyler@sfcjpa.org

Dear Ms. Byler,

The Sierra Club's Loma Prieta Chapter and Bay Alive Campaign respectfully submit comments on the Notice of Preparation for the San Francisquito Creek Joint Powers Authority's (SVCJPA) Environmental Impact Report for the project titled *Strategy to Advance Flood Protection, Ecosystems and Recreation along San Francisco (SAFER) Bay.*

Our chapter has a deep interest in the San Francisco Bay and its ecosystems, as well as areas near the Bay where development may impact natural resources and climate resilience in the region. We recognize and support the importance of the SAFER Bay Project in providing flood protection for communities near the Bay as sea levels rise. However, we have concerns about some aspects of the proposed project that we hope to see addressed in the Draft Environmental Impact Report (DEIR). We also wish to reinforce and support the comments submitted by the South Bay Salt Pond Restoration Project on June 3, 2022 (attached). Our comments are noted in the attached letter.

Respectfully,

Susan DesJardin

Bay Alive Chair

Sierra Club Loma Prieta Chapter

Jennifer Chang Hetterly

Bay Alive Coordinator

Sierra Club Loma Prieta Chapter

Attachments:

- South Bay Salt Pond Restoration Project Comment letter, dated June 3, 2022
- Joint Scoping Comments to the City of East Palo Alto regarding the Ravenswood Business District Specific Plan Update, dated May 16, 2022

Sent by:

Barbara Kelsey

she/her/hers

Chapter Coordinator

Sierra Club, Loma Prieta Chapter

3921 E. Bayshore Rd, Suite 204

Palo Alto, CA 94303

barbara.kelsey@sierraclub.org

We are still working remotely

most of the time, so email is

the best contact method.

SIERRA CLUB
LOMA PRIETA CHAPTER

SIERRA CLUB
BAY ALIVE

June 15, 2022

Tess Byler, Senior Project Manager
San Francisquito Creek Joint Powers Authority
2100 Geng Road
Palo Alto, CA 94303
tbyler@sfcjpa.org

Dear Ms. Byler,

The Sierra Club's Loma Prieta Chapter and Bay Alive Campaign respectfully submit the following comments on the Notice of Preparation for the San Francisquito Creek Joint Powers Authority's (SVCJPA) Environmental Impact Report for the project titled *Strategy to Advance Flood Protection, Ecosystems and Recreation along San Francisco (SAFER) Bay.*

Our chapter has a deep interest in the San Francisco Bay and its ecosystems, as well as areas near the Bay where development may impact natural resources and climate resilience in the region. We recognize and support the importance of the SAFER Bay Project in providing flood protection for communities near the Bay as sea levels rise. However, we have concerns about some aspects of the proposed project that we hope to see addressed in the Draft Environmental Impact Report (DEIR). We also wish to reinforce and support the comments submitted by the South Bay Salt Pond Restoration Project on June 3, 2022 (attached). Our comments are listed below.

General Comments

Construction of a new levee with a 60-100 foot base including placement of a floodwall, increasing ground elevation to 16-17 feet (NAVD 88) and addition of minimum 3:1 (horizontal:vertical) slopes requires significant fill and, as a result, reduces wetland habitat throughout the area and negatively impacts wildlife. We acknowledge that this may be necessary in some areas to achieve the goals of the project. However, wherever possible, new levees should be located upland of existing wetlands, on land, to minimize Bay fill and the associated loss of wetland habitat and impact on wildlife. This is consistent with East Palo Alto's Ravenswood Business District Specific Plan Policy LU-9.4 that says in part:

"Rights-of-way for levees or other structures protecting inland areas from tidal flooding should be sufficiently wide on the upland side to allow for future levee widening to support additional levee height so that no fill for levee widening is placed in the Bay."

The SAFER project plans show ponds as they exist today and do not reflect the future plans for ponds in the Don Edwards San Francisco Bay National Wildlife Refuge as described in South Bay Salt Pond Restoration Project's multi-phase implementation plan. Existing plans for future pond operation in the Refuge must be reflected in the environmental impact analysis for the project. Similarly, we would like to see the DEIR include Meta's Willow Village project and East Palo Alto's Ravenswood Business District Specific Plan Update in a cumulative impact analysis.

Specific Comments

First, we urge you to drop construction of a roadway for vehicle traffic between SF2 ponds in the Don Edwards San Francisco Bay National Wildlife Refuge from the project alternatives to be considered in the DEIR. Use of the refuge as a roadway is in direct conflict with the purpose of the refuge which is to preserve and enhance wildlife habitat. A roadway would have a significant negative impact on wildlife using the SF2 ponds, both during construction and under normal use. It would also require additional Bay fill to be used between the SF2 ponds, resulting in a permanent loss of habitat potential.

We are similarly concerned about the extension of that roadway into East Palo Alto. In our May 16, 2022 scoping letter regarding East Palo Alto's Ravenswood Business District Specific Plan Update (attached), we expressed significant concern about encroachment from new development and associated infrastructure constraining width and alignment options for the SAFER Levee and reducing flexibility for future heightening of the levee. We maintain that the best and highest use of the lands proposed for the Loop Road in East Palo Alto is a flood protection levee that can be raised over time to protect the University Village area.

Second, we are concerned about the location of the segment of the SAFER Levee between Ravenswood Slough and Hacker Way. The new higher levee should be located inland of the Ravenswood Slough toward Hacker Way. It is critical to site this new higher levee upland of the Ravenswood Slough toward Meta Headquarters parking area to minimize the loss of habitat and the impacts on wildlife.

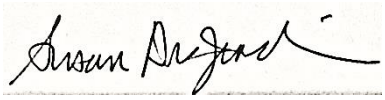
Third, we are concerned about the plans for the North of Bay Road segment of the SAFER Levee in that it includes only a floodwall, inboard of the Bay Trail, and no obvious plans to raise or relocate the Bay Trail. A new higher levee and Bay Trail should be constructed upland of wetlands on land similar to plans for the SAFER Levee segment South of Bay Road. Plans to assure the continued viability of this section of the Bay Trail should not be delayed as a future continuous Bay Trail should be a goal of the project.

Finally, we are concerned about construction impacts on sensitive Bay ecosystems in the project area. We recommend a baseline Biological Resource Assessment (BRA) be performed as part of the environmental analysis for this project and established as a standard methodology

for subsequent project level environmental review. BRAs should be undertaken for each reach and bio-niches within the reach. Please see page 4 of the attached May 16 Joint Scoping Letter to the City of East Palo Alto for a recommended BRA approach.

We appreciate the opportunity to participate in this project's development and request that you include alternatives in your environmental impact report that include no roadway between SF2 ponds, location of the SAFER levee segment north of Bay Road in East Palo Alto upland of any marshland and location of the SAFER levee segment around Meta Headquarters completely upland of the Ravenswood Slough.

Respectfully,



Susan DesJardin
Bay Alive Chair
Sierra Club Loma Prieta Chapter

Jennifer Chang Hetterly
Bay Alive Coordinator
Sierra Club Loma Prieta Chapter

Attachments:

- South Bay Salt Pond Restoration Project Comment letter, dated June 3, 2022
- Joint Scoping Comments to the City of East Palo Alto regarding the Ravenswood Business District Specific Plan Update, dated May 16, 2022

South Bay Salt Pond Restoration Project

Restoring the Wild Heart of the South Bay

June 3, 2022

Tess Byler, Senior Project Manager
San Francisquito Creek Joint Powers Authority
2100 Geng Road
Palo Alto, CA, 94303
tbyler@sfcjpa.org

Dear Ms. Byler and colleagues,

Thank you for the opportunity to attend the scoping meeting and provide scoping comments on the Notice of Preparation for the San Francisquito Creek Joint Powers Authority's (SFCJPA) Strategy to Advance Flood Protection, Ecosystems and Recreation along San Francisco (SAFER) Bay Project.

As we have discussed in multiple meetings, the collaborating entities behind the South Bay Salt Pond Restoration Project (SBSPRP) – most notably the U.S. Fish and Wildlife Service's (USFWS) Don Edwards San Francisco Bay National Wildlife Refuge (Refuge), which is the landowner of the Ravenswood pond complex portion of the SBSPRP – are supportive of the SFCJPA's overall mission and goals for the SAFER Bay Project, portions of which would take place on Refuge lands.

However, there are several points and details in the text and figure in the Notice of Preparation – and that were discussed in the May 19 Scoping Meeting – that we wanted to be sure were clarified and addressed in the Draft Environmental Impact Report (EIR). Our comments on those matters are listed below; please include these considerations in the analysis of the feasibility and environmental impacts of different alternatives in the EIR.

Please note that none of these points are intended as opposition to the overall SAFER Bay Project. Rather, they are intended to inform and advance the next steps in project planning, the development and screening of project alternatives, the CEQA and NEPA processes, and the various rights-of-way and easement agreements that will need to be developed between the Refuge and the SFCJPA as those parts of the project move toward implementation.

<u>Overarching Comment</u>

Any portion of the SAFER Bay Project that occurs on Refuge lands must comport with federal law and policy about the mission of the National Wildlife Refuge System. Specifically, that mission is to "administer a national network of lands and waters for the conservation, management and, where appropriate, restoration of the fish, wildlife and plant resources and their habitats within the United States for the benefit of present and future generations of Americans" (National Wildlife Refuge System Administration Act of 1966, as amended [16 U.S.C. 668dd-668ee]).

The Don Edwards San Francisco Bay National Wildlife Refuge was established by Congress on June 30, 1972, for the following purposes:

- "...for the preservation and enhancement of highly significant wildlife habitat...for the protection of migratory waterfowl and other wildlife, including species known to be threatened with extinction, and to provide an opportunity for wildlife-oriented recreation and nature study..." (86 Stat. 399, dated June 30, 1972).
- "...particular value in carrying out the national migratory bird management program" 16 U.S.C. 667b (An Act Authorizing the Transfer of Certain Real Property for Wildlife, or other purposes).
- "...to conserve (A) fish or wildlife which are listed as endangered species or threatened species....or (B) plants ..." 16 U.S.C. 1534 (Endangered Species Act of 1973).
- "...for the development, advancement, management, conservation, and protection of fish and wildlife resources ..." 16 U.S.C. 742f(a)(4) "...for the benefit of the United States Fish and Wildlife Service, in performing its activities and services. Such acceptance may be subject to the terms of any restrictive or affirmative covenant, or condition of servitude ..." 16 U.S.C. 742f (b)(1) (Fish and Wildlife Act of 1956).

The priority public uses of a National Wildlife Refuge include wildlife observation, interpretation, photography, environmental education, hunting and fishing. Any recreational activities considered on engineered levees in or through the Refuge should be appropriate, wildlife-compatible uses such as pedestrian and bicycle trails for public wildlife viewing and interpretation, where appropriate.

Specific Comments

1. Any public uses, structures, and/or facilities in the Refuge and associated with the SAFER Bay Project would need to be evaluated and approved under a Compatibility Determination supported by a NEPA-compliant project. We realize that the SAFER Bay Project's NEPA coverage will be provided in a subsequent permitting process, and so the timing of these steps is important to consider now.
2. As part of ensuring compatibility with Refuge purposes, the following points should be considered in the Draft EIR and subsequent NEPA/permitting document:
    - Construction-related short-term impacts are a major source of potential adverse impacts to the Refuge and its surroundings. The Draft EIR should describe best management practices, avoidance and minimization measures, and mitigation measures that can be taken to reduce these impacts. Construction activities would need to be planned and timed to cause the least disturbance to Refuge operations, wildlife and habitats.
    - The anticipated impacts of each alternative under consideration should be listed in tables and quantified wherever possible.
    - The Draft EIR should contain and identify a Preferred Alternative that is appropriate to implement on Refuge lands.
3. Any engineered levee or other feature on Refuge lands would need a Right-of-Way permit issued by the USFWS.
4. One of the points of discussion at the scoping meeting included use of Refuge lands for the construction of a "loop road" or other built feature for establishing a roadway for private vehicle use through or within the Refuge. While it may be acceptable to build a levee through part of the Refuge to manage flood waters or establish separation between different types of wildlife habitats, a levee-top roadway intended for use as a thoroughfare for private vehicles is not a compatible or appropriate use of the Refuge's congressionally mandated purpose or the mission of the National Wildlife Refuge System. As discussed in several meetings, alternatives that include establishing a transportation corridor for private vehicles will not be appropriate or compatible with the purpose of the National Wildlife Refuge.

5. Figure 1 in the NOP as well as the discussion in the text and in the scoping meeting consistently describe Ravenswood Ponds R1 and R2 as being restored to tidal marsh. That is certainly a possibility, but it is only one of the possible futures for these two ponds under the SBSPRP's multi-phase implementation plan and the guiding documents and programmatic permits for our project. Under our Adaptive Management Plan, we have to weigh the needs of a range of different endangered, threatened, and other special-status species as each phase of the project is implemented and strike a balance between tidal marsh restoration and various types of managed pond enhancements that will bring benefits and impacts to these different species. We have not yet reached a point where we can evaluate what to do with Ponds R1 and R2. They may indeed be restored to tidal marsh, but they may instead be retained and enhanced as ponds for other species. We strongly encourage the SAFER Bay Project team to include every combination of these different habitat outcomes for these ponds in the EIR, so that the alternative selected and advanced is consistent with the decisions and needs of the SBSPRP and the Refuge.
6. Figure 1 includes a habitat transition zone in Pond R2. We are not necessarily opposed to including this feature at this location, but it may not be necessary or desirable if that pond is kept as a managed pond. And even in the tidal marsh restoration scenario, it may not provide much additional habitat value in that location. We encourage you to consider alternatives both with and without that feature.
7. The SBSPRP's Phase 2 construction is underway at Ravenswood Ponds R3, R4, R, and S5, near the western end of the SAFER Bay Project. If construction is completed in 2022 as planned (or even shortly thereafter), the three different habitat types, flood management systems, and public access features will be in place and operational early in 2023. The landscape will be radically different than it is in the existing aerial photos and maps. It is important that the EIR not make any inferences or conduct any description of the existing conditions based on images or data that exist of the current configuration. We are happy to work with your project team to review and clarify what will soon be the existing condition as these locations.

Again, my colleagues and I have intent and motivation to participate in and support this project's development, environmental clearance, and permitting. We look forward to the next steps in our collaboration.

Please feel free to contact me at dave.halsing@scc.ca.gov or 650-814-0588.
Most sincerely,

Dave Halsing, Executive Project Manager
South Bay Salt Pond Restoration Project
California State Coastal Conservancy
1515 Clay St., 10th Floor
Oakland, CA, 94612

May 16, 2022

Amy Chen, Community Development Director
City of East Palo Alto, Planning Division
1960 Tate Street (Attn: RBD Project)
East Palo Alto, CA 94303
rbd@cityofepa.org

Dear Ms. Chen,

The Loma Prieta Chapter of the Sierra Club, the Citizens Committee to Complete the Refuge, Green Foothills, and Sequoia Audubon Society respectfully submit the following comments regarding the Notice of Preparation (NOP) for the Supplemental Environmental Impact Report (SEIR) for the Ravenswood Business District/4 Corners Transit-Oriented Development Specific Plan (RBDSP) Update.

Our organizations have a deep interest in the San Francisco Bay and its ecosystems, as well as areas near the Bay where development may impact natural resources and climate resilience in the region. We recognize the critical role that the RBDSP Update will play in shaping the future of East Palo Alto and its natural resources along the San Francisco Bay. We have participated in community meetings, engaged with local residents, community groups, and city staff/consultants, and commented to the Planning Commission and City Council throughout the planning process. Please see our full scoping comments below.

Project Description

We understand that this is a programmatic EIR and that environmental review for future projects will tier off of the SEIR. Nevertheless, it is known to the City that current development proposals (which together exceed this project's maximum office/R&D square footage) would shift new development away from the Bay Road core that was envisioned in and subject to environmental

review in the 2013 Specific Plan. Instead, these projects would concentrate the plan area's building intensity and height in areas adjacent to the wetlands, introducing substantial additional development and human impacts to sensitive habitat areas. This expected geographic shift and concentration of building intensity should be reflected in the project description and its impacts should be specifically evaluated in the SEIR.

We understand from the City's May 9, 2022 scoping meeting that mitigations adopted in the 2013 RBD/4 Corners Specific Plan FEIR will carry over and be supplemented with additional mitigation measures in the SEIR for this RBDSP Update. Please clearly identify in the SEIR any mitigation measures that are intended to update or supersede mitigations adopted in the 2013 FEIR as well as which measures they supplant.

Alternatives

Please include and analyze an environmental alternative that incorporates a wetlands setback[1] to avoid or minimize development and use impacts on the Bay's ecology while also accommodating bayside wetland migration (nature based adaptation) and enabling the San Francisco Creek Joint Powers Authority's preference for a wide sea level rise levee that can be raised over time as sea level rise worsens. Such an alternative could include an alternative Plan configuration that retains proposed housing but reduces office density or directs development intensity away from the Bay.

Community workshops and city study sessions regarding the RBDSP Update indicated that the proposed loop road is both controversial and likely to produce mixed results at best for local traffic conditions. We encourage you to evaluate all alternatives both with, and without the loop road.

Cumulative Impacts

Please include these projects in the cumulative analysis: SAFER Bay project, Facebook's Willow Village and other proposed new biotech building(s) in Menlo Park's bayfront area, Dumbarton Corridor project.

ENVIRONMENTAL IMPACT ANALYSIS AND MITIGATION CATEGORIES

We note that the NoP omits several potential CEQA environmental analysis categories. Because (1) the proposed RBDSP Update could more than double the allowed office/R&D/Lab square footage in the Plan area, (2) the City can reasonably anticipate concentration of that development along the shoreline, and (3) the allowed intensity and height may change for some

[1] A Wetlands Setback alternative establishing a 300-foot setback for new development was analyzed in the 2013 Specific Plan DEIR and judged to be "the next most environmentally superior alternative after the No Project Alternative." The Wetlands Setback was the recommended alternative coming out the 2013 DEIR. 2013 Draft Environmental Impact Report for the City of Palo Alto Ravenswood/4 Corners TOD Specific Plan, p. 5-30.

land use designations, we encourage you additionally to evaluate impacts in these areas: Aesthetics, Land Use and Planning, Population and Housing, Public Services, and Recreation through the SEIR.

AESTHETICS

Given the substantial increase in development potential and anticipated shift of development intensity within the plan area from Bay Road to bayfront, Aesthetics should be included in the SEIR scope of analysis, providing guidance to developers, perhaps with modeled building heights, of acceptable limits for development. The SEIR should carefully identify scenic resources, including open views of the Bay and foothills in the East Bay, sunrise over the bay, baylands, mature vegetation, and historic resources that may be affected, and should identify those resources that are likely to be impacted by the anticipated development program. Specific standards for building bulk and maximum building widths should be identified to preserve community viewsheds and avoid or minimize potential impacts of tall buildings, such as shadowing from buildings, glare from morning sun reflected onto the bay from glazing, and wind tunnels around tall buildings.

AIR QUALITY/GREENHOUSE GAS EMISSIONS

A detailed study of the impact of construction is needed. Construction activities and construction equipment will have an ongoing impact on air emissions, noise, and vibration. The SEIR should provide a quantitative analysis of air emissions and noise/vibration attributable to construction (including the use of heavy equipment, construction worker traffic, etc.), and provide appropriate standards and control measures for future projects under the Plan.

BIOLOGICAL RESOURCES

When it comes to shoreline locales around the Bay, East Palo Alto and the RBDSP shore are indeed rich. The bayland marshes spread out from the Dumbarton rail right of way, surround Cooley Landing and stretch eastward toward San Francisquito Creek. Its richness can be measured by multiple values: simple, restful pleasure in wild, open space; tidal habitat serving many wildlife species, some endangered; an established, vegetated tidal plain mitigating tidal surges; a carbon exchange engine equal to or perhaps better than rain forests and most of the wetlands are already protected at no cost to the City.

In sum, these wetlands are an ecological treasure for which East Palo Alto and the RBDSP must provide all appropriate care. We understand that the SEIR must perform a thorough review of the entire RBDSP area. Our comments here will focus on shoreline and near shoreline natural communities.

The SEIR should establish a Biological Resource Assessment standard for tiered projects.

For the SEIR, the Biological Resources analysis needs to reach beyond the CEQA checklist and regional databases to establish appropriate standards to be used by tiered projects. Please consider the Biological Resource Assessment (BRA) approach described below, as you develop standards for tiered project biological resource analysis.

> Biological Resource Assessment (BRA): For tiered projects, a baseline biological resource assessment must be performed and submitted by a qualified biologist for any site that may impact sensitive biological resources. Sensitive biological resources triggering the need for the baseline BRA shall include wetlands occurrences or suitable habitat for special-status species, sensitive natural communities, and important movement corridors for wildlife such as green corridors and shorelines.
>
> The BRA will assess natural habitats occurring on or adjacent to a project site including wetlands, mature trees, unused structures that could support species like swallows or special-status bats or other biological resources. The BRA will consider seasonality including nesting resources for migratory or locally resident birds.
>
> The baseline BRA shall provide a determination on whether any sensitive biological resources are present on or adjacent to the site, including jurisdictional wetlands and waters, essential habitat for special-status species, and sensitive natural communities. If jurisdictional wetlands and/or waters are suspected to be present on the site, a jurisdictional delineation confirmed by the U.S. Army Corps of Engineers (USACE) will be provided as part of the baseline BRA.
>
> The baseline BRA will also include consideration of existing conservation plans that apply to adjoining lands. For the RBDSP shoreline projects these include the Don Edwards National Wildlife Refuge (Refuge) Comprehensive Conservation Plan[2] and any similar plan the Midpeninsula Regional Open Space District (MPROSD) has for the Ravenswood Open Space Preserve. In such instances, the BRA will also include consultation with staff of the Refuge and of the MPROSD.
>
> The baseline BRA for any project along the shoreline, regardless of natural resource owner, will also consider the US Fish and Wildlife Service Tidal Marsh Recovery Plan[3] and relevant references of the South Bay Salt Pond Restoration Project.

The SEIR should perform a similar Biological Resource Assessment and identify both direct and indirect impacts using best available data.

In addition to establishing the BRA role for tiered projects, please employ similar standards for the SEIR analysis, especially for areas along the shoreline, and identify both direct and indirect impacts based on the full development potential proposed in the RBDSP Update. Conservation

[2] Don Edwards National Wildlife Refuge Comprehensive Conservation Plan 2012; https://permanent.fdlp.gov/gpo51796/index.htm

[3] US Fish and Wildlife Service Tidal Marsh Recovery Plan, 2013: https://ecos.fws.gov/docs/recovery_plan/TMRP/20130923_TMRP_Books_Signed_FINAL.pdf

managers for lands along the shoreline must be consulted as they have more relevant and complete data than any regional database, especially with regards to federally endangered species like Ridgway's rail and the salt marsh harvest mouse, both present along the RBDSP shoreline. The documents already mentioned should be used in SEIR analysis by qualified biologists. The SEIR must use the best available data in order to adequately update the RBDSP.

Impacts of Concern

Priority: For all impacts on wildlife and habitats the highest and best mitigation is avoidance.

Human Disturbance

Alternatives proposed in the NoP would produce exceptional increases in human density and activity near wetlands and other natural communities. The SEIR needs to analyze the biological impacts of such presence in regard to noise, litter, encroachment in habitats, dogs off leashes, food trucks, use of helium balloons and similar activities.

1. Evaluate and mitigate potential impacts on resident, nesting and migratory wildlife of any trash inclusive of food and food-contaminated trash that may be introduced by food vendors or picnickers especially along the shoreline inclusive of attraction of flocking gulls, pigeons or predators of any kind.
2. Evaluate and mitigate the potential impacts of increased human traffic using outdoor recreation infrastructure like trails. Studies have shown that wildlife retreat when humans move along trails[4] and that waterfowl are particularly intolerant of recreational trail use.[5]
3. Evaluate and mitigate impacts of noise on wildlife arising from events of any size or large gatherings along the shoreline or amidst developed shoreline projects.
4. Evaluate and mitigate impacts of human intrusion into and destruction of habitats.
5. Evaluate and mitigate impacts of people walking their dogs off-leash particularly adjoining shoreline wetland habitats, habitats of endangered species. Enforcement is challenging but some methods can be more effective than others as discussed by Mountain View's Senior Biologist Phil Higgins in a Palo Alto webinar last November.[6]

Predation

Increased human presence and tall structures will increase predation along the shoreline. Analysis must identify and mitigate to minimize predation. For wetland species, those predators

[4] Trulio, L. A., & Sokale, J. (2008). Foraging Shorebird Response to Trail Use around San Francisco Bay. *The Journal of Wildlife Management*, *72*(8), 1775–1780. http://www.jstor.org/stable/40208460

[5] Lynne A. Trulio and Heather R. White "Wintering Waterfowl Avoidance and Tolerance of Recreational Trail Use," *Waterbirds* 40(3), 252-262, (1 September 2017). https://doi.org/10.1675/063.040.0306

[6] Phil Higgins, Balancing Public Access and Habitat Enhancement in the Baylands,11/16/21, webinar @ ~1:50:02; https://www.sfestuary.org/truw-pahlp/

include racoons, opossums, skunks, foxes, rats and roaming cats. Predation is of major concern for the endangered species that live in the shoreline marshes.

1. Evaluate and mitigate outdoor feeding of animals along the shoreline by prohibiting the practice on lands of any new development and the Bay Trail. Outdoor feeding attracts and concentrates any and all of the species mentioned above and each will roam in wetlands consuming eggs, nestlings or adults inclusive of endangered species.
2. Evaluate and mitigate by controlling food trash that would cause gulls to congregate, species that also predate eggs or young of other wildlife.
3. Evaluate and mitigate building design near the shoreline to prevent perching or nesting of avian predators.
4. Evaluate and mitigate tree selection along or near the shoreline to control avian predators by prohibiting trees along the shoreline public access right of way and avoiding tall or spiking tree shapes in nearby, setback locations.
5. Evaluate and mitigate project level landscaping to avoid places where predator species might hide in daylight hours.

Disruption of tidal wetlands

Wetlands are uniquely sensitive to impacts from actions on surrounding lands and necessarily are subject to Clean Water Act as well as wildlife and habitat legal protections regardless of land ownership and location of the BCDC band. As such actions such as construction or landscape management along the RBDSP shoreline must be carefully monitored and mitigated even if equipment or workers never touch the marsh. Dust and seeds of invasive species can travel on even slight breezes. Oil spills or other contaminants may travel to sensitive habitats within the Plan area, particularly north of Bay Road and close to and within the BCDC buffer zone.

Both temporary and permanent impacts to these wetlands must be evaluated and avoided, including impacts resulting from construction activities such as grading, installation of subsurface infrastructure and placing of fill to raise the height of buildings or installation of flood barriers such as anticipated in the SAFER Bay Project. In addition,

1. Mitigation Measure BIO-5 from the 2013 Ravenswood Four Corners/TOD Specific Plan FEIR should be amended to apply to all potentially impacted wetland habitats, private or publicly owned, inclusive of those identified as under State or federal jurisdiction and to require that no fill material be placed on the wetlands.
2. Construction and landscaping practices should evaluate and mitigate impacts of work like construction (temporary impact) and landscaping (temporary and repetitive) on sensitive wetlands by setting standards and monitoring compliance for all such actions.
    a. Place dirt piles away from the shoreline, covering with tarps when not in use.
    b. Require tire washing for all vehicles used on the site to avoid import of invasive plant species.
    c. If pile driving is necessary, use methods that minimize noise and are confined to limited periods of time and incorporate all actions needed to protect the federally endangered Ridgway's rail. See 2f below.

d. Do not permit night-time construction activities along the shoreline to avoid impacts on night-active species in the marshes. If any exceptions to night-time construction activities, require that all needed lighting be shielded, directed down and away from the sensitive habitats.
e. Landscapers should not use blowers near the wetlands as the practice will send seeds, dust, and other contaminants into the wetlands. Blower noise would also disrupt the quiet of the shoreline environment for people and wildlife.
f. Construction and noise require all appropriate protections for the federally endangered Ridgway's rail. The BRA of shoreline projects must (1) include rail surveys to establish existing conditions and again prior to any noise or other marsh impacts, (2) observe nesting season construction restrictions if the rails are within 700' and (3) work in consultation with the US Fish and Wildlife Service before and throughout construction activity having any potential impacts.
g. Consistent with 2013 RBDSP Policy LU-9.4, the SEIR should establish development standards that ensure adequate "Rights-of-way" for SAFER project preferred-design levees and be sufficiently wide on the upland side to allow for future levee widening to support additional levee height and ensure that no fill for levee construction or widening is placed in the Bay. Please see further comments under Land Use and Planning.

Bird Safety

Human infrastructure threatens communities and ecosystems with significant impacts. Collisions with buildings alone kill nearly 1 billion birds per year, highlighting the necessity for bird-safe design to protect local and migratory bird populations. Please study any potential impacts of the project's design on bird populations, such as the likelihood of bird-strikes. Consider the following policies as mitigation:

1. The applicability of the Bird-safe policy of the 2013 RBDSP should be expanded to include all commercial development regardless of habitat proximity.
2. For residential development, we ask for the addition of bird-safe design requirements for developments within 300-ft from riparian habitats, wetlands and open space.

Light Pollution

Artificial light at night from this infrastructure causes significant impacts. Light disrupts the circadian rhythm of living beings which can impact mating, foraging, and migration behaviors, sometimes with lethal results. Light pollution has also been correlated with increased cancer risks and hormone disruption in humans. To mitigate these impacts, we recommend that the impacts of light pollution be studied and that the following standards be established.

1. Require shielded lights and prohibit up-lighting.
2. All lighting shall have a correlated color temperature of 2700 Kelvin or less City-wide.

3. All lighting shall be angled downwards and facing away from the Bay or other habitat areas[7].
4. Timers, dimmers, shades, and occupancy sensors should be used in commercial buildings to ensure that lights are turned off when buildings are not in use. Non-essential lights should be turned off at 10pm.
5. Lighting fixtures should be coordinated with street tree placement and species.
6. Construction lighting should not be exempted from outdoor lighting standards in shoreline areas within the plan area.

Shading

Analyze and mitigate daylight attenuation impacts on the health and survival of the bayland ecosystem due to shadowing by tall adjacent buildings. Studies have shown the importance of sunlight[8] to estuarine ecosystems and that shadowing from bridges[9] and docks[10] can negatively affect plant growth and invertebrate density in estuarine ecosystems. By extension, tall buildings along East Palo Alto's treeless marsh plain that thrives in open sunlight are likely to introduce even broader shadow impacts. Please include shadow studies to analyze shading impacts on the baylands from buildings. Mitigations should include setback standards that apply to shoreline projects developed under the RBDSP and also require stepped-back heights for building design as well as avoidance of recreation or other features that extend over bayland habitat.

Glare and lightcast

Analyze and mitigate glare and night light cast from windows with building design guidelines that avoid both impacts on surrounding natural communities especially marsh wetlands.

[7] This aligns with East Palo Alto Municipal Code Section 18.34.110 - Outdoor Light and Glare: All outdoor lighting shall be arranged so as to keep light directed only on the subject property. It is unlawful to create illumination exceeding 0.1 foot-candles on any adjacent property. It is unlawful to create or allow direct glare, whether from floodlights or from high temperature processes (e.g., combustion, welding, etc.) visible at the property line in violation of Section 18.34.110

[8] Thom et al. 2008 Light Requirements for Growth and Survival of Eelgrass Zostera marina L in Pacific Northwest USA Estuaries https://www.researchgate.net/publication/226247644_Light_Requirements_for_Growth_and_Survival_of_Eelgrass_Zostera_marina_L_in_Pacific_Northwest_USA_Estuaries

[9] Broome et al. 2005 Effects of Shading from Bridges on Estuarine Ecosystems. CTE/NCDOT Joint Environmental Research Program Final Report https://connect.ncdot.gov/projects/research/RNAProjDocs/2001-12FinalReport.pdf

[10] Logan et al. 2017 Effects of Docks on Salt Marsh Vegetation: An Evaluation of Ecological Impacts and the Efficacy of Current Design Standards https://www.mass.gov/doc/effects-of-docks-on-salt-marsh-vegetation-an-evaluation-of-ecological-impacts-and-the-efficacy/download

Pesticides and rodenticides

Analyze and mitigate both pesticides and rodenticides with avoidance practices as each is known to kill desired species, directly or indirectly. Pesticides used along the often windy shoreline can both impact habitat and become a water quality contaminant.

GEOLOGY AND SOILS

Please see Hazards and Hazardous Materials, below.

HAZARDS AND HAZARDOUS MATERIALS

The Ravenswood District Specific Plan SEIR should evaluate the cumulative impacts of all hazardous waste sites and other chemical pollution within the Plan Area

1. Due to chemical contamination of large areas of the Plan Area by past and ongoing land uses, it is critical that the SEIR evaluate the impact of hazardous chemicals on anticipated future land uses. It is not appropriate to defer those evaluations to the project-specific EIRs, as the Plan's development goals may not be realistic or economically feasible due to the decades-long timeframes and high costs of site remediation. Additionally, the SEIR should address the cumulative health and environmental impact of pollutant releases from multiple hazardous waste sites within the Plan Area.

   The SEIR should address the following topics related to hazardous chemicals within the Plan Area should:

   Evaluate the suitability of properties within the Plan Area for future development using current toxicity values published by the USEPA and DTSC. The cleanup requirements for the Rhone-Poulenc[11] and Romic[12] sites are based on toxicity screening values for cancer risk, noncancer health impacts, and estuarine protection from 1988 (Rhone-Poulenc) and 2004 (Romic), respectively. If more health-protective values have since been published, the contractor should use those values to assess the risk associated with future land uses.

1. Anticipate likely near-term changes to cleanup requirements based on toxicity assessments currently in progress at USEPA or DTSC. Several examples follow:

[11] *UNITED STATES OF AMERICA, Plaintiff, vs. STARLINK LOGISTICS, INC., Defendant. Consent Decree.* https://elr.info/sites/default/files/doj-consent-decrees/r_starlink_logistics_inc._consent_decreefinal.pdf

[12] *Land Use Covenant and Agreement, Environmental Restrictions*, and *Final Remedy Decision for Former Romic Environmental Technologies Corporation Facility, East Palo Alto, California.* https://19january2017snapshot.epa.gov/www3/region9/waste/romic-eastpaloalto/pdf/Romic-Decision-Comment-Response.pdf

a. The IRIS reevaluation of inorganic arsenic, expected to be completed in the next year, may result in more stringent soil and groundwater cleanup levels. This would impact the Rhone-Poulenc site, where arsenic at up to 500 parts per million remains in subsurface soils.
b. USEPA has declared the intention to add two chemicals within the category of Per-and-poly-fluorinated alkyl substances (PFAS) to the RCRA and CERCLA hazardous chemicals lists in 2022, and to promulgate Ambient Water Quality Criteria for those chemicals. The Romic facility treated wastes from electronics manufacturing, which could indicate the presence of PFAS in soil and groundwater at this site. New site investigations could be required to determine if these chemicals are present in soil and groundwater, as well as in adjacent estuarine waters and sediments.

2. Evaluate the impact of land covenants or deed restrictions on the entire Plan Area. The Romic site (12.6 acres) and Rhone-Poulenc site (5 acres) have land covenants or deed restrictions prohibiting many land uses, and that also prohibit any activities disturbing soil or pumping groundwater without written permission from the regulator. Construction of multi-story buildings on soil prone to liquefaction will require extensive boring and dewatering.

3. Evaluate the impact of construction activities and new construction across the Plan Area on the following:

    a. **Compatibility with existing remediation and groundwater monitoring systems**
    Construction activities and new construction should not damage or prevent operation of existing remediation and monitoring systems, such as impermeable caps, monitoring wells, or the biobarrier at the Romic site that is attempting to prevent pollutants from entering the Eastern Slough. In addition, redevelopment should not be allowed to prohibit, limit, or significantly complicate future environmental remediation.
    b. **Changes to groundwater flow directions or rates due to pumping for borehole drilling and dewatering of building foundations**
    Consolidation of soils by dewatering and placement of building foundations will create a subsurface barrier, shifting groundwater flow.
    c. **Transport of contaminated soils as dust to adjacent residential neighborhoods, schools, sensitive or vulnerable populations, and wetlands**
    d. **The potential for subsurface utilities such as sewers or electrical lines to act as conduits for transport of hazardous soil vapors into buildings**
    This is of particular concern at the Romic site, which has both a dense non-aqueous phase layer (DNAPL) of halogenated solvents such as trichloroethene

(TCE) at the bottom of several aquifers and a floating oil layer atop the groundwater that may contain toxic pollutants such as benzene and toluene.[13]

4. Address the potential human health and environmental impacts of the current and historical auto salvage yards and other industries that bordered the western and southern sides of the Romic site[14], and were not investigated in the Romic assessment. Several of those properties have deed restrictions.[15] Pollutants commonly present at auto salvage sites include oil, heavy metals, ethylene glycol, and arsenic.[16]

5. Investigate the transport of hazardous substances from the Plan Area to estuarine sediments and waters. Neither the Romic nor the Rhone-Poulenc site actions included an assessment of sediment contamination or water quality in estuarine channels adjacent to those sites. The 2008 Romic remediation plan states that such an assessment would take place at a future date, but as of 2022 that has not occurred. The Plan EIR contractor should evaluate cumulative impacts to aquatic species from all pollution sources on the East Slough and other waters that could potentially receive groundwater or surface runoff from the Plan Area. Eventually, there will need to be a long-term monitoring plan for estuarine water quality.

The SEIR should evaluate the potential for sea-level rise to worsen pollution of surface soils within and beyond the Plan Area.

Sea-level rise is projected to lead to increased direct flooding of the Plan Area (see Figure 1), which is already at risk from King Tides and storm surges. Without raised levees or other shoreline protection along the entire bayfront, future development will be at risk from more frequent floods. A less recognized hazard that should be evaluated in the Plan EIR is groundwater flooding and the potential for rising water tables to bring buried pollutants to the ground surface and to transport additional pollutants into wetlands. Land within the Plan Area is likely to experience groundwater flooding with a 1-meter rise in sea level.[17] In the East Bay, groundwater bubbling out of manhole covers has been reported 250 feet from the shoreline.[18] Rising water tables and tidal fluctuations could move contamination from buried soils to the surface and force hazardous vapors along utility conduits into buildings. The Plan EIR should include a detailed hydrologic evaluation of this potential pathway for chemical exposures.

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[13] *First Semiannual 2021 Groundwater Monitoring and Remediation Evaluation Report, Bay Road Holdings Site, 2081 Bay Road, East Palo Alto, California. August 16, 2021.* https://www.epa.gov/ca/bay-road-holdings-llc-formerly-romic-environmental-technologies-corporation

[14] Google Earth Historical Imagery, October 1991.

[15] State Water Resources Control Board Geotracker. https://geotracker.waterboards.ca.gov/

[16] https://www3.epa.gov/npdes/pubs/sector_m_autosalvage.pdf

[17] Plane, E., Hill, K., and C. May. "A Rapid Assessment Method to Identify Potential Groundwater Flooding Hotspots as Sea Levels Rise in Coastal Cities. "Water. 2019, 11, 2228.

[18] "Groundwater and sea level rise: What's at risk?" Kristina Hill, UC-Berkeley. *Sea Level Rise and Shoreline Contamination Regional Workshop*, December 2021.

Figure 1. Projected flooding (blue shading) with 1-meter sea-level rise (https://cimc.epa.gov/)

BioScience projects may bring heightened safety risks due to sea level rise and associated groundwater rise.

Please evaluate and mitigate potential safety risks related to an expansion of life science/lab facilities in the plan area. In an urbanized setting, the biological materials being studied could become a regional health hazard if allowed to escape. Furthermore, siting of such facilities in shoreline areas, identified as flood zones, can create vulnerabilities for the Bay ecology as sea levels rise and 100-year flood events occur with increased frequency; placement in areas where soil liquefaction in seismic events could lead to structural failure also pose heightened biosafety hazards. Please consider guidance in the attached April 11, 2022 letter to East Palo Alto.

HYDROLOGY AND WATER QUALITY

Stormwater Services

As part of its analysis of EPASD Sewer Services, the LAFCo MSR[19] reviewed and described other service systems in East Palo Alto including Stormwater Services. Those findings identified several vulnerabilities that could impact the RBDSP area and that should be analyzed in the SEIR. Notably and related to the RBDSP, the MSR discussion noted risks associated with City location by the Bay, sea level rise, and deficiencies of the pump station and storm drain system. Currently 56% of the City is designated at elevated risk of flooding.

[19] LAFCo Municipal Service Report, East Palo Alto Sewer District: p. 74

Areas of Concern

O'Connor Street Pump Station improvements

This is the stormwater system's sole pump station, draining into San Francisquito Creek. The MSR cited the City's 2015 Storm Drain Master Plan as a resource that identified in good detail improvements needed in the Stormwater System including the pump station. East Palo Alto has made some improvements recently and is planning more work in 2022-2023. Equipment in the facility, such as its water pumps, no longer work efficiently and thus pose risk to the community upstream in major storm events. As this is critical infrastructure and an existing condition, the SEIR needs to discuss and analyze potential impacts if the pump station continues in status quo.

Storm drain deficiencies

The MSR discussion describes the entire stormwater system of which the RBDSP area is a major component. The city-wide system of drainpipes includes some 430 nodes (manholes, inlets, similar). Of those, modeled analysis identified 68 nodes where some level of flooding could be expected. Among those, 33 would be locations of flooding of one foot or more. In the SEIR, analysis should identify impacted nodes within the RBDSP area and provide a map to show locations inclusive of degree of risk such as the depth of potential flooding.

Climate Challenge: Water above and below ground

Associated with climate change, meteorological shifts have already changed the local climate: extended periods of drought and less frequent but intense, major storms or sequential storms such as last October's atmospheric river. Such storms test local stormwater systems and, by infiltration, sewer systems and produce surface ponding and localized flooding. Steadily, over the decades of development envisioned for the RBD, rising groundwater (subsurface aquifers) will exacerbate the problem. For the RBDSP, the SEIR needs to set a framework for development actions that can adapt and survive these climate changes and to preserve the outcomes the Specific Plan pursues.

An important reference to consult is a report prepared by the San Francisco Estuary Institute for the City of Sunnyvale: Sea-level rise impacts on shallow groundwater in Moffett Park.[20] This report is specific to findings in Moffett Park but its analysis is useful, discussing potential impacts and adaptation action for development. Notably its sources for groundwater data are from existing well databases, not involving any physical hydrologic study. SFEI has consulted with East Palo Alto on urban ecology and should be on groundwater risk planning. Although, in the scoping meeting, Troy Reinhalter said that there would be no groundwater study, we urge

[20] SFEI et al, Sea-level rise impacts on shallow groundwater in Moffett Park, November 2021; https://static1.squarespace.com/static/5e38a3dd6f9db304821e8e5e/t/61a7b37743ec4b770e11ee73/1638380421678/Moffett+Park+Specific+Plan+Groundwater+Addendum.pdf

the project team to reconsider that decision so that the RBD might benefit from that baseline preparation for the future.

As food for thought, here is the list of potential impacts compiled in the SFEI report:

- Corrosion. Salinity impacting below ground infrastructure
- Buoyancy. Buoyant force impact on foundations, buried utilities and pipes, roads
- Seepage. Seepage into subsurface structures, floors, walls
- Infiltration: Infiltration into stormwater and sewage pipelines reducing capacity
- Liquefaction: Higher water tables increase liquefaction risk
- Damage to vegetation: Saturated soils and/or higher salinity can impact plants
- Contaminant mobilization: Movement in existing remediation or of unidentified contaminants
- Emergence flooding. Site-dependent; even non-emergent levels can exacerbate surface flooding

Again, given the RBDSP hydro-geologic location, we strongly urge inclusion of groundwater analysis in the SEIR and use it to set an adaptive framework for RBDSP area development.

LAND USE AND PLANNING

Consider shoreline overlay to accommodate SAFER Levee and avoid Bay fill.

In the 2013 RBDSP on p. 73, the City established the following policy:

> Policy LU-9.4: For development projects within the BCDC jurisdiction:
> 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. **Rights-of-way for levees or other structures protecting inland areas from tidal flooding should be sufficiently wide on the upland side to allow for future levee widening to support additional levee height so that no fill for levee widening is placed in the Bay.** (emphasis added)

This policy statement makes several important points. Sufficient land width must be provided for flood protection structures and no fill is to be placed in the Bay. In 2013 the SAFER Bay levee was already under discussion through the San Francisquito Creek Joint Powers Authority (SFCJPA) and was anticipated to protect a flood-weary city from oncoming sea level rise. Even in 2013 the City anticipated, as reflected in LU-9.4, that the original levee, when built, would subsequently require added height and width.

Time has moved on. The SFCJPA completed a feasibility study and its NoP for a programmatic EIR has been released concurrent with the scoping period of the RBDSP Update. Clearly much more is known about the SAFER levee and requirements of its construction.

The LAFCo MSR discussion mentioned that, since 1940, City residents have suffered through eight major flood events, all fluvial. As is well understood and the purpose of the SAFER levee, City residents, schools and businesses require this sea level rise protection, need it as a priority construction for long-term health and safety.

It is time to use recent, available information to define and apply a land use overlay preserving lands for the SAFER levee and critical community protection and to update or replace LU-9.4 using that information.

Reserve land for the SAFER levee. To date neither the 2013 RBDSP nor any other City document identifies and protects land needed to prepare the City for sea level rise. In recent years, the City has seen multiple proposals from developers whose projects encroach on the shoreline, allowing only sufficient land for the Bay Trail with no set aside for the City's critical levee infrastructure.

> **SAFER levee width**. In a discussion with the Tess Byler,[21] SAFER Project Manager for the SFCJPA, we learned that the SFCJPA's *preferred* engineered levee design would be a structure with a 3:1 slope, 20' wide upper surface. Such a structure could have a width footprint of potentially100' or more particularly if including the width for height requirements of the 2013 LU-9.4. In comments about flood walls (vertical structures), we learned they were not preferred but would be used where shoreline space is limited such as the bayward side of the PG&E substation on Bay Road. **We recommend that the SEIR analysis include discussions with the SFCJPA to directly acquire data to be used to define the width of land that needs to be reserved for the levee.** The same conversations should substantiate the value the preferred levee type provides to the City and its residents.
>
> **SAFER levee location**. As stated in the existing LU-9.4, the City does not want any fill for levee construction put into the Bay. That reference was speaking only to the addition of height to a future levee. Revisions need to include all actions regarding the levee including original construction. Regulatory oversight for the SAFER levee is coordinated by the BIRRT (Bay Integrated Restoration Regulatory Team), a team composed of representatives of all regulatory agencies that have Bay responsibilities. We learned that the SAFER project has committed to the BIRRT that the levee will not be built in Bay wetlands. As such, the City must set aside sufficient land that lies inland from the Bay wetland edge and without regard to existing locations of the Bay Trail or the BCDC band. For SEIR analysis, here again discussions with the SFCJPA are essential.

[21] Virtual meeting, Tess Byler, SFCJPA, 04/19/22

SAFER levee and the BCDC band. There is a popular misunderstanding that the BCDC band is the only jurisdiction affecting where development can occur on the shoreline. The SAFER Bay levee is critical city infrastructure, the project has initiated CEQA and levees are already being built or planned in other Bay locations. For the SEIR, analysis should include discussion with BCDC to clarify jurisdictional status regarding the levee in addition to discussions with the SFCJPA.

We strongly recommend that the RBDSP Update adopt specific SAFER levee guidelines and establish a dedicated levee right-of-way.

SAFER levee and the Loop Road. Considering the levee needs discussed above, it is apparent that lands proposed for the Loop Road in the 2013 RBDSP will be needed for construction of a levee that will protect the University Village area. It is our recommendation that that is the best and highest use of the "Loop Road" location. **The SEIR should update the Loop Road analysis accordingly.**

POPULATION AND HOUSING

Given the substantial proposed increase in development intensity under the RBDSP Update, the SEIR should study the expanded project's impact on city-wide and regional jobs/housing balance and evaluate and mitigate displacement impacts as well as gentrification impacts due to poor jobs match and proposed new amenities.

PUBLIC SERVICES

Please evaluate the potential for the RBDSP Update to necessitate the expansion or construction of additional facilities or services and include potential new facilities for public safety services, schools, community services and similar institutions. in the Water Supply Assessment.

RECREATION

East Palo Alto is currently well below the City's target ratio of 3.9 acres of parkland per 1,000 residents. The 2013 Specific Plan proposed adding 30 acres of new parks and trails. Because the RBDSP Update scenarios anticipate much more residential and commercial growth in the plan area, the SEIR should evaluate how park and recreation facilities in the plan area will fulfill the Specific Plan's goals and parkland requirements. The SEIR should:

1. Analyze what the potentially underserved recreational needs are for future residents, employees, and visitors to the Plan area and evaluate the need for additional parkland and recreation facilities (including access and parking) to accommodate increased demand.

2. Evaluate the impacts of increased resident and employee recreational activity on the quality and accessibility of recreational facilities in and near the Plan area including libraries, community centers, Cooley Landing, Ravenswood Open Space Preserve, the Bay Trail, and Jack Farrell Park. Include mitigations to maintain service levels and address increased wear and tear on existing nearby facilities.

3. Consider the mitigation potential of recreational open space along the bay front serving as temporary stormwater catchment areas for flooding in extreme storm events.

TRANSPORTATION

1. Loop road: Analyze whether the loop road indicated around the west side marsh can be built on existing land and if so, whether it is feasible without taking space from the backyards of residences 9using eminent domain), impacting adjoining wetlands or obstructing alignment of the planned SAFER Bay levee along the planned route.
2. If a loop road is included, provide traffic studies for traffic that such a loop road would carry (especially during commute hours), and the safety impacts on the adjacent neighborhood, from cut through traffic generated by the loop road.
3. Analyze traffic studies with no loop road. See comments under Land Use, above.
4. Analyze potential for including a safe slow network of streets with slow auto traffic, pedestrian priority and safe bike lanes to encourage mode shift away from auto usage.
5. Analyze the effectiveness of including wider sidewalks and adequate street lighting to encourage safe walking on streets that would benefit from these amenities.

UTILITIES AND SERVICE SYSTEMS

Impact of rising groundwater

The RBDSP area is served by a variety of utilities that rely on underground conduits and other utilities that may be seriously impacted by rising groundwater associated with sea level rise. Please see the rising groundwater discussion in our comments on Hydrology and Water Quality.

Sewer System Analysis

Recently, San Mateo County LAFCo released a draft Municipal Services Report[22] (MSR), an updated review of sewer services provided by the East Palo Alto Sanitary District. EPASD is the primary sewer service provider for the RBDSP area. The MSR's Summary[23] includes a long list of issues of concern and companion list of recommendations. Currently management of action on the issues is in the hands of EPA SD. Per the MSR, that management could be in the hands

[22] SMC LAFCo, draft MSR Update, East Palo Alto Sewer District: https://www.cityofepa.org/sites/default/files/fileattachments/city_manager039s_office/page/21302/epa-epasd-wbsd_msr-update_2022-03-28_draft.pdf

[23] LAFCo Municipal Service Report, East Palo Alto Sewer District: pp. 96-99, "Summary of East Palo Alto Determinations"

of the City of East Palo Alto through an available LAFCo action that would transfer jurisdictional authority.

Deficiencies of the EPASD sewage collection system

It is a serious health and safety concern that, as reported in the MSR,[24] 70% (~21 miles) of the existing EPASD sewer system has a carrying capacity that is substandard at 6" diameter, needing upgrading to 8", and increasing the risk of surcharge or overflows during major storm events. Additionally substantial but unidentified parts of the collection system are still composed of the original clay pipe with brick and mortar manholes, aged infrastructure that is at high risk of failure.

1. **The SEIR should analyze and provide a baseline of existing location and physical conditions of the sewer services, especially for the EPASD-served area**. The analysis should provide maps of the existing sewer pipeline system showing where it is located and what is known about pipe conditions. Even if EPASD cannot or will not provide all the necessary data (as the MSR reported), analysis should report all pipeline data that is available, provide a method to add pipeline data for planning use as it becomes available and evaluate impact significance arising from lack of data.

2. The West Bay Sanitary District (WBSD) provides sewer services to a small portion of the RBDSP area. As such **the SEIR analysis should include a description of that service area, primarily the University Village area including certain adjoining lands on the shoreline**. In its discussion of WBSD,[25] the MSR remarks mention that collection capacity issues exist in that system as well but without identifying location. A map of that collection system with locations of substandard pipelines, if any exist in the RBDSP area, should be included. WBSD is a significantly larger service that the MSR discussion describes as better managed and generally more reliable.

3. New RBDSP Utility Policy: One action taken in the SEIR can be to create a new utility policy establishing a process toward resolution of significant sewer services impacts. In addition to condition issues already discussed, the MSR exposes a wide-ranging list of deficiencies that together indicate that the EPASD, as current service provider, is unable or unlikely to fulfill requirements in the RBDSP area. The Specific Plan should analyze and address that issue as a priority. **We suggest that the RBDSP Update include a new policy**, such as the following:

   > The City of East Palo Alto will pursue actions to improve sewer services for health and safety reliability, timeliness for new tie-ins and expansion of collection capacity for the purpose of providing for community quality of life and economic growth.

[24] LAFCo Municipal Service Report, East Palo Alto Sewer District: p. 105, "Wastewater Services"
[25] LAFCo Municipal Service Report, East Palo Alto Sewer District: p. 155

Thank you for the opportunity to submit comments on the RBDSP Update NOP. We look forward to continued engagement in the Specific Plan Update process and review of the draft SEIR.

Sincerely,

Jennifer Chang Hetterly
Campaign Lead, Bay Alive
Sierra Club Loma Prieta Chapter

Eileen McLaughlin
Board Member
Citizens Committee to Complete the Refuge

Alice Kaufman
Policy and Advocacy Director
Green Foothills

Jennifer Rycenga
President
Sequoia Audubon Society

HARVEST
PROPERTIES

June 15, 2022

Ms. Tess Byler
Senior Project Manager
San Francisquito Creek Joint Powers Authority
2100 Geng Road
Palo Alto, CA 94303

RE: Harvest Properties' Comments on the Notice of Preparation
Draft Environmental Impact Report
Strategy to Advance Flood Protection Ecosystems and Recreation along San Francisco (SAFER) Bay

Dear Ms. Byler,

Thank you for the opportunity to comment on the Notice of Preparation (NOP) for the SAFER Bay Project, proposed by the San Francisquito Creek Joint Powers Authority (SFCJPA). Harvest Properties (Harvest) supports the goal of the SAFER Bay Project to provide resiliency to coastal flooding and sea level rise in East Palo Alto and Menlo Park as well as habitat and recreation improvements.

Summary

As described in this letter, we have identified the impacts that a 7:1 levee slope as proposed in the NOP would have on Harvest's The Landing project. Specifically, it would eliminate the recreational and open space amenities that the community has expressed as critical for East Palo Alto's waterfront. In the spirit of partnership, and with a shared goal of providing resiliency to coastal flooding and sea level rise, as well as maximizing habitat and recreation improvements and benefits to the community, Harvest has identified and now proposes a *hybrid slope option* for the SFCJPA's consideration, which we have mapped and included as an attachment to this letter. There are certain constraints that are unavoidable, and will necessitate a more traditional levee with a 2:1 slope in limited areas. However, for the majority of our property's waterfront, Harvest is open to the possibility of including a 3:1 slope, and in some locations, a 7:1 slope. We therefore request that this hybrid slope option is evaluated in the forthcoming Safer Bay Project Environmental Impact Report and as part of the ultimate alignment. The following includes additional detail.

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Harvest Properties / The Landing

Harvest Properties is the property owner of approximately 19 acres in East Palo Alto: 1990 Bay Road, 1175 Weeks Street, 1250 Weeks Street and 1103 Weeks Street. As part of our proposed development (The Landing) to the City of East Palo Alto (City or EPA), Harvest is proposing a mixed-use development project that includes a variety of uses including a 95-unit 100% affordable housing development, commercial office and life-science space, subsidized ground floor retail space dedicated to local East Palo Alto (EPA) businesses, and approximately seven (7) acres of open space and recreational amenities. On top of this, Harvest is proposing other significant community benefits, such as: much needed infrastructure improvements; grants to help build and support local small business and entrepreneurship in EPA; local co-working space for EPA residents to start and grow their businesses; grants to support the growth and diversity of EPA's cultural arts; a commissary kitchen free of charge to EPA residents; a community marketplace for local EPA businesses and residents to showcase their goods; and, a wide variety of recreational amenities (i.e. playground, fitness area, dog park, community garden, community plaza for community events and gathering, walking and biking trails, and family picnic areas along the Bayfront) *(Exhibit 1: Selected Project Renderings).*

Exhibit 1: Selected Project Renderings (The Landing)

Affordable Housing project: 95 low-income units with ground floor community-oriented uses

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Community Marketplace, including Commissary Kitchen

Subsidized retail space dedicated to EPA local businesses

As you can see from the below diagram (*Exhibit 2*: *Project Context*), Harvest's properties are located along one-half (½) mile of shoreline, adjacent to the Laumeister Marsh, which includes sensitive habitat areas. In addition to City requirements for protection of these areas, these tidal marshes are highly regulated via State and federal wildlife protections, wetland protections, and water quality protections. Additionally, our team is cognizant of BCDC's 100' shoreline band, that is located along our properties' shoreline. We have designed The Landing to ensure that there are not any structures or buildings within this shoreline setback area. The BCDC shoreline band is programmed entirely for publicly accessible open space and recreational amenities.

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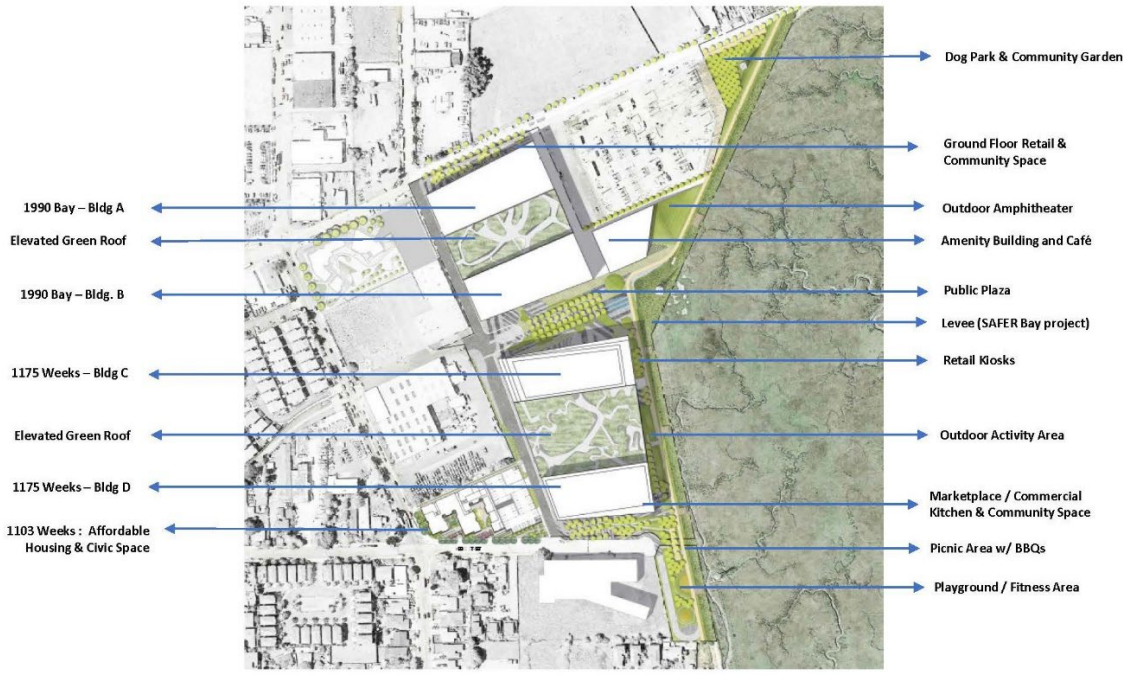
Exhibit 2: Project Context



As part of our proposed development, we will be incorporating ecological design practices with the goal of avoiding, where possible, and minimizing potential disturbances that can affect the ecological values of the marsh. Measures have been developed based on the City of East Palo Alto's 2013 Ravenswood Business District (RBD) Specific Plan and Environmental Impact Report and will continue to be refined in close coordination with the City and SFCJPA. Such measures will likely include those intended to reduce noise and light effects from our development, potential for disturbance from people and pets, stormwater runoff, impervious cover, bird-safe measures, and potential for increased opportunities for predator and invasive species access.

Additionally, prior to Harvest's purchase of the properties, the properties at 1990 Bay Road and 1175 Weeks, underwent approximately forty years of environmental remediation, culminating in the issuance of a closure report by the Regional Water Quality Control Board, in the form of a Risk Management Plan (RMP). Harvest will be abiding by the requirements prescribed in this RMP during the construction of The Landing. The SFCJPA will also be required to follow the rules and procedures of this regulatory document. In particular, to preserve water quality within Laumeister Marsh, the levee slope and core should be designed to retain the integrity of the previously remediated soils, now and in the future. The levee design should minimize contact with remediated soils during construction and should avoid and minimize future exposure of tidal surface and ground water to remediated soils as sea level rises.

Finally, as the SFCJPA is aware, PG&E's Cooley Landing Substation is located at the northern end of our property, and its high voltage towers and lines are situated along the entire extent of the waterfront. Harvest is currently working collaboratively with PG&E to ensure that The Landing's design is accommodating the needs and constraints of PG&E's infrastructure. Any future SAFER Bay levee design and construction will also

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need to pay close attention to the existing Substation as well as the towers and overhead lines' location and alignment.

City of East Palo Alto: Planned Community Benefits

For the past three years since Harvest's purchase of the aforementioned properties, we have had over 100 meetings with community organizations, residents, local businesses, and community stakeholders and leaders in East Palo Alto. Over this period of time, we have listened to the community regarding their needs, desires, aspirations, and vision for East Palo Alto. Time and time again, we have heard how important it is to activate the waterfront of East Palo Alto with a wide variety and range of both passive and active recreational uses: bicycle and walking trails, children's playgrounds, fitness areas, basketball courts, dog parks, community gardens, BBQ areas, picnic benches, grassy areas for the community to gather, and public plazas that can be used for community celebrations and festivals. We have also heard how important it is to honor the history of East Palo Alto, its origins as a City, its diversity as a Community of Color, and its rich and diverse cultural traditions. These objectives were clearly and robustly articulated in the City of East Palo's comment letter on the NOP, dated June 7, 2022.

The proposed plan for the Landing that Harvest has submitted to the City of East Palo Alto includes *all of the above uses along the waterfront,* in a manner that honors the existing fabric of the adjacent residential and commercial neighborhoods in EPA, as well as respects the shoreline's wetlands and habitat. While it is typical for a levee to create a berm, with a slope down to lower, existing inland ground, as part of The Landing, Harvest has proposed that the entire site be raised by approximately 5 feet to match the grade of the Bay Trail and the levee. This has a number of positive community benefits and comes at a significant cost. It creates a seamless transition from the Bay Trail and levee to all the inland recreational amenities, and it also provides unobstructed views of the waterfront as the top of levee is at the same elevation as The Landing's amenities. *(Exhibit 3: Integration of The Landing / Bay Trail / Levee)*

Exhibit 3: Integration of The Landing / Bay Trail / Levee

View of Levee, Bay Trail, and 1175 Building (including Community Marketplace)

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View of Levee, Bay Trail, and public amenities (including local EPA retail kiosks)

Additionally, it is important to note that The Landing's waterfront uses are consistent with the proposed mix of recreational uses and amenities, that are currently part of the City of East Palo Alto's 2013 Ravenswood Business District (RBD) Specific Plan, and the proposed update of the Specific Plan, currently underway in the City.

SAFER Bay Project - Feasibility Report Background

During our due diligence, community outreach and project planning phases for The Landing, our planning efforts have been informed by the *Safer Bay Project, Public Draft Feasibility Report* from 2016[1] (Feasibility Report). The Feasibility Report shows our site as part of Reach 8, with two levee alignment options (*Exhibit 4: Feasibility Report Figure 9*). Option 1 (in black) shows an alignment with greater setbacks. That alignment was marked as "dropped," and we understood based on conversations with SFCJPA staff that Option 1 was no longer being pursued. Option 2 (shown in blue) shows a new levee alignment built on the Bay side of the existing levee, with restored transition zone habitat along the Baylands Nature Preserve/Laumeister Marsh from Bay Road to Runnymede Street. As shown in Option 2 and as confirmed in conversations with SFCJPA staff, new levee work was expected to be contained to the BCDC 100-foot shoreline band and would have the benefit of future floor and sea level rise protection. This would also be consistent with City planning including the RBD Specific Plan and allow more recreation and open space use that East Palo Alto sorely needs.

[1]https://static1.squarespace.com/static/5f21f9097be3cf17ef8a9984/t/5f52c3a62d8df66606d8eeb5/1599259580017/SAFER_Bay_Public_Draft_Feasibility_Report_Summary_Oct._2016_.pdf

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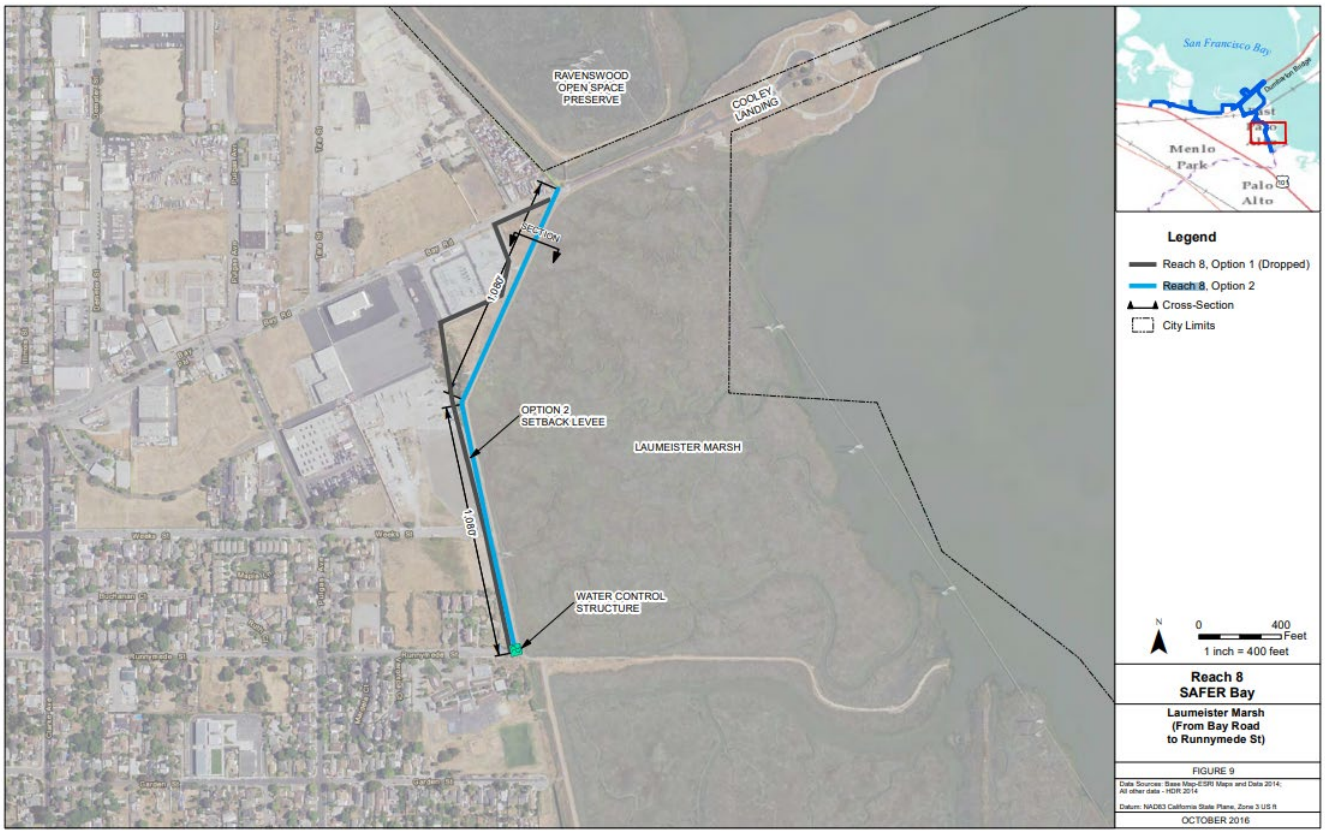
Exhibit 4: Feasibility Report Figure 9



Further, based on the SFCJPA's prior conceptual Cross-Section provided to Harvest, our design and engineering team had always assumed that a 2:1 slope would be designed and constructed along our property's waterfront. Please see *Exhibit 5: Typical Cross-Section, EPA South of Bay Road* for this diagram provided by the SFCJPA. We submitted our Pre-Application in February 2020 and our Major Application in October 2021 to the City of East Palo Alto based on this conceptual Cross-Section provided to us by the SFCJPA and earlier conversations with SFCJPA staff members.

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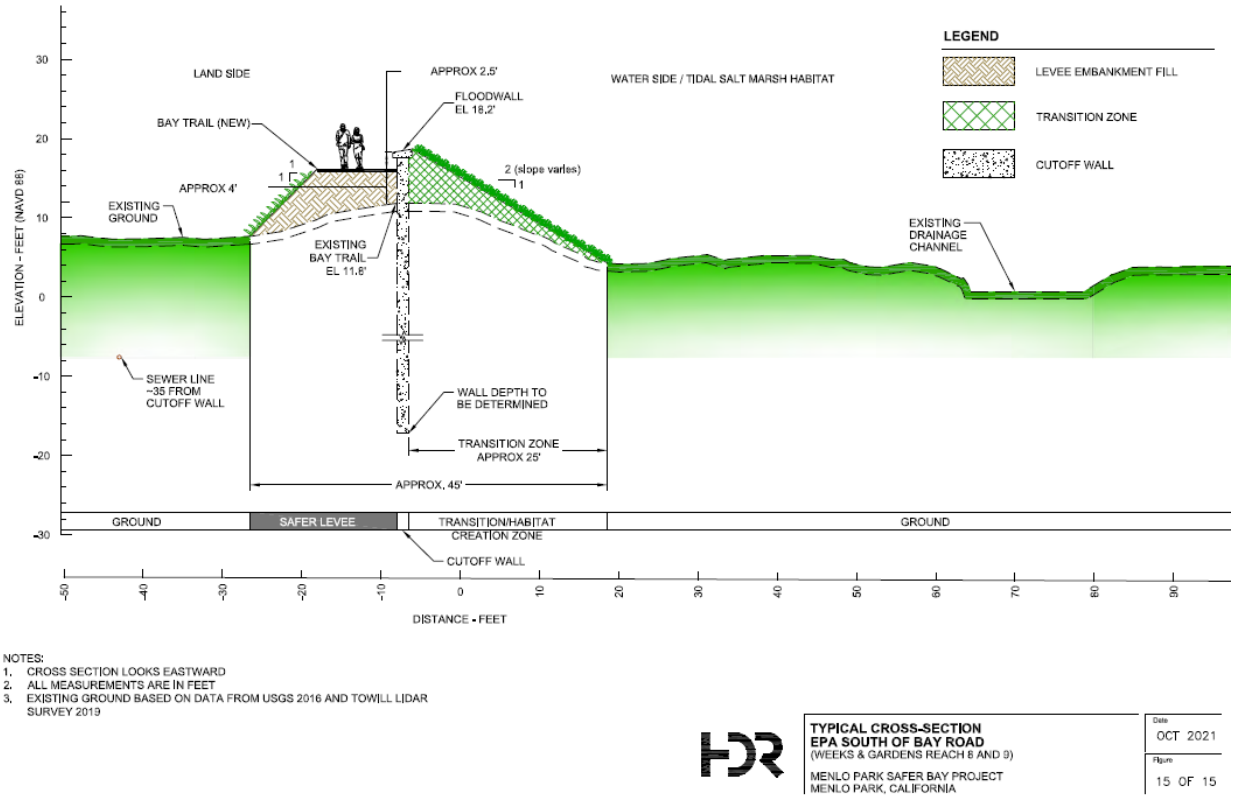
Exhibit 5: Typical Cross-Section, EPA South of Bay Road (SFCJPA diagram)



NOP: Conceptual Cross-Sections

It was not until the NOP for the SAFER Bay project was recently released that we were made aware that SFCJPA was now contemplating a different conceptual Cross-Section, indicating a range of 3:1 to 7:1 for its Transition Zone. As mentioned above, this creates significant problems for our current site plan, and will prevent the community's goals of maximizing recreational and open space amenities from being realized. It may also continue a troubling pattern of poorer communities and communities with largely non-white populations bearing the brunt of environmental impacts, including infrastructure meant to address environmental harms that also serves to protect wealthier, whiter communities.

The NOP presents two (2) "Conceptual Cross-Sections of Integrated Floodwall and Transition Zone, Habitat Creation," for the area south of Bay Road (*Exhibit 6: Figure 8 & Figure 9).* The Cross-Sections depicted are in the same location of The Landing project, as our properties extend south of Bay Road to south of Weeks Street. A slope of 3:1 (min) to 7:1 Transition Zone Habitat Creation is presented in these Cross-Sections, with a reference to Note 3 on the same page, which states: "Transition Zone will vary based upon location along the Flood Control Alignment and Existing Constraints."

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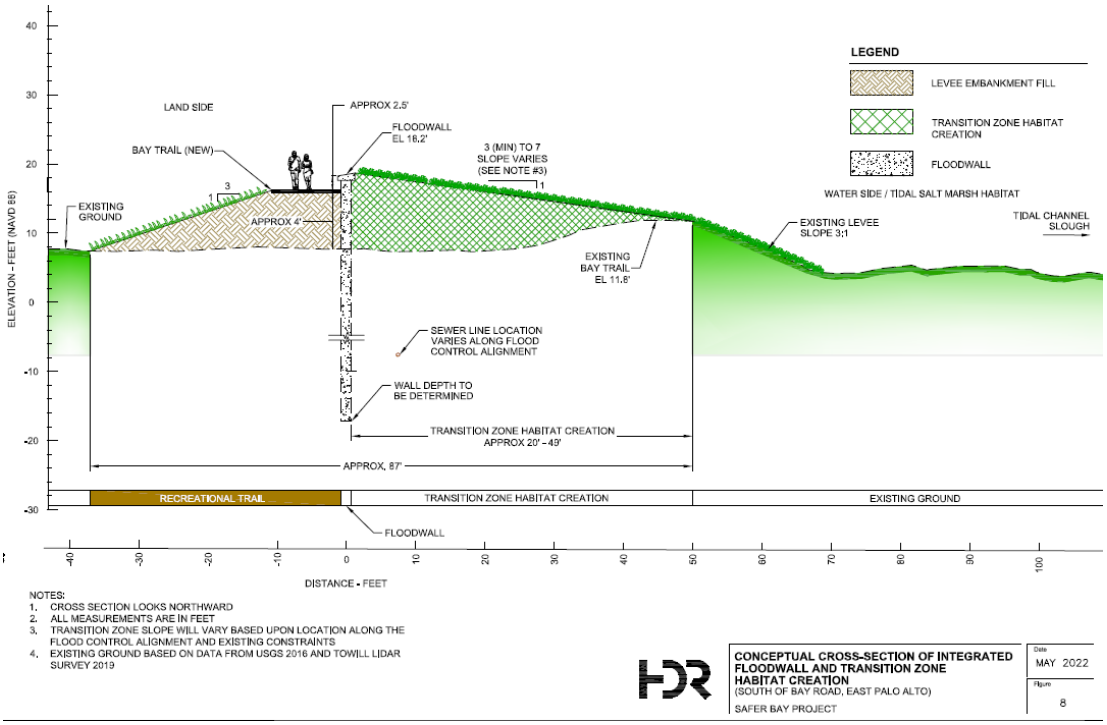
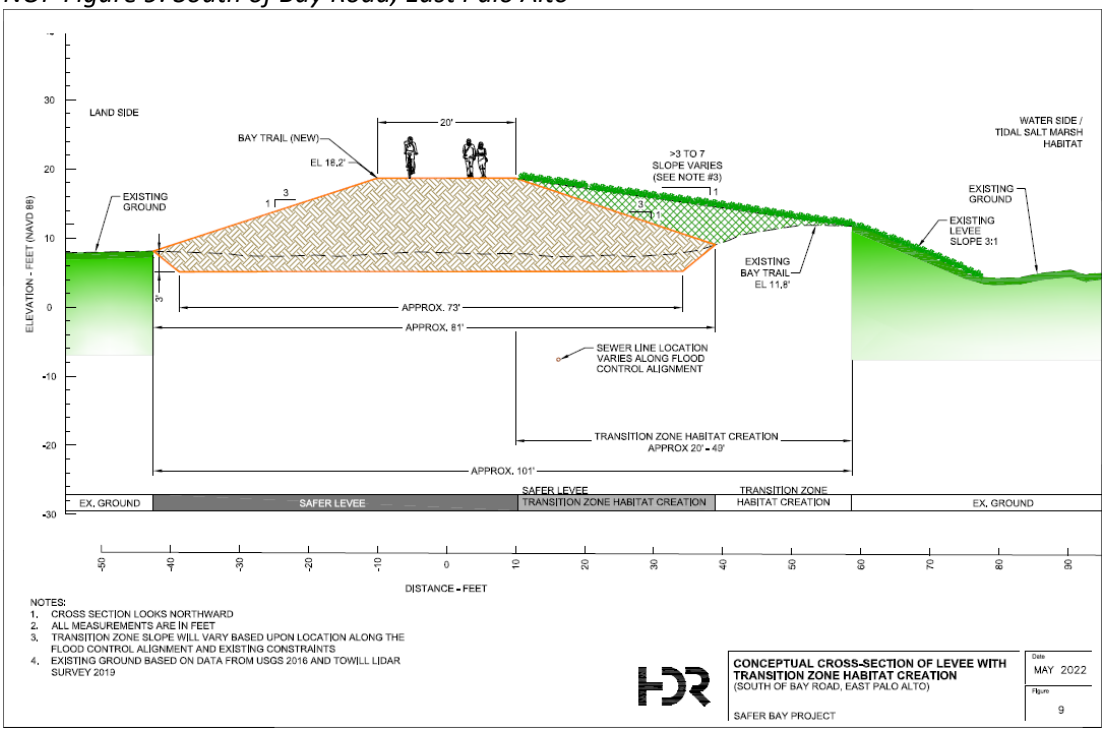
Exhibit 6 : Conceptual Cross-Sections of Integrated Floodwall and Transition Zone, Habitat Creation

NOP Figure 8: South of Bay Road, East Palo Alto



NOP Figure 9: South of Bay Road, East Palo Alto



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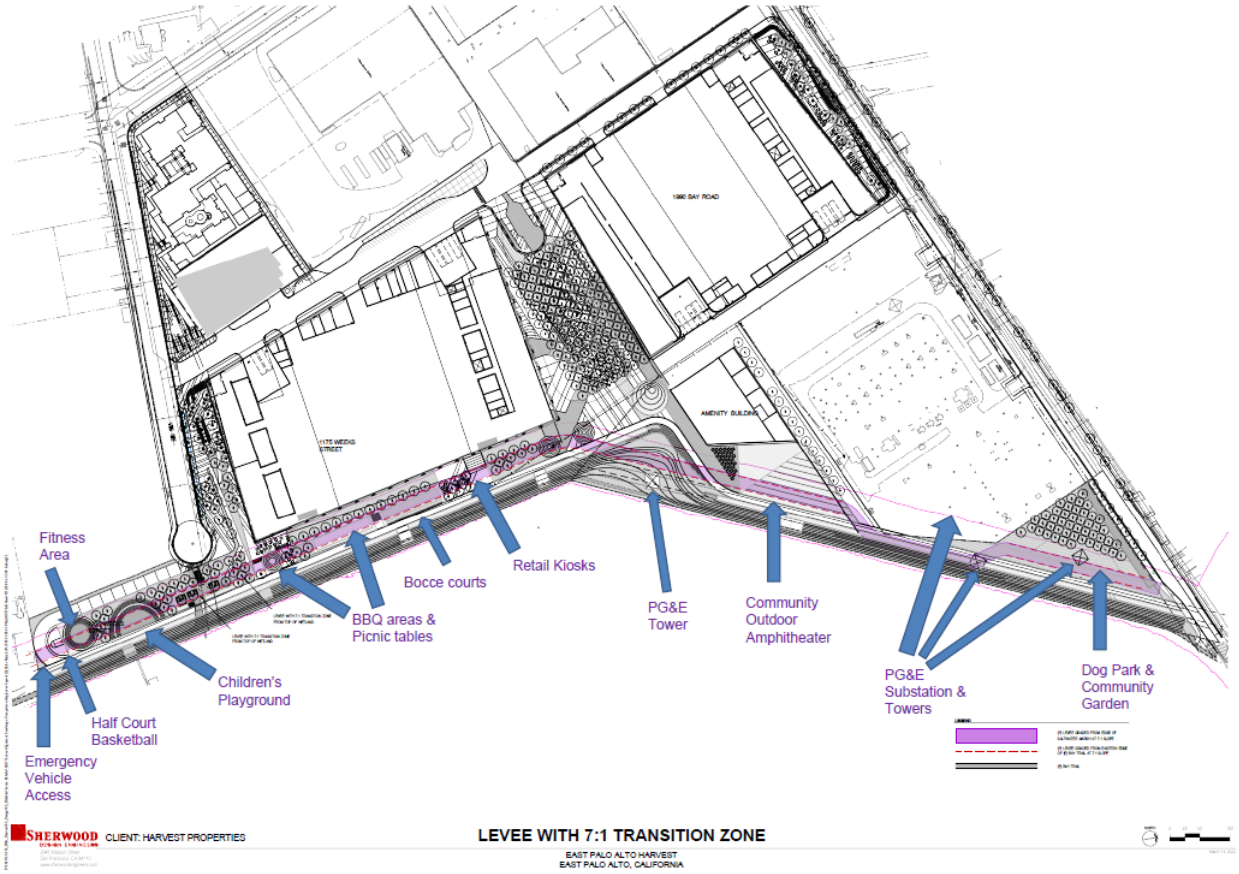
Impacts to the Landing Project and the Community

While we can appreciate the goal of maximizing this Transition Zone, it is critical to note that for portions of our site, anything greater than a 3:1 slope (and in some locations 2:1 slope) would *eliminate* the recreational and open space amenities that the community has expressed as critical for EPA's waterfront. Please see *Exhibit 7: Levee with 7:1: Transition Zone.* As can be seen in this diagram, a 7:1 slope would extend inland into our property, by nearly 50 feet. If a transition zone of 7:1 were constructed along our property's frontage, this would eliminate the possibility of the construction of the community's children's playground, ½ court basketball court, fitness area, picnic benches, BBQ areas, outdoor seating and the viability of future retail along that frontage. There would simply not be adequate room to construct these amenities. Additionally, the emergency vehicle access road that curves down from the end of the Weeks Street cul-de-sac would also would not be able to be constructed, which would create severe fire and emergency vehicle access problems. Others of The Landing's amenities would also be drastically reduced in size, such as the project's public plazas, and grassy amphitheater lawns, and waterfront seating areas.

Exhibit 7: Levee with 7:1: Transition Zone



Note that the purple band in the Exhibit above represents the location of a 7:1 levee (including the Bay Trail), and, how far this would infringe into Harvest's property.

Additionally, as was mentioned above, PG&E's Cooley Landing Substation is located at the northern end of our property, and its high voltage towers and lines are situated along the entire extent of the waterfront. As can

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be seen in Exhibit 7 above, with a 7:1 sloped levee, there would be several conflicts that would need to be addressed by SFCJPA in adapting and working around the existing Substation and high voltage towers and lines.

The *San Francisco Bay Shoreline Adaptation Atlas* is a science-based framework for developing climate adaptation strategies that are "appropriate for our diverse shoreline settings and that take advantage of natural processes in the [San Francisco] Bay."[2] Accordingly, it contains an extensive analysis of sea level projections and potential adaptation measures around the entire San Francisco Bay, including East Palo Alto specifically. Entities including Marin County, San Mateo County, the MTC, and BCDC are already applying the *Adaptation Atlas* within their planning frameworks. The *Adaptation Atlas* importantly states that while ecotone levees may have some benefits over traditional flood risk management levees in terms of ecosystem function, in the "Policy Considerations" discussion (page 86) it states that ecotone levees are "largely untested," and "will require considerable volumes of material to construct, with high associated costs." Harvest believes this "experimental" method of addressing flood risk management and sea level rise may come at too high an economic and social cost, including losing sight of the needs and desires of the community and City of East Palo Alto, and providing the community with the open space and recreational amenities that they desire.

Harvest / SFCJPA Collaboration: Hybrid Levee Option

Prior to submitting our Pre-Application to the City of East Palo Alto in early 2020, Harvest met with the SFCJPA to discuss our proposed plans, and at that time, began a collaborative working partnership with the organization. It is critical that Harvest and the SFCJPA work together on the design, engineering, and eventual construction of the levee, as we are neighbors, and it will take close coordination and partnership to plan for and execute the development of The Landing and the SAFER Bay project.

In the spirit of this partnership, and with a shared goal of providing resiliency to coastal flooding and sea level rise as well as maximizing habitat and recreation improvements and benefits to the community, we have re-visited our site plan to explore the possibility of incorporating more gentle ecotone slopes into our proposed plans. As Note 3 in the NOP's Cross-Sections acknowledges, there are certain "constraints" that are unavoidable, and will necessitate a more traditional levee with a 2:1 slope in limited areas. However, for the majority of our property's waterfront, we are open to the possibility of including a 3:1 slope, and in some locations, a 7:1 slope. Please see attached *Exhibit 8: Hybrid Levee Option.*

We are proposing a 2:1 slope for two particular site-constrained areas of the site: 1) PG&E Cooley Landing substation pinch point (to the north); 2) Community park with emergency vehicle access to the Bay Trail (to the south). This area includes the children's playground, fitness areas, ½ court basketball court, seating areas. For these locations, a 2:1 sloped levee will allow both flood and sea level rise protection as well as the protection of critical infrastructure and community benefits. It is important to note that there is a single-family residence just south of our proposed community park area that would also be negatively impacted by a gentler Transition Zone; a 2:1 sloped levee is likely the best and only alternative for this property.

[2] San Francisco Estuary Institute, San Francisco Bay Shoreline Adaption Atlas, (April 2019), at page 13, available at: https://www.sfei.org/sites/default/files/toolbox/SFEI%20SF%20Bay%20Shoreline%20Adaptation%20Atlas%20April%202019_highres.pdf, [hereinafter Adaptation Atlas].

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Along the majority of our property's frontage, it may be possible to incorporate a 3:1 slope, at the expense of more generous landscaped seating areas, that are currently programmed for these areas. For those portions of our property that are less space constrained, our plan can accommodate a gentler 7:1 slope. This occurs in two locations: 1) adjacent to the public plaza and amphitheater area, and 2) community garden and dog park area. As noted below, it is critical to note that incorporating levee slopes of 3:1 to 7:1 will necessitate the levee's footprint to infringe on Harvest's property, and a form of easement or conveyance of property (via eminent domain or negotiated agreement) will be necessary.

As previously mentioned, up until one month ago, under the direction and guidance of the SFCJPA, our prior design was based upon a 2:1 levee slope. The Cross-Sections presented in the NOP present a number of challenges for our current site plan. In the spirit of partnership, Harvest has worked with its engineering and design team to create the hybrid levee option. This hybrid levee option appropriately and reasonably balances our property interests, community expectations for amenities and flooding, sea level rise and habitat preservation. It is important to note that Harvest will not be able to make any other adjustments to this revised site plan, as it already represents significant changes to our site plan. Additionally, we feel the SFCJPA will be pleased with this option's creation of additional wetland areas on Harvest's property (i.e., additional square footage of wetland areas) that do not currently exist along the shoreline.

Easements / Eminent Domain

One point that we would like to raise is that in the course of recent conversations regarding the potential levee alignments, we have heard no discussion of how or whether SFCJPA intends to seek fee purchase or permanent easements over the property, which would be necessary for the ultimate levee alignment, and which would only have higher costs in the event a more gentle 7:1 slope is selected for a larger area. Similarly, we have not heard whether such actions will be accomplished through condemnation (and whether SFCJPA is authorized by its Joint Powers Agreement to take such action) or negotiated agreements. Further, how will the significant costs of doing so be funded? We urge SFCJPA to consider and disclose these factors as part of the consideration of potential alignments.

Conclusion

Harvest greatly appreciates the opportunity to provide our comments on the NOP for the SAFER Bay project, proposed by the SFCJPA. We look forward to future dialogue and collaboration with the SFCJPA as the SAFER Bay project progresses. Our collective goals should be to provide resiliency to coastal flooding and sea level rise in East Palo Alto and Menlo Park, maximize habitat and recreation improvements, while ensuring that the East Palo Alto community's goals, aspirations, vision and needs are addressed and met at the highest level.

If you should have any questions or comments, please do not hesitate to reach out to us.

Sincerely,

Kim Diamond

Kim Diamond
Managing Director of Development
Harvest Properties

Attachment: Exhibit 8: Hybrid Levee Option

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Exhibit 8: Hybrid Levee Option

LEGEND

- (E) SALTWATER MARSH DELINEATION
- (P) LEVEE TRANSITION AREA BETWEEN 2:1 TO 3:1 SLOPE
- (P) LEVEE TRANSITION AREA AT 3:1 SLOPE
- (P) LEVEE TRANSITION AREA BETWEEN 3:1 TO 7:1 SLOPE
- (P) BAY TRAIL

SHERWOOD DESIGN ENGINEERS
2548 Mission Street
San Francisco, CA 94110
www.sherwoodengineers.com

CLIENT: HARVEST PROPERTIES

HYBRID LEVEE OPTION

EAST PALO ALTO HARVEST
EAST PALO ALTO, CALIFORNIA

NORTH

0 25' 50' 100'

June 6, 2022

June 15, 2022

Tess Byler, Senior Project Manager
San Francisquito Creek Joint Powers Authority
tbyler@sfcjpa.org

SENT VIA E-MAIL TO: tbyler@sfcjpa.org

Subject: **SAFER Bay Notice of Preparation of an Environmental Impact Report** (SCH # 2022040504)

Dear Ms. Byler:

On behalf of the Midpeninsula Regional Open Space District (Midpen), we respectfully submit the following comments regarding the San Francisquito Creek Joint Powers Authority's (SFCJPA) Notice of Preparation (NOP) of an Environmental Impact Report (EIR) for the Strategy to Advance Flood Protection, Ecosystems and Recreation along the San Francisco Bay (SAFER Bay) Project.

Midpen has preserved over 65,000 acres of open space land on the San Francisco Bay Peninsula. Our mission is:

> *To acquire and preserve a regional greenbelt of open space land in perpetuity; protect and restore the natural environment; and provide opportunities for ecologically sensitive public enjoyment and education.*

While much of Midpen's open space lands are along the ridge of the Santa Cruz Mountains, Midpen owns and manages Ravenswood Open Space Preserve (Preserve), which is located along the shore of the San Francisco Bay in East Palo Alto. Midpen recently completed a new 0.6-mile segment of the San Francisco Bay Trail (Bay Trail) at the Preserve. In addition, Midpen also owns a portion of Cooley Landing Park, which was developed in partnership with the City of East Palo Alto (City). Operated by the City, Cooley Landing Park is located on a peninsula at the eastern end of Bay Road.

Midpen is focused on how the SAFER Bay Project improvements in Reaches 5, 7 and 8 (Dumbarton Approach, North of Bay Road – East Palo Alto, and South of Bay Road – East Palo Alto) would impact Ravenswood Open Space Preserve, Cooley Landing Park and the Bay Trail at Ravenswood.

Midpen agrees with the SFCJPA's determination that an EIR is the appropriate level of environmental review and that all environment factors listed under the CEQA Guideline Appendix G should be evaluated in the EIR. In particular, the SFCJPA should conduct the following studies and coordination, and include the findings in the EIR:

Biological Resources

Midpen's Ravenswood Preserve and the City's Cooley Landing Park contain highly sensitive and regulated resources. As such, Midpen should be included in discussions with the SFCJPA, the City, and appropriate regulatory agencies related to proposed Project improvements within Midpen lands. The EIR should include analysis of the impacts to the adjacent sensitive wetlands, tidal marsh lands, and protected species to ensure that the site's sensitive resources and wildlife movement along the shoreline are fully protected from the implementation of flood protection measures for the built environment.

Midpen requests that the following considerations and analysis be incorporated into the Project design and environmental review:

- In general, use broad sloped or ecotone levees wherever possible versus standard levees with more abrupt slopes or floodwalls as they provide enhanced ecological benefits in support of sensitive habitats, special status species (Ridgway's rail, salt marsh harvest mouse, tidal marsh plants) and flood protection.

- Ponds R1 and R2 currently provide substantial seasonal breeding habitat for the federally threatened western snowy plover. Restoration of these ponds should include alternative options to mitigate the loss of the existing habitat. These alternatives should include enhancements to R3 and SF2 to ensure these sites are productive/viable as plover habitat or consider leaving some select areas of RI and R2 that could provide flat, elevated, bare ground appropriate for breeding habitat. Specifically, retaining nesting islands in SF2 should be analyzed for the feasibility of providing habitat for plovers and terns in the short-term, and Ridgeway's rail and salt marsh harvest mouse in the long-term, if the islands become vegetated.

- Analyze and consider the need for measures to avoid conflicts between recreation and native species. Project implementation may result in plovers and other shorebirds nesting on recreational trails, especially adjacent to lost habitat. Consider and analyze alternatives to reduce these conflicts.

- Coordinate with researchers (USGS, USFWS, others) that are studying Pond SF2 to understand the potential for impacts to SF2 from the implementation of a proposed transition zone habitat east of SF2.

As the NOP states on page 6,

> "A later phase of the project may include tidal marsh restoration of the bayward portion of Pond SF2 and the adjacent diked marsh between SF2 and the Cooley Marsh (located in the Ravenswood Open Space Preserve). This action would substantially improve tidal marsh habitat connectivity for wildlife movement along the bayshore."

As such, the EIR should consider the potential of the future improved tidal marsh when developing appropriate and compatible Project alternatives for Reach 5 and 7.

Hazards and Hazardous Materials

According to the City's Ravenswood / 4 Corners TOD Specific Plan, the Ravenswood Business District (the area adjacent to Reach 5/6, 7, and 8) has a large number of industrial sites contaminated by past activities. The EIR should include an analysis of potential water quality impacts resulting from contamination discharge related to soil disturbance as part of the Project implementation.

For Project implementation, clean soils are critical to prevent water quality degradation and the introduction of invasive species and pathogens. If imported soil will be required, develop and analyze soil quality standards for identifying and sourcing appropriate clean, weed-free imported soils.

Hydrology and Water Quality

Midpen understands the Project goals are to address current tidal flooding and projected sea level rise. Comprehensive flood prevention must also address stormwater flows, therefore, the Project design and environmental review should consider and analyze upland stormwater flows and appropriate water discharge and holding, if necessary.

Recreation

Midpen understands that the Project includes proposed improvements to existing recreational access to the shoreline, including elevating the shoreline trails to reduce trail exposure to flooding, and construction of new trails that connect to the existing Bay Trail. The Draft EIR should include:

- Analysis of the proposed Project's temporary and permanent impacts to recreational uses along the Bay Trail. Outreach and coordination with Midpen and other affected land management agencies for the Bay Trail should be addressed prior to and during construction, including the coordination on any anticipated closures to nearby trails and Bay Road that leads to Ravenswood Open Space Preserve and Cooley Landing Park.
- Analysis and consideration of measures to mitigate the potential for conflicts between recreation and biological resources/sensitive species and habitats. Project implementation may result in plovers and other shorebirds nesting on recreational trails, especially adjacent to lost habitat. Consider and analyze alternatives to reduce these conflicts.

Aesthetics

The EIR should include analysis of the proposed Project impacts to the views of the Bay from recreational trails, adjacent parks, and surrounding neighborhoods.

Traffic and Transportation

The EIR should include analysis of the proposed Project impacts (temporary and permanent) to the existing Bay Trail and impacts to the proposed transportation improvements included in the Ravenswood Business District / 4 Corners Specific Plan.

Ravenswood Business District / 4 Corners Specific Plan Update

The City is currently conducting an update to the Ravenswood Business District / 4 Corners Specific Plan to consider allowing an increased density of development in the area adjacent to the Project area. Midpen recommends that the SFCJPA coordinate closely with the City to understand potential future development associated with the Ravenswood Business District (RBD) / 4 Corners Transit-Oriented Development (TOD) Specific Plan Update in order to develop appropriate flood control measures for not only current conditions, but future developments.

Alternatives Analysis Coordination with Public/Private Landowners within the Project Area

We strongly recommend that the SFCJPA continue working closely with the City of East Palo Alto, the San Francisco Public Utilities Commission, Midpen, other public stakeholders as well as private landowners to identify additional Project or segment alternatives to be considered in the EIR, while considering impacts and mitigation strategies for the whole Project.

Specifically, Midpen requests that the EIR analyze Project alternatives that:

- Prioritize the implementation of broad sloped or ecotone levees wherever possible,
- Retain the new Ravenswood Bay Trail segment, and
- Evaluate the potential for restoration to and assess impacts on the Ravenswood triangle.

Midpen requests that the SFCJPA consult with Midpen on design alternatives affecting the Ravenswood Bay Trail and Preserve prior to the initiation of an environmental analysis. Once the Draft EIR is available for public review and comments, please send notification to Planning Manager Jane Mark at jmark@openspace.org and Senior Planner Gretchen Laustsen at glaustsen@openspace.org. We appreciated the opportunity to review and submit comments on the NOP.

Sincerely,

Susanna Chan
Assistant General Manager

CC: Midpeninsula Regional Open Space District Board of Directors
Ana M. Ruiz, General Manager, Midpeninsula Regional Open Space District
Alice Kaufman, Green Foothills
Eileen McLaughlin, Citizens Committee to Complete the Refuge
Matthew Brown, San Francisco Bay National Wildlife Refuge Complex

San Francisco Bay Conservation and Development Commission

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Transmitted Via Electronic Mail

June 15, 2022

Tess Byler
Senior Project Manager
San Francisquito Creek Joint Powers Authority
2100 Geng Road, Suite 210
Palo Alto, CA 94303
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,

SCHUYLER OLSSON
Senior Environmental Scientist (Specialist)

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Citizens Committee to Complete the Refuge

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Comments submitted via electronic mail

June 15, 2022

Tess Byler, Senior Project Manager
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2100 Geng Road
Palo Alto CA 94303
Via email: tbyler@sfcjpa.org

RE: Notice of Preparation of an Environmental Impact Report for the Strategy to Advance Flood Protection, Ecosystems and Recreation along San Francisco (SAFER) Bay Project

Dear Ms. Byler:

Citizens Committee to Complete the Refuge appreciates the opportunity to provide scoping comments in response to the April 22, 2022 Notice of Preparation (NOP) of an Environmental Impact Report (EIR) issued by the San Francisquito Creek Joint Powers Authority (SFCJPA) for the SAFER Bay Project (Project). We commend the SFCJPA for its efforts to address the important challenge of protecting bayside communities from flooding and sea level rise.

We are also submitting a Memorandum from Dr. Peter Baye, Coastal Ecologist, Botanist, dated June 15, 2022 regarding the proposed project and attached to these comments.

Citizens Committee to Complete the Refuge (CCCR) has spent decades protecting the Bay's tidal wetlands and listed and rare species, and has an ongoing interest in wetlands restoration and acquisition. Our senior members worked with Congressman Don Edwards to obtain congressional authorization in 1972 to establish the Refuge. Since then, our organization has taken an active interest in Clean Water Act, Endangered Species Act, CEQA/NEPA regulations and National Wildlife Refuge System Administrative Act policies and implementation at the local, state and national levels, demonstrating our ongoing commitment to wetland, wildlife and Refuge issues.

Additionally, we have participated as a stakeholder in the US Fish and Wildlife Service Tidal Marsh Ecosystem Recovery Plan, the San Francisco Bay Conservation and Development Commission Adapting to Rising Tides and Bay Adapt processes, the San Francisco Estuary

Partnership, the San Francisco Bay Joint Venture and the South Bay Salt Pond Restoration Project. Our participation in these processes demonstrates our recognition of the threats posed by climate change and more specifically, sea level rise, and the challenges that face our region as we work to protect the current and future health of San Francisco Bay and our communities. With those interests, and a relationship with the Don Edwards San Francisco Bay National Wildlife Refuge, we previously had the opportunity to comment to the SFCJPA on the San Francisquito Creek Flood Protection Bay to 101 Project, a project that has some connection to the Project described in this Notice of Preparation. We are also submitting a Memorandum from Dr. Peter Baye, Coastal Ecologist, Botanist, dated June 14, 2022 regarding the proposed project.[1]

Our comments are based on Project information provided in the NOP, the 2016 *"SAFER Bay East Palo Alto and Menlo Park Public Draft Feasibility Report"* (Feasibility Report) referenced in the NOP, and the presentation slides and recording from the May 19, 2022 SAFER Bay Project NOP Meeting which are posted on the SFCJPA website (http://sfcjpa.org).

Project Description

According to the NOP, the Project site is located along approximately 7 miles of the shoreline of San Francisco Bay from the Menlo Park/Redwood City border south to the East Palo Alto/Palo Alto border. The Project has been divided into 8 segments or reaches, all located within the cities of Menlo Park and East Palo Alto. Project actions will take place on both public and privately owned property including:

> *"…the Don Edwards National Wildlife Refuge (Refuge), including Refuge-managed land in Laumeister and Faber Tract Marshes (owned by City of Palo Alto) and Ravenswood Open Space Preserve (owned by Midpeninsula Open Space District). The Project also includes actions within land owned by the San Francisco Public Utilities Commission, the Cargill Corporation, and many others; and within the Caltrans State Route 84 right-of-way at the western approach to the Dumbarton Bridge*."

The purpose of the Project is "…*to protect people, property and infrastructure from current tidal flooding and projected sea level rise through engineered and natural features that enhance shoreline ecosystems and improve recreational opportunities*." A combination of levees, floodwalls and flood risk reduction structures with be utilized to meet current FEMA coastal flood protection requirements and provide protection from 3.5 feet of anticipated sea level rise. The project proponent states the proposed Project would include more than 550 acres of habitat restoration and 1 to 2.5 miles of new or improved trails.
The NOP states:

> "*Consistent with CEQA, the SAFER Bay Project EIR will contain both project-level and program level evaluations. Those Project components with sufficient design and construction information will be evaluated at a project level of detail and those lacking*

[1] Memorandum from Dr. Peter Baye, Coastal Ecologist, Botanist, dated June 14, 2022 to CCCR, attached hereto as Exhibit 1.

sufficient detail will be evaluated programmatically, in accordance with CEQA Guidelines Sections 15161 and 15168."

As identified in NOP *Figure 1: Project Location and Components*, only two reaches, "Substation and Marsh Restoration" and "South of Bay Road – East Palo Alto" will be evaluated at the "project level of detail" in the EIR.

In sections below, the comments of this letter will be grouped as:

- General comments
- Comments regarding the proposed alignment reaches, organized from north to south
- Comments identifying significant sections for impact analysis

General Comments

Safer Bay Project and the Refuge

The Don Edwards San Francisco Bay National Wildlife Refuge (Refuge) is an important partner with the SAFER Bay Project. Lands owned and/or managed by the Refuge represent the largest geographic portion of adjacent properties potentially impacted by the Project.

According to the agency's 2013 *Comprehensive Conservation Plan*[2], "The Refuge was established with three major purposes. The most important of these is the preservation of the natural resources of the South Bay, which include among others the habitat of migratory birds, harbor seals, and threatened and endangered species. The second major purpose is to provide environmental education and wildlife interpretation opportunities to Bay Area schools and residents. Third, the Refuge will ensure the protection of an important open space resource and other wildlife-oriented recreation opportunities for the enjoyment of local residents and visitors (EDAW 1974)."

The Refuge was established to protect special status species and other fish and wildlife, and all actions undertaken must be compatible with protection of those resources. In discussion that follows, you will find comments that demonstrate how these Refuge priorities, mandated by Congress, apply to specific proposals and topics of the Project's NOP.

★ To facilitate the Project's working relationship with the Refuge, the EIR needs to (1) include the Refuge's Comprehensive Conservation Plan as a planning resource, (2) add the USFWS/Refuge to its list of Permits and Approvals (p.7, NOP) for permitted access to Refuge lands and (3) consult with Refuge management on any Project needs involving Refuge lands inclusive of the Faber and Laumeister marshes.

Future "Draft Project Description"

The *SAFER Bay Notice of Preparation (NOP) Scoping Meeting Presentation Slides* from the May 19, 2022 public meeting include a slide entitled "Environmental Impact Report Process" (Slide No. 8). The slide presents a timeline and flow chart indicating that a "Project Description

[2] Don Edwards San Francisco Bay National Wildlife Refuge Comprehensive Conservation Plan 2013: https://permanent.fdlp.gov/gpo51796/index.htm

Review" will take place in 2023, prior to the preparation of the Draft EIR. In the *May 19, 2022 SAFER Bay project NOP Meeting Recording,* the public was informed that "although not required, a draft project description will be released for public review in August 2023".

We are very heartened to learn that agencies and the public will have an additional opportunity for review and comment on what we might assume will be a much more robust and complete project description.

★ The DEIR must ensure that sufficient information is included on Project design details and potential environmental impacts for a "meaningful response", for the reaches that will be analyzed at the project level in the EIR and sufficient information regarding potential direct and indirect impacts that may arise in future phases to enable the agencies and public to provide substantive comments.

Tiering and Subsequent CEQA Project-Level Analysis

Regarding review of project elements currently being evaluated at the program level, the NOP states, *"Supplemental CEQA for those aspects of the Project evaluated in the SAFER Bay EIR at a program level of detail will occur before construction of those elements."* (Page 8)

Under CEQA Guidelines Section 15168(c)(1), subsequent CEQA review may be either an EIR or Negative Declaration ("If a later activity would have effects that were not examined in the program EIR, a new Initial Study would need to be prepared leading to either an EIR or a Negative Declaration. That later analysis may tier from the program EIR as provided in Section 15152.").

- What does the SAFER Project consider "*supplemental CEQA*"?
- Would future reaches currently being considered at the program level be subject to a full EIR prior to construction, or would a Negative Declaration be used?
- Will the level of subsequent CEQA analysis be different for each Project reach?
- The forthcoming Draft Project Description and/or the EIR should outline how the supplemental CEQA process will unfold for the specific program-level reaches, and describe the process for subsequent opportunities for agency and public review and comment. It is particularly important to inform agencies and the public whether or not there will be opportunities to review and provide comment on future phases, as design of those phases moves forward or whether the programmatic DEIR will be the only opportunity for public review and comment.

Accuracy of Statements of Proposed Actions

In discussions below, we will discuss issues related to Project proposals of nature-based actions such as restoration on lands of the Refuge. Our discussion will address issues of impacts of concern on habitat and wildlife but we should not ignore an issue that may mislead the public and agencies dependent on a CEQA document.

In the NOP, (p.7) we find:

> **Tidal Marsh-Upland Transition Zone Habitat at Pond R1/R2.** The Project ***will construct*** a broad, gently sloped habitat transition zone that will increase the surface area and vertical extent of transition zone habitat adjacent to the footprint of restored tidal salt marsh. High tide refugia could also be created within portions of Pond R1 to provide escape cover within the restored marsh. The locations of transition zone habitat will depend upon the footprint of restored tidal habitat versus enhanced managed pond habitat (to be determined in collaboration with the SBSPRP project management team). (italics added).
>
> **Tidal marsh-upland transition zone habitat construction at Pond R4**. Similar to Pond R2***, the Project will construct*** a broad, gently sloped habitat transition zone that will increase the surface area and vertical extent of transition zone habitat relative to the amount of transition zone habitat restored in Pond R4 by the SBSPRP. The design will be developed in collaboration with the SBSPRP project management team. (italics added)

Both items present the proposal with the certainty of "will construct." We find this statement disturbing as our research while preparing to respond to the NOP included asking the SBSPRP and the Refuge about the NOP proposals, learning that neither agency has any agreements with the Project for such actions. Our further concern is that the CEQA intent "to inform" is here instead misinformation provided to the public and agencies who may depend on it in responses to the NOP.

- ★ In the EIR, statements of proposed actions must be accurate to the status of that action. If Project actions are to occur on lands of other jurisdictions, the EIR should be able to cite a completed agreement of the parties for the action or, minimally, amend statements of proposed action appropriately e.g. agreement pending.

<u>Concurrent Project-Level EIR for All Reaches with Proposed Pond Restoration</u>

The South Bay Salt Pond Restoration Project (SBSPRP) has yet to initiate its Phase 3 planning process for the ponds that have not already been designated for either tidal marsh restoration or enhanced managed ponds. Refuge Ponds R1, R2 and SF2 are all currently managed ponds that may be considered for complete or partial restoration to salt marsh habitat in the future. SBSPRP decisions on conversion of ponds to tidal marsh are based on ongoing scientific studies that inform the "adaptive management" process required by the 2007 *South Bay Salt Pond Restoration Project Final Environmental Impact Statement/Report.* All decisions must also be consistent with the legally-mandated purpose of the Refuge's federally-protected lands.

Decisions on future tidal marsh restoration of R1 and R2 may be dependent on habitat decisions for SF2, and vice-versa, especially with respect to ensuring the retention of adequate breeding habitat, or enhancement of habitat, for endangered western snowy plovers. While Ponds R1 and R2 are in a reach that will be analyzed at the project level in the EIR, Pond SF2 will not undergo a detailed project-level analysis until some future time.

Since decisions on future habitat designations for these three ponds cannot be made in isolation, it may be appropriate for the Project, in consultation with the SBSPRP and the Refuge, to consider conducting a project-level analysis for SF2 at this time as well; specifically, to obtain the required Refuge and SBSPRP determination as to whether or where placement

of any SAFER levees within these ponds will be appropriate for habitat restoration or enhancement.

Restoration as Mitigation for Project Impacts

Habitat restoration of over 550 acres is an important element of the overall Project as stated below in this excerpt from the NOP *Project Overview* on page three:

> *"The SFCJPA is collaborating with the South Bay Salt Ponds Restoration Project to restore former salt production ponds, Pond R1 and Pond R2, located in the Ravenswood Complex, as part of the SAFER Bay Project. The restoration scenarios include tidal marsh or a combination of tidal marsh and managed ponds. The Project will construct levees, floodwalls and other flood protection features necessary to enable the restoration of tidal action to these ponds and includes design and construction of the pond restoration itself in order to mitigate for the Project's impacts to jurisdictional wetlands and aquatic habitats. The Project also proposes to increase the diversity of habitat by building tidal salt marsh-upland transition zone habitat (transition zone habitat) on the bayward slope of appropriate segments of levee adjacent to existing and/or restored tidal salt marsh."* (Emphasis added)

It would be inappropriate to assume that ponds R1 and R2 will be converted to tidal wetlands. While restoration to tidal wetlands of as many acres of salt ponds as possible is one of the goals of the South Bay Salt Pond Restoration Project, it has always been recognized that there is a delicate balance of habitats and habitat use that must be maintained. One of the project objectives of the SBSPRP is to maintain populations of salt pond dependent migratory waterbirds such as the Wilson's and red-necked phalaropes, eared grebes, and Bonaparte's gulls, as well as salt pond-dependent special status species such as the western snowy plover. When considering the overall habitat mosaic in the South Bay, and the critical acres needed for specific Bay wildlife species, the SBSPRP and Refuge may conclude that the best ecologically-based decision is to leave Ponds R1, R2 and SF2 entirely as managed ponds.

- What effect would this have on the Project's ability to mitigate for Project impacts to jurisdictional wetlands and aquatic habitats?
- In order to address the possibility that the number of acres available for Project habitat restoration may not be adequate for mitigation, the EIR must include details on the location, functional value and acreage of existing jurisdictional wetlands and aquatic sites that could be directly and indirectly impacted by Project actions, and provide mitigation strategies that do not require the use of lands that may already be encumbered by restrictions in use.

Levee Design Details

As subsequent comments in this letter will demonstrate, it is clear that the two levee design graphics were not sufficient information, particularly for project-level discussions. Along the ~7 miles of Project shoreline, the variations in siting, of differing inboard and outboard conditions and the common obstacles of ordinary infrastructure all lead to the conclusion that there must be many variations of levee footprint, height, slope/partial slope/no slope and more in levee design. While we made attempts to answer questions by building charts, it was clear more information was needed and may be very pertinent to, say, someone whose home would be near the future levee. The EIR needs to provide in-depth levee information in plain language

but with the appropriate level of detail so the public and agencies may better understand the changes ahead.

- ★ The Project Description of the EIR must include discussion, charts and images suitable for every project-level action and sufficient to make program-level consideration informative.

Comments on Specific Reaches, North to South

Marsh Road

The Feasibility Report provides two options for this reach. Based on the NOP *Figure 1: Project Location and Components,* it appears that Option 2 has been selected for analysis in the program-level EIR. This option would raise the existing levee along the Bayfront Canal from Marsh Road to the Redwood City border. Since the Feasibility Report was issued in 2016, the Bayfront Canal & Atherton Channel Flood Protection and Ecosystem Restoration Project has been completed - a collaborative effort between the cities of Atherton, Menlo Park and Redwood City, San Mateo County and the Refuge. The new infrastructure components of this flood control project must be reflected in the existing conditions section of the EIR.

Additionally, The Bayfront Canal is directly adjacent to the Cargill salt ponds which are all in the Congressionally-authorized expansion boundary for the Refuge. Should these adjacent Cargill ponds become available for acquisition and restoration to tidal marsh in the future, this levee could provide high marsh habitat and room for marsh migration with sea level rise.

- ★ The EIR should explore a design alternative for the levee on this reach that could accommodate (or at least not preclude) a possible future addition of an extended 30:1 slope on the bayside of the SAFER levee.

Bedwell Bayfront Park

The NOP *Figure 1* shows this reach extending from Marsh Road to high ground within Bedwell Bayfront Park.

- ★ The new Draft Project Description should provide a sufficient level of detail for agencies and the public to understand how the Project will increase flood protection in this reach within the constraints of existing water control structures, the roadway into the park, the adjacent Flood Slough waters and wetlands and Refuge Pond S5.

Bayfront Expressway

This reach extends from the high ground of Bedwell Bayfront Park down to Bayfront Expressway adjacent to Refuge Ponds R4, R5 S5 and R3, and then continues along the highway to the edge of the Tech Campus reach. It is very important that the SFCJPA continues to work closely with the South Bay Salt Pond Restoration Project (SBSPRP) and the Refuge on the levee design elements for this reach.

The NOP doesn't reflect the existing conditions on Refuge lands in this area that will be impacted by proposed Project levees shown in NOP *Figure 1* and *Figure 2 Cross-Section of Levee with Transition Zone Habitat (Bedwell Bayfront Park).* (Although *Figure 2* is labeled as Bedwell Bayfront Park, it appears to apply to the Bayfront Expressway reach.) As part of its Phase 2 implementation, the SBSPRP has installed a water control structure between Pond R5 and R4, and is expected to complete construction of a habitat transition zone along the perimeter of Pond R4 by the end of 2022.

- ★ To what extent, if any, would the Project's Proposed Transition Zone Habitat section within Pond 4 (as depicted in NOP *Figure 1*) be needed?

Other than the levee cross section provided for the small area with transition zone habitat in R4, the NOP includes no information on the dimensions or footprint for the remaining levee sections between Pond 3 and S5/R6 and along Bayfront Expressway. The SBSPRP Phase 2 plans currently being implemented call for Pond R3 to remain a managed pond for endangered western snowy plover breeding habitat; therefore, levees for this reach should be designed to have a smaller footprint in order to have the least amount of fill placed inside Refuge Ponds R3 and R5.

- ★ The EIR must provide details on the number of acres in Refuge ponds that would be permanently impacted from fill, identify and analyze direct and indirect impacts to the Refuge and special status species and also describe how impacts to Refuge lands and wildlife during and after levee construction will be minimized or mitigated.

Tech Campus

The Tech Campus reach is located around the Meta (Facebook) East campus and along the north side of Bayfront Expressway. It crosses the Ravenswood Pump Station Outfall near the southeast corner of the Meta campus.

Because this proposed section of levee borders approximately 1.25 linear miles of Ravenswood Slough (an estimated total of 28 acres), and transects the connection at the Ravenswood Pump Station to the Caltrans wetland mitigation area south of Bayfront Expressway, it has the potential to significantly impact jurisdictional wetlands and waters. In addition, the levee sections to the west and north of the tech campus could potentially affect the Refuge's levee on the opposite side of Ravenswood Slough that protects Pond R3 habitat for shorebirds, including the federally threatened western snowy plover.

The Feasibility Report states that Ravenswood Slough in the Tech Campus area, "…*is not currently high-quality tidal marsh*." The Feasibility Report and NOP provide no criteria or assessment for reaching this conclusion. This description implies that Ravenswood Slough does not provide valuable wildlife habitat.

Ravenswood Slough has been documented to support the federal and state listed endangered and state fully protected Ridgway's rail (RIRA). In the 2020 Invasive Spartina Project RIRA survey results noted the detection of 14 RIRA[3]. The Project determination that Ravenswood Slough in this reach is not high quality is also inconsistent with our recent observations, and the photo-documentation of this tidal marsh we provide below. All photos were taken by G. Raabe.

Brackish wetlands on east side of campus showing Ravenswood Slough at Bayfront Expressway across from the Ravenswood Pump Station.

Ravenswood Slough wetlands looking east along the Bayfront Expressway section of the Tech Campus reach, Pond R3 on the left.

[3] California Ridgway's rail Surveys for the San Francisco Estuary Invasive Spartina Project 2020; https://spartina.org/documents/InvasiveSpartinaProject_RIRAReport2020.pdf

Ravenswood Slough wetlands looking north from Tech Campus existing levee.

Ravenswood Slough wetlands from northwest corner of Tech Campus, Bedwell Bayfront Park in the background.

Ravenswood Slough wetlands looking south, existing Tech Campus levee on left, Pond R3 on right.

Ravenswood Slough west of the tech campus during high tide.

This area of Ravenswood Slough west of the tech campus is currently being used by Killdeer and Black-necked Stilts, and their young. Photos taken June 6, 2022.

Adult and fledgling Killdeer foraging in Ravenswood Slough salt marsh.

Adult and fledgling (in vegetation) Black-necked Stilts in Ravenswood Slough salt marsh.

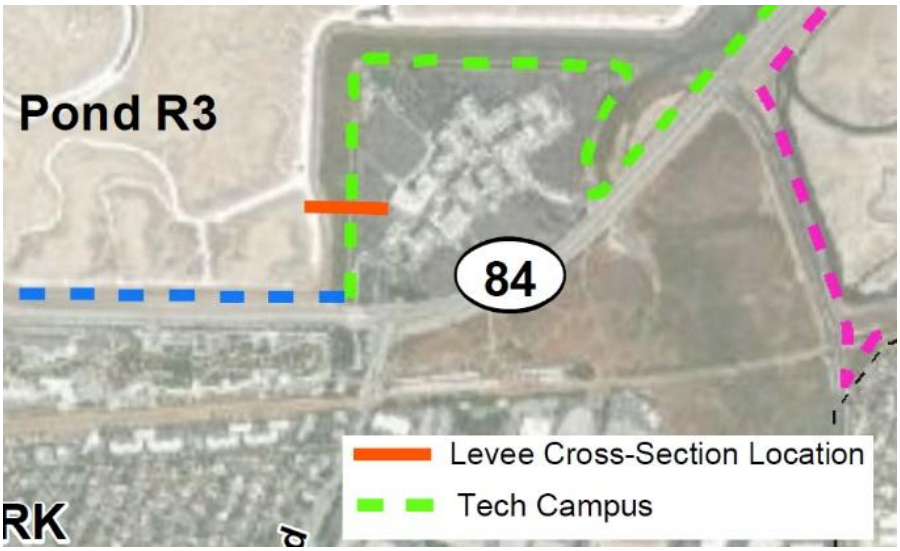
Black-necked Stilt populations have experienced precipitous declines in the south San Francisco Bay[4], so any habitat suitable for this species to use for breeding is important and should be considered worth protecting.

The Feasibility Report description that this is not a high-quality salt marsh could lead the public to assume it is not suitable habitat for the federally endangered salt marsh harvest mouse. We now know the mouse occupies a diversity of vegetation in addition to pickleweed, and can inhabit muted tidal marshes[5].

The Feasibility Report's unsubstantiated characterization of Ravenswood Slough salt marsh in this area could influence agency and public comments with respect to the scope and content of the EIR. The EIR must include accurate documentation of the extent and ecological value of existing Biological Resources in this reach, including listed species, and provide alternatives that avoid, minimize or mitigate impacts to habitat and wildlife.

<u>Information Needed on the extent of Tidal Marsh Habitat Loss:</u>

The NOP does not provide information on potential Project impacts to the salt marsh habitat in this section of Ravenswood Slough; however, using the figures provided in the NOP (Figures 1,3 and 4) it is clear that there is a potential for loss of salt marsh along 1.25 miles of Ravenswood Slough from the proposed Project levee.



Excerpt from NOP Figure 1 showing location of levee cross-section.

[4] Hartman, C.A., Ackerman J.T., Schacter, C., Herzog M.P., Tarjan L.M, Wang, Y., Strong, C., Tertes, R., and Warnock, N. 2021. Breeding Waterbird Populations Have Declined in South San Francisco Bay: An Assessment Over Two Decades. San Francisco Estuary and Watershed Science, 19(3). https://doi.org/10.15447/sfews.2021v19iss3art4

[5] Barthman-Thompson, L., Smith, K. and Riley, M. 2017. Salt Marsh Harvest Mouse Survey Bias, New Results for China Camp State Park. Poster Abstracts, State of the San Francisco Bay Estuary Conference, Oct 10-11, 2017. https://www.sfestuary.org/wp-content/uploads/2017/09/SOE17Abstract2_Conserving_SMHM.pdf

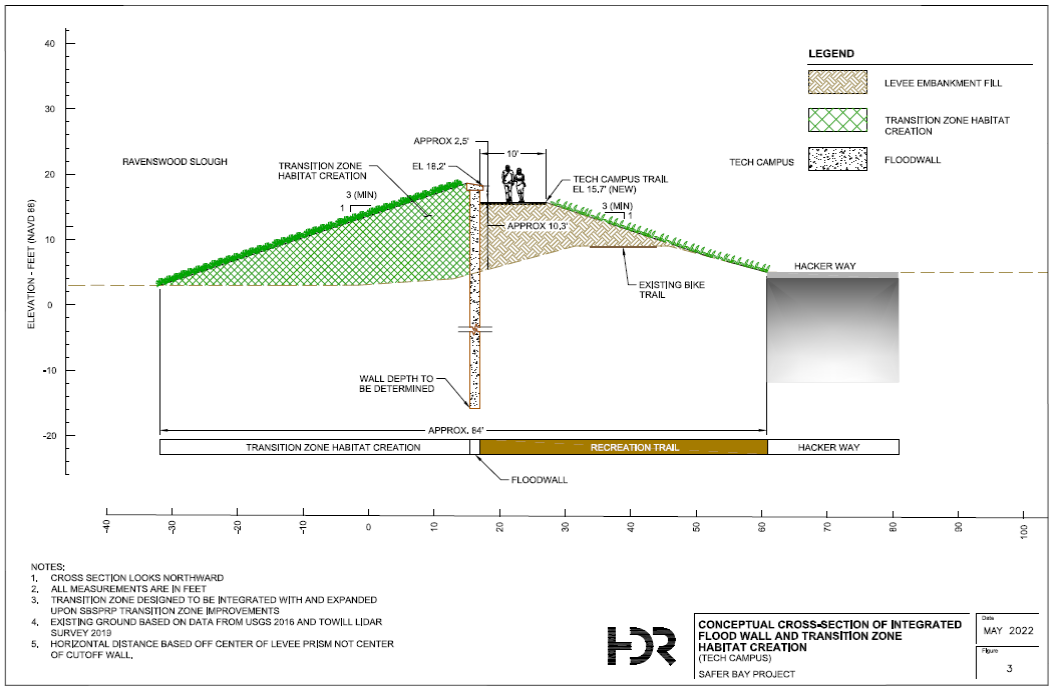


Figure 3 from the NOP shows a levee with an 84-foot base extending from the edge of Hacker Way west into Ravenswood Slough.

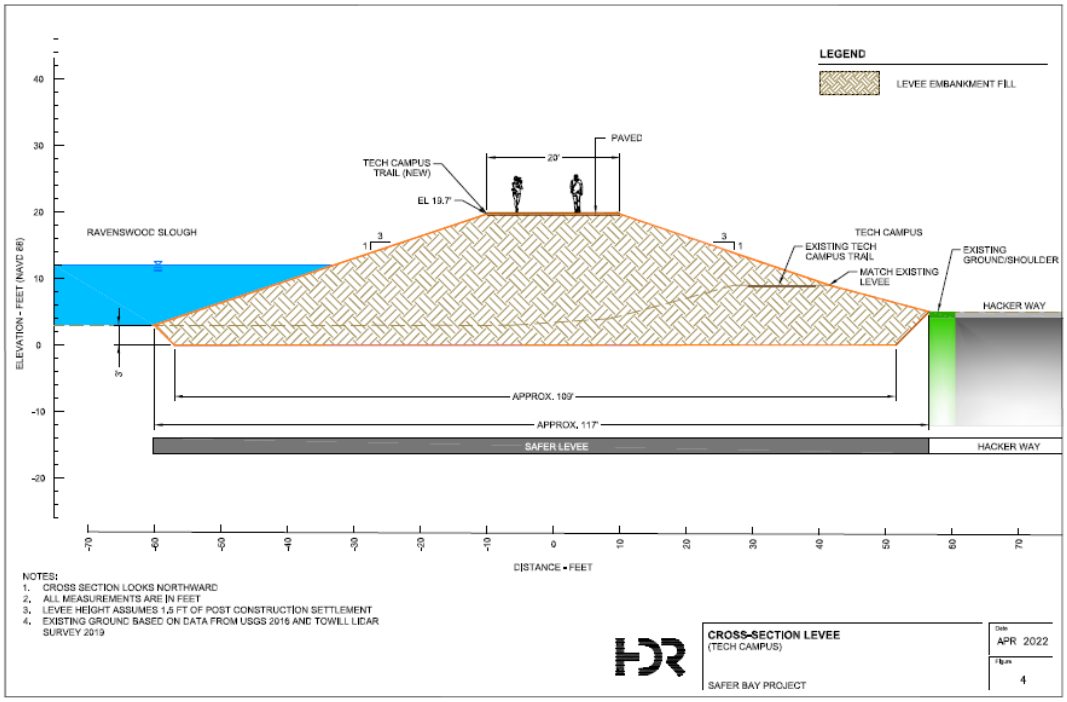


Figure 4 from the NOP shows a levee with an 117-foot base extending from the edge of Hacker Way west towards Ravenswood Slough.

Additionally, the NOP provides no information on the design and footprint for the levee section along Bayfront Expressway, and therefore the potential for impacts to tidal marsh habitat in this area is unknown.

Tech Campus section (– ~ –) adapted from NOP Figure 1. ??? = area of unknown levee design and footprint along Bayfront Expressway.

★ For each alternative considered in the EIR for this reach, even at the program level, there must be specific locations and acreage provided for any wetlands and waters that could be temporarily, permanently, directly and indirectly impacted from the Project. The types of impacts and acreages of impacts should be provided in a table – (e.g. temporary, permanent, direct, indirect, habitat type, acreage).

<u>Potential Impacts to the Levee Protecting Pond R3:</u>

Converging shorelines increase tidal amplitude towards the landward end of enclosed estuaries[6]. Without knowing the extent to which a proposed levee may encroach into Ravenswood Slough, thereby increasing the convergence of the shorelines, it is not possible to determine what impact increased tidal amplitude may have on the structural integrity of the Pond R3 levee across the slough (even without sea level rise) that protects habitat for shorebirds and breeding western snowy plover from inundation.

[6] Holleman, R. C., and M. T. Stacey (2014), Coupling of sea level rise, tidal amplification, and inundation, J. Phys. Oceanogr., 44(5), 1439–1455, doi:10.1175/JPO-D-13-0214.1.

Ravenswood Slough wetlands looking west from existing Tech Campus levee, with Pond R3 levee across the slough.

Below are three Google Earth overlays showing approximate shoreline locations in Ravenswood Slough under different conditions: 1) current, 2) with an 84-foot wide levee base along the perimeter of the tech campus and 3) with a 117-foot wide levee base. Shorelines are estimated from the location of saltmarsh vegetation on the Google Earth image and field observations. The shoreline realignment drawn in the second and third figures is limited to levee sections where Hacker Way parallels Ravenswood Slough because the NOP only provides information for the proposed levee relative to Hacker Way, the perimeter roadway on the tech campus.

Current conditions showing convergent shorelines (yellow line) of Ravenswood Slough going inland (north to south).

Ravenswood Slough shoreline with base of 84-foot levee extending west from Hacker Way, showing increased convergence of the shorelines.

Ravenswood Slough shoreline with base of 117-foot levee extending west from Hacker Way, showing increased convergence of the shorelines.

★ The EIR should include an analysis of the potential hydrological changes in Ravenswood Slough (including changes in tidal amplitude) from the Tech Campus levee, and how those changes could impact the levee protecting the shorebird habitat in the Refuge's Pond R3.

Alternative for Consideration:

The SBSPRP plan for Pond R3, currently being implemented, is to enhance this managed pond for shorebirds and western snowy plover nesting habitat, and not restoration to tidal marsh. This decision was published in the *South Bay Salt Pond Restoration Final Environmental Impact Statement/Report, Phase 2 Executive Summary* in April 2016. On Page 7 of the NOP, there is a statement that the Project would provide habitat enhancement for nesting plovers in Pond R3; however, the NOP included updated figures for this reach (Figures 3 and 4) with the same 2016 Feasibility Report levee designs for possible restoration to tidal marsh. These designs are for a levee with a large footprint and "transition zone habitat" extending well into Ravenswood Slough. There appears to be no reason at this point to have a larger levee with a transition zone surrounding the tech campus.

★ In order to avoid or minimize impacts to the Ravenswood Slough wetlands and endangered species, the Project should reconsider the Feasibility Report's Reach 4, Option 1 levee shown in Figure 16 below, or another levee design that eliminates any permanent fill in Ravenswood Slough.

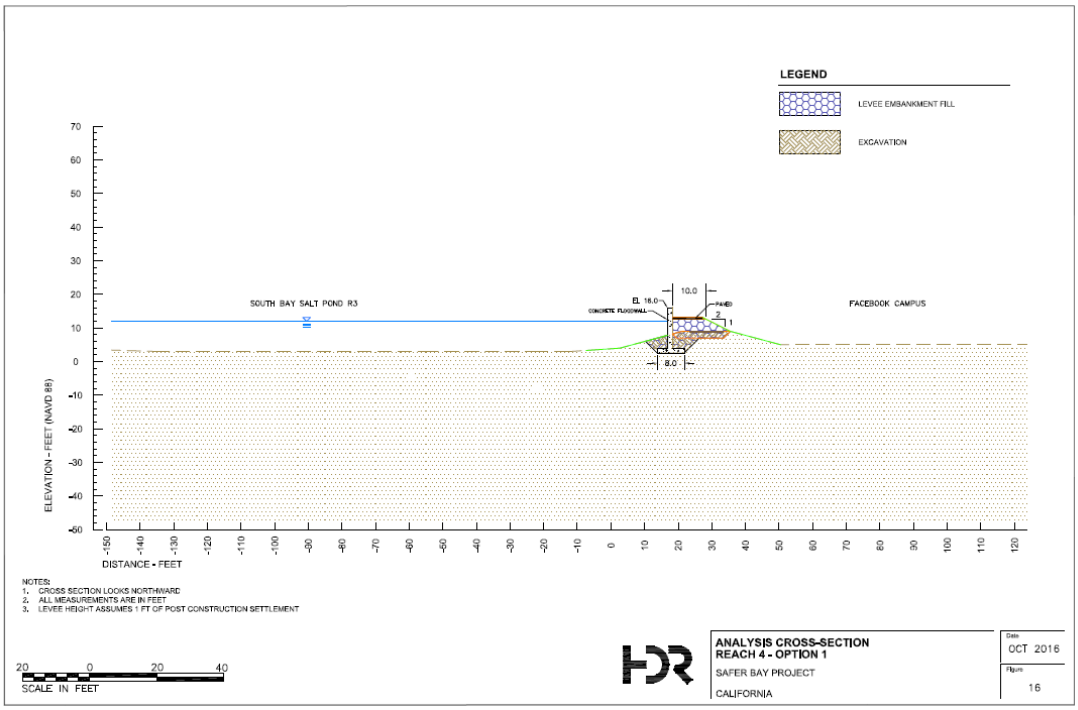


Figure 16 from the Feasibility Report showing the Option 1 floodwall with a greatly reduced Project footprint. Ravenswood Slough is on the left.

Substation and Marsh Restoration (Project Level EIR)

As shown in NOP *Figure 1*, the proposed levee for this reach surrounds the perimeter of the PG&E substation, and continues along the two edges of Bayfront Expressway adjacent to the Refuge's Pond R2. NOP *Figure 5 Cross-Section of Levee with Transition Zone Habitat Creation* shows that the proposed SAFER levee, including the 30:1 sloped, bayside transition zone habitat, would extend approximately 560 feet out from the edge of the PG&E property.

As mentioned in our general comments, the SBSPRP has not completed the planning process for Ponds R1 and R2 with respect to potentially restoring tidal marsh, enhancing the existing managed ponds, or creating a combination of the two habitats.

- ★ The EIR for this reach may need to analyze a range of options for levee placement and design, and for enhancing wildlife habitat in these ponds. Following consultation with the SBSPRP and the Refuge to obtain options consistent with their goals, the Project should include an appropriate number of alternatives to analyze. Additionally, migratory shorebirds and breeding Western Snowy Plovers utilize these ponds; therefore, the EIR should identify potential impacts to wildlife from levee construction and provide corresponding mitigation measures.

Dumbarton Bridge West Approach, Levee Expressway Crossing and SF2 alignment.

The NOP's Project Location and Components map (Figure 1), suggests levee locations along Bayfront Expressway at its bridge approach and also three connections bisecting or adjoining the Refuge's Pond SF2. Even though this part of the Project is program-level, it is a concern that the map's suggestions omit mention of various options developed in the 2020 Dumbarton

Bridge West Approach + Adjacent Communities Resilience Study[7] (DBWA Study). Those options can affect best placement of the Project's levees. By the time actions described under program-level planning commence, Caltrans may have adopted DBWA options that may alter locations for a levee crossing of the Expressway and the route of the levee within or around Pond SF2.

The EIR must include the following analysis and set standards that will guide project-level planning.

- Present the six options shown in the Conclusions of the DBWA Study with discussion about how they each might affect the Project's levee locations, levee connections and the best site for the Expressway crossing. For instance, in options that include a longer or shorter elevated roadway, where are sites that are optimal for the Expressway crossing? Pending Caltrans decision on length of an elevated roadway, how does the landing location of the roadway affect levee alignments on the roadside or with SF2?

- As Program-level guidance, set the standard that project level planning include in-depth **biological resource assessments (BRA)** as required under Menlo Park's Connect Menlo, identifying impacts unique to alignment-habitat combinations. For example, the BRA findings of a levee next to Ravenswood Slough would differ from a levee next to the western snowy plover habitat in SF2. Analysis would occur for impacts along both sides of the expressway, from the Mosely Tract through Ravenswood Slough and similarly along SF2. Additionally the BRA analysis would need to include how the planned levee type impacted habitat and consider if an alternate form of levee could avoid or minimize impacts.

- Figure 1 suggests three **possible levee alignments in SF2**. It is of significance that these Refuge lands are required under Refuge priorities and the National Wildlife Refuge System Administrative Act[8] to dedicate the highest priority to wildlife and the habitat they require. Any levee crossing, new or increased in size can cause extensive temporary and permanent impact on the wildlife that require this habitat, multiplied by the number of levee alignments built. The greatest impact would occur for levees bisecting and disrupting habitat such as the alignment shown near the Bay or that of the existing berm separating the migratory bird island pond and snowy plover habitat. For these reasons **we recommend that the EIR consider a University Avenue levee only.**

- For any alignment within or adjoining SF2, the EIR needs to set the program-level standard that project-level planning (supplemental CEQA action) will report the existence of a completed formal agreement with the Refuge for the action proposed.

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[7] Dumbarton Bridge West Approach + Adjacent Communities Resilience Study, 2020; https://mtc.ca.gov/sites/default/files/documents/2021-05/Dumbarton-Bridge-West-Approach-Adjacent-Communities-Resilience-Study-Final-Report.pdf

[8] National Wildlife Refuge Administrative Act of 1966 and as amended: https://www.govinfo.gov/content/pkg/COMPS-3011/pdf/COMPS-3011.pdf

The "Loop Road"

During the June 19th Public Scoping Meeting, Project staff described a SF2 alignment bisecting habitat described above proposed to be built large enough to provide a road connecting East Palo Alto to Bayfront Expressway and called the "**Loop Road**." As we have also been commenting on plans for the Ravenswood Business District (RBD) in East Palo Alto, we knew of a proposal for a Loop Road within that City dating back to the 2013 RBD Specific Plan[9]. We are also aware that there are significant concerns among East Palo Alto officials questioning whether that Loop Road will ever be built.

From our prior comments about wildlife disturbance, it is apparent that building a road would vastly escalate impacts on the species of SF2. That very issue is likely why Congress, through the NWRSAA, expressly limited public use on Refuges to passive recreation and environmental education if/when/where it is compatible with adjoining habitats. As set forth in the Act:

> Sec. 4 (a)(1)
>
> (2) The mission of the System is to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans.
>
> Sec 5: Definitions
>
> For purposes of this Act:
> (1) The term ''**compatible use**'' means a wildlife-dependent recreational use or any other use of a refuge that, in the sound professional judgment of the Director, will not materially interfere with or detract from the fulfillment of the mission of the System or the purposes of the refuge.
> (2) The terms ''**wildlife-dependent recreation''** and ''wildlife dependent recreational use'' mean a use of a refuge involving hunting, fishing, wildlife observation and photography, or environmental education and interpretation. (emphasis added)

★ The NWRSAA neither describes or authorizes any other public use, not roads nor any other construct serving only humans. **The EIR discussion of alternatives needs to list the Loop Road proposal as having been considered and rejected.**

[9] City of East Palo Alto, Ravenswood Business District Specific Plan 2013, p.78, Goal TRA-4 and related policies : https://www.cityofepa.org/sites/default/files/fileattachments/community_amp_economic_development/page/9021/final_spec_plan_feb_2013.pdf

Levee Alignment and Potential Marsh Enhancement North of Bay Road in East Palo Alto.

The East Palo Alto shoreline has a nature-based SLR asset that is unique among Bay cities: its entire length features thriving tidal marshes. An objective then is to protect by avoidance and, where needed, enhance existing marshes to be paired with inboard levees. Here is a place where SLR adaptation needs no manmade introduction, just encouragement and protection. If there is any location with the possibility of inland marsh migration, it should be considered as well.

Alignment Alternatives.

The Project, in NOP Figure 1, presents **two alternative alignments**, one following the existing Bay Trail berm as it cuts through marsh as a border of the Ravenswood Open Space Preserve (ROSP). The other sits on high ground adjoining edges of Eastern Slough and the marsh edge. The first would require substantial fill in wetlands in order to build a stable levee and presents engineering challenges to avoid interference with the flow of Eastern Slough, risking long-term impact on the hydrology of the inner marsh area. It was reassuring to hear (Tess Byler, personal communication with Eileen McLaughlin) that the SFCJPA had told the Bay Integrated Restoration Regulatory Team (BIRRT) that the Project would put no fill in the Bay. If that is the Project's intent and as fill and construction disruption would have significant impacts to wildlife, habitat and hydrology, then in the EIR **the Bay Trail alternative should be rejected and excluded from consideration even as a program-level option in the EIR.**

We recommend that the Project retain the high ground levee alternative with EIR consideration with discussion of the reasons for doing so. As this alignment appears to avoid Bay fill, it simultaneously preserves the deepest, most flood protective reach of tidal marsh on the East Palo Alto shoreline. The EIR should analyze issues and impacts including Project right-of-way on privately-owned lands, realignment of the Bay Trail and presence of hazardous materials. The land nearest Bay Road is well documented as an EPA Superfund site (aka Romic site) and the existing auto salvage business is both a levee obstacle and hazardous waste concern. Infinity Salvage has been in business at this site for decades and, to public knowledge, has never had its soils tested for hydrocarbon and other hazards that may have accumulated, possibly seeping beyond its boundary including toward Eastern Slough. The high ground alignment would also need to use land that the 2013 RBDSP set aside for a possible "Loop Road." At this time and from our participation in RBDSP Update planning, there is no indication that East Palo Alto will build that road.

Marsh and Slough Enhancement

There is an **opportunity for the Project to provide marsh enhancement** that may improve existing nature-based tidal marsh protection. Near the unused rail corridor, a narrow reach of the Eastern Slough and marsh extend inland from the slough's northern mouth. The slough continues, completing the Eastern Slough that wraps around the Ravenswood Open Space Preserve. The marsh continues inland becoming an "inner" marsh largely isolated between the Bay Trail berm in the ROSP and developed lands. Hydrologically, it is fed by the Eastern Slough. These peripheral marshes have been described as low quality, an indication that it is an ecologically inefficient location, commonly caused by the action of humans. In this case a hydrological factor is a berm that extends out from the railroad ROW, narrowing the northern mouth of the slough and thereby restricting tidal flow.

★ Given that increasing the depth of marsh (distance from mudflat edge to shore) also increases its SLR and sea surge protection, it is in the best interest of East Palo Alto to use the opportunity to enhance this slough and marsh and improve protection of the North of Bay Road Shoreline.

South of Bay Road - East Palo Alto (Project Level EIR)

This project-level segment of levee and its alignment would provide direct flood protection for a community composed largely of single-family homes and a business district that has proposals for very substantial office and retail development. The Bay Trail separates these developed sites from broad expanses of healthy tidal marsh lining this shore of the San Francisco Bay and home to the endangered Ridgway's rail. Mostly conserved as part of the Don Edwards Refuge, the marshes are a cost-free sea surge mitigation asset to the East Palo Alto community and a carbon sink. But, with SLR, the marshes need to be paired with a substantial levee. This segment of the proposed levee borders Laumeister and Faber Marshes Most of the Laumeister and Faber Marshes are conserved wetlands held as part of the Don Edwards National Wildlife Refuge, while a band along the Bay Trail edge is privately owned. Regardless of jurisdiction, these

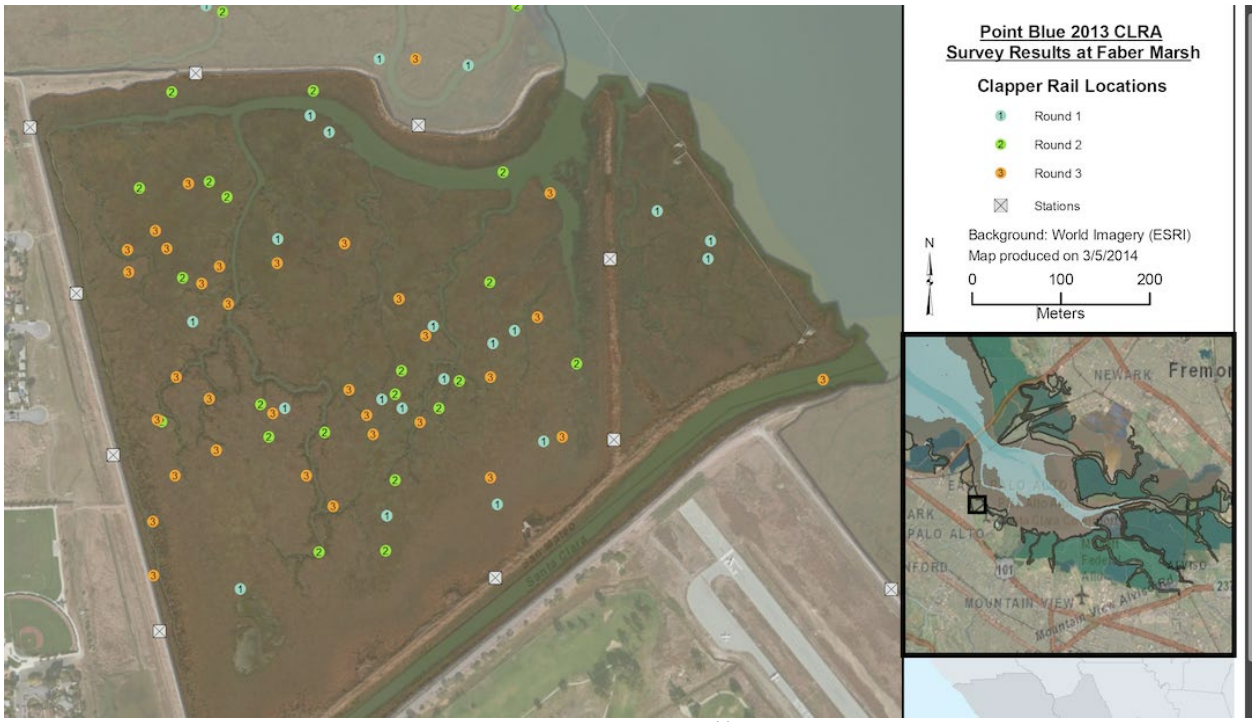
wetlands provide existing, nature-based sea level rise protective function that mitigates sea surges and potentially allows for lower levee height.

The NOP displays two options for the Levee South of Bay Road (LSBR) on pages 20-21. Because of varied inland constraints on the one side and the potential for sea surge on the outboard side both privately-held and Refuge wetlands, the EIR needs to:

- Provide a comprehensive discussion of potential levee types, varied by location and relationship to exposure to wave dynamics, rising seas and utilization of existing marshes as nature-based SLR adaptation or situations that offer potential to enhance or establish nature-based wave mitigation.
- Include examples of levees requiring a narrower footprint on the Bay side, for example where it is sufficient that vegetated slope starts midway on a sea wall.
- Analyze how the presence and extent of marsh may or may not mitigate the wave-reflective impact of a flood wall, inclusive of shoreline erosion potential. If such a wall is needed, discuss how impacts will be mitigated.
- As the Project designs predict settlement of the levee, the EIR should discuss and identify locations where settlement and instability may produce maintenance issues.
- Provide levee information in graphics and charts to allow local residents or business owners to know what type of levee they will be seeing day to day and how it might change their neighborhood. Please see charts on following pages that may be examples of their function as an information tool.

A critically important Project objective should be to preserve the habitat that exist as part of the flood protection solution. Endangered Ridgway's rail and salt marsh harvest mice use the marshes and it is expected that California black rail and salt marsh wandering shrew are present.[10] The following figure shows the result of a Ridgway's rail survey in Faber Marsh that provides a sense of the importance of this habitat to wildlife, as well as the broad extent for natural productivity and carbon sequestration.

[10] The EIR should conduct an up-to-date search of relevant material including the previously cited Refuge Comprehensive Conservation Plan and rail studies of the Point Blue Conservation Center.



Results of Ridgway's rail survey (formerly Clapper rail)[11]

Laumeister Marsh is a prehistoric remnant marsh.[12] The marsh was included in a USGS study of marsh accretion. The study, completed before current SLR revisions, concludes: "The Laumeister is primarily composed of high-marsh vegetation, and low marsh is dominated with Spartina. Model results showed that high accretion rates, due, in part, to high suspended-sediment concentrations in south San Francisco Bay, would sustain high-marsh habitat through 2060 (0.57 m SLR). Once the rate of sea-level rise increased in the second half of the century, Laumeister would begin to lose relative elevation and transition to predominantly mid-marsh habitat by 2080 (0.85 m SLR). By 2100, Laumeister would transition predominantly to low-marsh habitat (1.23 m SLR)."[13] There is a possibility that sediment supply will increase during the coming decades which would assist the marshes in keeping up with the more recent SLR forecasts.[14] Lastly, over a 50-100 year horizon, there will be other options to consider to protect these valuable marshes whether it be offshore reefs, refugia or sediment addition to increase elevations to prevent degradation and loss.[15]

[11]https://www.waterboards.ca.gov/rwqcb2/water_issues/hot_topics/SFCP/Technical_%20Doc/Faber%20Marsh%20clapper%20rail%20Survey%202013.pdf

[12] Palaima, A. (Ed.). (2012). Ecology, conservation, and restoration of tidal marshes: The San Francisco estuary. Univ of California Press.

[13] Thorne, Karen M., et al. *Final report for sea-level rise response modeling for San Francisco Bay estuary tidal marshes*. Ed. John Yutaka Takekawa. US Department of the Interior, US Geological Survey, 2013

[14] Stern, M. A., Flint, L. E., Flint, A. L., Knowles, N., & Wright, S. A. (2020). The future of sediment transport and streamflow under a changing climate and the implications for long-term resilience of the San Francisco Bay-Delta. Water Resources Research, 56(9), e2019WR026245.

[15] Thorne, K. M., Freeman, C. M., Rosencranz, J. A., Ganju, N. K., & Guntenspergen, G. R. (2019). Thin-layer sediment addition to an existing salt marsh to combat sea-level rise and improve endangered species habitat in California, USA. Ecological Engineering, 136, 197-208.

Because of the importance of this habitat and its relatively good position in relation to future accretion, there should be no or an absolute minimum of bay fill in the Levee South of Bay Road. The NOP raises a concern that extending the levee into the Bay is still considered as an option for this segment: "Preliminary options to be considered for evaluation in the EIR include other Project alignment and design options identified in the Feasibility Report."[16] Of particular concern is the old Option 2 which "consists of a new levee built on the Bay side of the existing levee." [17]

- ★ **An option to "build on the Bay side of the existing levee" for the Laumeister and Faber sections should be listed as considered and rejected and not receive further analysis.**

Tables showing alternative levee options for the Levee South of Bay Road

Just as charts were useful for our analysis, charts on this page and the next might be useful in presenting levee information in the EIR. The NOP provides two recommended Project options for this reach which appear to be consistent with the objective to protect wetland habitat. The two cross sections shown for the Project begin construction at the edge of the current Bay Trail and preserve the existing roughly 3 to 1 slope to the wetlands below on the bayside. The options are provided on Pages 20 and 21 of the NOP.

The following table provides a summary of the dimensions of these options which can then be compared to the available space. Measurements are in feet.

Options	Integrated Flood Wall, feet, P. 20	Trail on levee top, No flood wall, feet, P. 21
Elevation of levee top	18.2	18.2
Elevation of Bay Trail	15.7	18.2
Elevation of inland property	8	8
Trail width	10	20
Transition zone horizontal dimension: minimum	20	20
Transition zone horizontal dimension: maximum	49	49
Overall distance from Bay edge of current trail to existing inland ground: minimum	58	73

[16] SAFER_Notice+of+Preparation.Rev_6May2022+(1).pdf, Page 8

[17] Public Draft Feasibility Report, SAFER Bay Project, Strategy to Advance Flood protection, Ecosystems and Recreation along San Francisco Bay East Palo Alto and Menlo Park {2016), San Francisquito Creek Joint Powers Authority

Overall distance from Bay edge of current trail to existing inland ground: maximum	87	101

We considered how well these designs would fit available space. Using Google Earth's ruler, we estimated distances from the outer edge of the current trail to a constraining feature. Starting at the south end of the Trail and working north, the space between the current trail edge and constraining features diminishes. Initially, there appears to be room for the trail-on-top levee at the south, and farther north conditions are likely to require the Flood Wall option. There are exceptions where none of the designs fit and other options should be considered.

Distance – current trail edge to inner ground at points moving south to north	**Estimated Feet available**
At O'Connor Pump bayshore flood pond	92
At MLK Park to drainage trend ditch line	80
At Beech street to drainage ditch	79
At Cypress Street to drainage trend ditch line *	66
At Garden street	60
North of Garden St. the drainage ditch is rerouted closer to bay	37
At the end of Runnymede things are complex:	
To drainage south of Runnymede	69
At bend closest approach to drainage	21
At bend closest approach to lot	34
North of bend along houses closest to trail	23 to 28
Along Rhône-Poulenc site in RBD	8
At the closest distance to Bay Road PGE Station	32

*The ditch trend line is the prevailing course. At the access overpasses, one of the "bridge" culverts is closer to the Bay. The assumption here is that those narrower spots can be addressed by replacing the access paths with ones that ramp up to the higher levee.

<u>Exceptions to the Project options:</u>

A walking tour of the South of Bay Road segment with an eye on planning for the Ravenswood Business District identified a variety of conditions and infrastructure that may require specialized levee adaptation such as: right of way on private property and on high ground, the bend and narrow point in the Bay Trail near Runnymede, stormwater outflows, drainage ditches that parallel the alignment, the O'Connor Pump House, public access at multiple locations, previously unknown locations of contaminated soil and power towers.

The EIR needs to discuss how the Project will resolve each of these situations (and others perhaps) and what impacts are incurred and how they will be mitigated.

Impact Analysis of the Levee South of Bay Road

In this section we refer to additional direct, indirect and cumulative impacts of the Project that must be considered in the SAFER EIR.

The intent of the Project options described for South of Bay Road on pages 20 and 21 is to preserve the existing refugia slope from the edge of the current trail to the wetlands. For any exceptions that require Bay fill the EIR must describe and evaluate every feasible flood protection design to avoid fill.
If mitigation is required for any levee impacts in this segment, the EIR must consider and select enhancement options within or for Laumeister and Faber Marshes.

Some construction impact seems unavoidable to the transition/refugia slope and adjacent wetlands. The EIR must describe those impacts and recommend mitigation on site. For example, if there are impacts to the existing transition zone, it may be possible to do invasive plant control there and add native perennials while creating the transition slope.[CH1]

The EIR must consider options, such as the ones described above, to fit a SAFER levee into a smaller horizontal space when necessary to avoid wetland fill.

No matter which of the bayside slopes is designed there may be the potential for additional transition habitat to be created along the higher levee. The DEIR should identify and provide details regarding the success criteria that will be utilized for the project, describe what ongoing resource management is required and how it will be funded.

The EIR must consider the direct and indirect cumulative effects of the proposed developments in East Palo Alto and interactive effects between those and the SAFER Projects. Examples of some of the possible effects are settlement, groundwater distribution, stormwater distribution and pumping, night lighting, increase in human impacts and litter on the bay habitats. The EIR should provide a description of mitigation measures that will be implemented at each segment that will address impacts to biological and hydrological resources, hazards, etc.

Describe the effects of improved Bay Trail facilities and access on increasing human use and impacts. Describe ongoing litter control and removal programs required to mitigate the effects. Describe how to human disturbance to wetland habitat and wildlife will be addressed. Define who will be responsible for monitoring and addressing issues that might arise.

The SAFER Project must obtain agreements with local jurisdictions to prohibit night lighting and light trespass on the levee, Bay Trail and bay habitats. [CH2]

The EIR must consider how the inner side of the levee and new overpass access ramps can help preserve the drainage ditch and stormwater capacity and its usefulness for fresh to brackish water habitat.

Not only is Nature of service to humans for flood control, but Nature must be preserved for its inherent values. The EIR must provide integrated assessment, consideration and planning for the wetlands and bay habitats adjacent to the SAFER levee in this segment and that will involve partnership with the USFWS and agreements when necessary.

The EIR must describe the special value and nature of prehistoric, never-diked wetlands such as Laumeister Marsh, and precautions that are appropriate to preserve those areas.

HYDROLOGY AND WATER QUALITY

For the SAFER Project, a number of water-related issues need to be considered for analysis in the EIR.

<u>Tidal channel and Erosion impacts of the Proposed levees</u>

The Project proposes to construct levees, floodwalls and some structures that may combine characteristics of each and do so along ~7 miles of shoreline. Some may have earthen slopes of varied height and length. Each of those structures may have local or wave-reflective impacts. Varying by levee type, high water events and location, impacts of each variation need to be analyzed and impacts mitigated, if possible. Analysis must be completed for:

- Tidal Channels (3:1 slope levee)(Ravenswood Slough, Eastern Slough, site-specific small sloughs):
    - Potential impacts of wave reflection on opposite earthen banks
    - Potential marsh erosion at the base of floodwalls following high-water wave action or storm surge
    - For a levee extending into a channel, potential alteration of channel flow with possible increased erosive action on the far bank
- Flood walls (vertical structures)
    - Wave force reflection when directly facing the incoming waves
    - Wave force reflection at a 90 degree angle to incoming waves
    - Erosion impacts of soils at base of floodwall, direct or angled

- Major storm events or series of moderate storm events

  SLR levees are designed to keep water out while storm events can produce significant ponding particularly on impervious surfaces and/or saturated soils. It is also true that SFCJPA is not responsible for each city's stormwater system. Nonetheless in a sudden, major storm event, water can accumulate rapidly inboard of a levee wall. The EIR must analyze, by location, vulnerability issues and how they could be mitigated.

- In East Palo Alto consider conditions described in a LAFCO Municipal Services Report. Its recent study[18] of the EPA Sanitary District included assessments of all City Services including **Stormwater** Services. Those findings identified several vulnerabilities that could impact inboard flooding, The report noted that currently 56% of the City is designated at elevated risk of flooding from any source.

  An area of concern is storm drain deficiencies. The MSR discussion describes the entire stormwater system. The city-wide system of drainpipes includes some 430 nodes (manholes, inlets, similar). Of those, modeled analysis identified 68 nodes where some level of flooding could be expected. Among those, 33 would be locations of flooding of one foot or more.

  In the EIR, analysis should identify impacted nodes in the vicinity the levee and plan mitigation comparable to risks such as the depth of potential flooding

Climate Challenge: Water above and below ground

As the SFCJPA is well aware and associated with climate change, meteorological shifts have already changed the local climate: extended periods of drought and less frequent but intense, major storms or sequential storms such as last October's atmospheric river. Such storms test local stormwater systems

[18] LAFCo Municipal Service Report, East Palo Alto Sewer District: p. 74

and, by infiltration, sewer systems and produce surface ponding and localized flooding. Steadily, over the decades of development envisioned on the EPA and Menlo Park shorelines, rising groundwater (subsurface aquifers) will exacerbate the problem. At the program-level the EIR needs to set a framework for development actions that can adapt and survive these climate changes and to preserve the effectiveness of the levee system planned.

- ★ The EIR needs to assess: How might rising groundwater affect the stability and structural integrity.of a levee?

An important reference to consult is a report prepared by the San Francisco Estuary Institute for the City of Sunnyvale: Sea-level rise impacts on shallow groundwater in Moffett Park.[19] This report is specific to findings in Moffett Park but its analysis is useful, discussing potential impacts and adaptation action for development. Notably its sources for groundwater data are from existing well databases, not involving any physical hydrologic study. SFEI has consulted with many entities and could help the SFCJPA assess this ~7 mile shoreline project.

As food for thought, here is the list of potential rising groundwater impacts compiled in the SFEI report:

- Corrosion. Salinity impacting below ground infrastructure
- Buoyancy. Buoyant force impact on foundations, buried utilities and pipes, roads
- Seepage. Seepage into subsurface structures, floors, walls
- Infiltration: Infiltration into stormwater and sewage pipelines reducing capacity
- Liquefaction: Higher water tables increase liquefaction risk
- Damage to vegetation: Saturated soils and/or higher salinity can impact plants
- Contaminant mobilization: Movement in existing remediation or of unidentified contaminants
- Emergence flooding. Site-dependent; even non-emergent levels can exacerbate surface flooding

Notably, sitting on an alluvial fan that is already a threat for liquefaction, the question is: will rising groundwater make it worse?

Biological Resources

For CCCR, this topic is usually central to our comments. We have mentioned concern about issues impacting wildlife, habitat and wetlands throughout this letter. One recommendation that we made in earlier discussion was the recommendation to have a qualified biologist perform a Biological Resource Assessment (BRA). BRAs are required by Menlo Park which has a detailed description of BRA actions. We hope the Project agrees that it would make good sense to use that analysis tool for the entire Project and for identification of the Project's Biological impacts and mitigations.

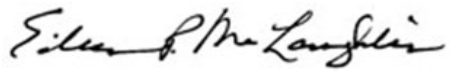
We also refer the Project to the attached Memorandum provided to CCCR by Dr. Peter Baye. His expertise as a coastal wetlands scientist is invaluable as a resource in planning for EIR analysis.

[19] SFEI et al, Sea-level rise impacts on shallow groundwater in Moffett Park, November 2021; https://static1.squarespace.com/static/5e38a3dd6f9db304821e8e5e/t/61a7b37743ec4b770e11ee73/1638380421678/Moffett+Park+Specific+Plan+Groundwater+Addendum.pdf

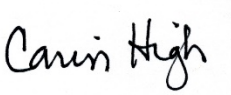
We appreciate the opportunity to offer the comments included here and we look forward to the release of that Draft Project Description.

Yours truly,

Gail Raabe
Co-Chair
Citizens Committee to Complete the Refuge



Eileen McLaughlin
Board Member
Citizens Committee to Complete the Refuge



Carin High
Co-Chair
Citizens Committee to Complete the Refuge

Rick Johnson
Wetlands Advocate
Citizens Committee to Complete the Refuge

ATTACHMENT: Exhibit #1 Memorandum of Peter Baye, Ph.D, Coastal Ecologist

CC: Matt Brown, SF Bay National Wildlife Refuge Complex
Dave Halsing, SCC, Executive Mgr, SBSPRP

Exhibit #1

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Coastal Ecologist, Botanist
33660 Annapolis Road
Annapolis, California 95412

(415) 310-5109

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M E M O R A N D U M

To: Citizen's Committee to Complete the Refuge, Palo Alto
Date: June 14, 2022
SUBJECT: San Francisquito Creek Joint Powers Authority SFCJPA Notice of Preparation (CEQA): Strategy to Advance Flood Protection, Ecosystems and Recreation along San Francisco Bay Project Environmental Impact Report considerations

Executive summary:

- **Bayland landscape settings** (non-tidal baylands, uplands, high tide line position, and tidal marsh) should provide a framework for design and impact assessment. All plan view figures showing alignment of levee and transition zone habitat designs, and impact analysis should be clearly framed in relation to their position within bayland landscape (landform and habitat) settings. Drawings and designs should clearly display the degree to which new levees and constructed transition zone (ecotone) slopes are set back landward of the high tide line, or encroach into existing tidal marsh.

- **Substrate specifications** used to construct habitat transition zones, especially the root zone (upper soil profile) are essential for assessment of project feasibility and environmental effects. They are as essential to project description as elevations.

- **Phasing for incremental construction of habitat transition zones over time, in pace with sea level rise**. Just as the NOP indicates the potential need to phase construction for logistical project needs, environmental impact minimization needs also justify evaluation of alternatives that include incremental "thin-layer" lifts of sediment for gradual construction of habitat transition zones, within the range of (non-destructive) burial tolerance of transition zone vegetation.

- **High tide refuge design and assessment should include the entire tidal marsh-upland gradient, not just the high tide line**. We support the NOP to assess the entire distribution of high tide refuge habitat across the tidal marsh landscape, and plan for long-term integrated co-management of high tide refuge habitat both within constructed transition zones, and in the related tidal salt marsh platform.

In addition, we recommend explicit focus on project impacts on non-native plant species invasions (spread of wildland upland and wetland weeds), and mitigation measures based

on integrated weed management during all project stages, including pre-construction management and imported fill selection, stockpiling, and handling.

Recreational trail alignments and vegetation designs should be integrated to minimize behavioral impacts of trail uses on wildlife in tidal marshes and transition zones.

Memorandum to Citizens Committee to Complete the Refuge:

1. As requested, I have reviewed the SFCJPA Notice of Preparation for the flood protection/ecosystem/recreation project in the South Bay, and I am providing CCCR with some recommendations for EIR preparation to support meaningful, adequate environmental assessment of this complex project and environmental setting, over a project life of about a century.

2. Programmatic environmental assessment considerations

2.1. Location-dependent and setting-dependent environmental assessment. The Project proposes to "increase the diversity of habitat by building tidal salt marsh-upland transition zone habitat (transition zone habitat) on the bayward slope of appropriate segments of levee adjacent to existing and/or restored tidal salt marsh." This general description does not distinguish the fundamental design and impact context of whether levee features are built landward or bayward of the existing high tide line, in tidal wetland gradients. Impacts and ecological performance of levees, horizontal levees, habitat transition zones, etc. are more dependent on location and the context of environmental setting than they are on their dimensions and slopes. The impacts of constructing new levees or habitat transition zones are not all inherent in design features. They depend on the surrounding habitats and physical geography, and their positions within the land-shore gradient. Position and siting of levee features within the land-shore gradient include major contrasting differences in *bayland landscape settings* such as:

- Construction of habitat transition fill slopes (zones) in non-tidal baylands restored to tidal hydrology ("blank slate" bayland setting; no fill encroachment or truncation of existing tidal marsh);
- Set-back of constructed habitat transition fill slopes landward of or up to the existing high tide line adjacent to existing tidal marshes, where landward retreat spaces may be feasible (no fill encroachment or truncation of existing tidal marsh; e.g. Palo Alto Horizontal Levee pilot project);
- Potential encroachment of habitat transition fill slopes, or levees, into existing tidal marshes; distinguish fill encroachment into narrow fringing tidal marshes and wide tidal marsh platforms with creek networks.

These distinct bayland landscape settings, considering both land-side and bay-side constraints and environmental sensitivities, are particularly important for assessing whether a "typical" cross-section design may be likely to provide net habitat resilience and enhancement during sea level rise, or whether it would risk excessive near-term encroachment and truncation of

shrinking tidal marsh habitats, which undergo both submergence from sea level rise, and bay-edge erosion. The EIR should introduce and organize discussion of impact assessments and project designs in explicit context of bayland landscape settings like these. Figure 1 of the NOP (project location and components) does not represent bayland landscape settings or levee alignments across them. Corresponding plan view figures in the EIR should make levee alignments and positions plain, in relation to tidal marsh and high tide line positions. Otherwise, programmatic environmental assessment of typical project designs would almost certainly result in confusing or misleading general conclusions. The more reach-specific (shoreline segment-specific) programmatic environmental assessments of designs are, the more likely they are to provide a basis for clear understanding of near-term and long-term potential impacts, and support meaningful, specific comments.

2.2. Substrate-dependent and hydrology-dependent ecological performance. Substrate types, sources, and specifications for levees, habitat transition zones, or horizontal levees are not discussed in the NOP. The massive size of the project, even if constructed over long periods of time, would require commensurate massive volumes of imported fill. Substrate characteristics affecting vegetation composition (such as porosity, bulk density, percentage clay, percentage sand, percentage gravel or rock fragments, weed seed bank density and composition) or vegetation dynamics (drought impacts) depend on both fill source constraints, and on substrate design specifications. Vegetation composition, structure, and dynamics shaped by substrate, in turn, shapes habitat functions. The habitat functions of representative or typical conceptual levee cross-section designs (figures 2-8, NOP) cannot be predicted or meaningfully interpreted without reference to substrate attributes and sources. Upland subsoils, bay sediments, and terrestrial alluvial sediments have highly significant persistent differences as substrates for vegetation of levees and habitat transition zones. These differences are inherent, and generally cannot be modified feasibly by amendments or vegetation management.

For example, the substrate properties influence the height and density of vegetation cover bordering public trails. This is an important variable for screening wildlife visual cues, and limiting human disturbance, or entry of habitat areas by people or off-leash dogs. Some mitigation measures may depend on vegetation “buffer zones” along trails that restrict access. Those functions would depend on substrate conditions that enable design vegetation to perform them.

Substrate that restricts root development or amplifies dieback, injury or growth inhibition effects of drought, may cause a target vegetation to convert to either weed-dominated vegetation, or more sparse, open non-target vegetation types, or cause excessive need for maintenance beyond the capacity of managers (which is often the case on constructed levees).

Substrate is particularly important for assessment of potential failure to meet ecological objective (or mitigation requirements) for marsh wildlife high tide refuge habitat at or above the high tide line. Substrates that inhibit growth or survivorship of tall, dense vegetation cover during and after droughts, or promote competition of weeds over target vegetation, may negate basic project goals. Substrate specifications are essential to assessment of terrestrial ecotone high tide refuge habitat.

The EIR should clarify substrate and hydrology assumptions for location-specific levee designs, distinguishing between "dry" (winter-moist, summer-dry), well-drained habitat transition zones, and constructed sub-irrigated slope wetlands, like the Oro Loma and Palo Alto horizontal levee demonstration projects. The ecological and hydrological functions and habitat structure of wetland horizontal levees are qualitatively different from those of "dry" habitat transition zones, and their potential ecological interactions with contiguous tidal marsh are also significantly different.

The EIR should therefore either state assumptions for substrate used to construct "topsoil" and subsoil root zones, or include concept-level specifications for them, and assess the performance of vegetation and habitat related to substrate. The EIR should distinguish the substrate and hydrology of wetland horizontal levees, and their effects on vegetation and habitat structure on the slope and in the adjacent tidal marsh (brackish marsh gradients) if they may be included in the project.

3.0 Resource-specific environmental impact and design considerations

3.1 Sea level design criteria and programmatic evaluation of phased construction. The project adopts Ocean Protection Council (OPC) guidance to plan resilience for 3.5 feet of sea level "additional 3.5 feet of tidal elevation to account for anticipated sea level rise as well as other applicable FEMA design criteria…". The NOP also states [p. 5] "In some cases, levees might be constructed and raised in stages given the long-term impacts of sea level rise and budget limitations… precise routes within some reaches have not been finalized and could depend on funding, land acquisition…." Similarly, the EIR should consider alternatives and mitigation measures that include levee or habitat transition zones also raised in stages or increments to distribute and dissipate habitat impacts over decades, minimize near-term wetland fill impacts, in closer pace with sea level rise rather than a full century ahead of it. If all project alternatives have criteria set for flood control levees to meet 3.5 feet of sea level rise (including extreme sea level events), single construction levee projects would have to place fill all at once for a century of sea level rise. Where levee/habitat transition zone fills may encroach tidal marsh, this impact may have non-linear impacts on marsh habitats, as tidal drainage networks and wildlife home ranges become reconfigured by bayward habitat transition zone fills, including uplands that may not be reached by the high tide line for decades.

For example, "thin lift" sediment lifts in tidal marshes (generally 15-20 cm or less, depending on vegetation type and sediment burial tolerance) are designed to allow rapid direct vegetative recovery of buried vegetation, more than new colonization of bare substrate. A similar method of thin-layer "construction" should be evaluated for incremental construction of lower habitat transition zones if they encroach on existing tidal salt marsh (e.g., sediment fans deposited by hydraulic slurry placement, or mechanically placed unconsolidated muds washed into fans by high pressure hoses). If all levee and habitat transition zone construction is restricted to upland (landward of high tide line) sites, this measure may not be needed for initial project construction, but it may be considered as a maintenance or adaptive management measure to keep pace with higher-than expected rates of sea level rise, with reduced impact.

3.2 High tide refuge habitat analysis within and landward of tidal marsh platforms. The NOP states [p. 5] "An assessment of high tide refugial habitat functions in the face of sea level rise will be performed in existing high-quality marshes. This assessment will be utilized in collaboration with resource agencies to determine if and where the project would propose construction of transition zone or other types of high tide refugial habitats in existing high-quality marshes." This is very appropriate and necessary for environmental assessment. The EIR should not presume that all or most important high tide refuge habitat either is or should be along the landward edge (high tide line) of tidal marsh habitats in all settings. Well-distributed high tide refuge habitats occur within home ranges of salt marsh wildlife species, especially in tall vegetation canopies along well-drained tidal creek banks, as well as at landward edges of marshes, where terrestrial predator risks may offset some of their benefits. The EIR should consider active management of internal marsh high tide refuge habitats as potential mitigation for short-term and long-term impacts of levee construction, to enhance resilience of cross-shore high tide refuge habitats (landward-edge and interior refuge habitats interacting at different tide levels. The EIR should not conflate marsh substrate elevations with the actual high tide refuge cover (leafy vegetation canopy height above marsh substrate and water surface elevations during marsh submergence).

3.3. Tidal Marsh-Upland Transition Zone Habitat. The EIR should distinguish highly contrasting types of "transition zones", "horizontal levees" that are suitable habitats for target species which are not compatible in the same vegetation types and locations. For example, the NOP identifies high tide refuge habitat for salt marsh harvest mouse and California Ridgway's rail in constructed broad, gently sloped tidal marsh-upland transition zones or "horizontal levees", and also rare plants like California sea-blite (note spelling; not "blight", meaning disease) and salt marsh bird's-beak. While mouse and rail high tide refuge habitats share the same basic requirement for tall, dense patches of vegetation above highest tide elevations, this habitat is entirely incompatible with the vegetation and substrate conditions for salt marsh bird's-beak and California sea-blite, which in turn occupy different high marsh substrate and vegetation types (sparse, short turfy salt marsh and pan edges, and coarse, well-drained estuarine beach or high marsh berms, respectively). The EIR planning to accommodate these contrasting species within the project area (and snowy plovers as well) requires geographic demarcation of designed bayland landscape settings.

The EIR should clarify and define explicit working definitions and criteria (including slopes, substrates, hydrology, vegetation types) for all project-defining terms like "horizontal levee", "habitat transition zone", "ecotone levee", noting both synonyms and relevant distinctions. Over-broad use of the same terms like "horizontal levee" for slopes as steep as 6:1 or dryland vegetation, and tule-covered wetland slopes as flat as 20:1 can be confusing and misleading, and preclude clear understanding of important attributes like buffer zones, wildlife screening, and high tide refuge habitat distribution.

3.4. Western Snowy Plover Breeding Habitat Enhancement and bayland landscape setting. The NOP states that there "has been a loss of the ecosystem services that tidal marsh habitat provides, including nesting and foraging habitat and upland refugia for threatened and

endangered species such as California Ridgeway's rail, western snowy plover, and salt marsh harvest mouse". Tidal marsh per se does not provide habitat for western snowy plover. Other tidal marsh-adjacent bayland habitats, including estuarine beaches and playa-like dry salt evaporation pond beds or similar unvegetated (or minimally vegetated) high-albedo habitats support western snowy plover habitats. The NOP correctly identifies pond R3 (not tidal marsh) as existing snowy plover habitat. The EIR should explain the long-term management planning status of pond R3 in the Refuge (managed salt pond versus tidal marsh) under 3.5 ft of sea level rise during the project design life. Tidal marsh transition zone features and amendments with Pacific oyster shell are not relevant to western snowy plovers; oyster shell habitat enhancement for snowy plovers requires a hypersaline or seasonally disturbed non-tidal or above-tide setting that restricts vegetation. The EIR should clarify that sustainable, feasible snowy plover habitat enhancement measures would be excluded in vegetated habitats like tidal marshes, and restricted to either salt pond, managed saline lagoon, or coarse (shell, sand, gravel) bay beach habitats.

3.5 Invasive plant species spread and management during and after construction. Disturbed soils during construction phases provide increased opportunities and vectors for dispersal and colonization of non-native invasive plant populations already established in tidal marsh edges and levees. Imported fill also brings a high risk of new invasive plant species colonization. The EIR should assess the existing range of invasive plants that are established on levees and high salt marsh habitats in the project area, the potential for increased spread and population size during and after construction, and adequate, feasible mitigation measures (an integrated weed management plan) based on early detection and management during and after staging, construction, and establishment phases.

3.6. Recreational trail alignments, designs, and mitigation measures. The EIR should consider opportunities to set back recreational trails as far as possible from the bayward slopes of levees or habitat transition zones, instead of designing them for full levee top (road) span. The bayward side of the levee top should be evaluated in the EIR designs as components of buffer zones that provide vegetative screening (knee-high or taller brushy or bristly native upland scrub vegetation; or dense, tall tule/bulrush vegetation on wetland horizontal levee slopes) to discourage people or dogs from establishing social trails to transition zone wildlife habitats. Recreational trail designs should also evaluate the feasibility of incorporating blinds to allow compatible wildlife viewing in sensitive areas where spur trails may cause excessive long-term wildlife disturbance. Wide transition zone habitats should be expected to become potential breeding habitats for terrestrial wildlife and some waterfowl, and movement corridors for terrestrial wildlife using tidal marshes; they would not be just a buffer zone or high tide refuge habitat for tidal marsh wildlife.

Sent via electronic mail: No hard copy to follow

June 15, 2022
Place ID 833545

San Francisquito Creek Joint Powers Authority
Attn: Tess Byler
2100 Geng Road, Suite 210
Palo Alto, CA 94303
Email: tbyler@sfcjpa.org

Subject: Strategy to Advance Flood Protection, Ecosystems and Recreation along San Francisco Bay, Notice of Preparation of Environmental Impact Report, San Mateo County

Dear Ms. Byler:

The San Francisco Bay Regional Water Quality Control Board (Water Board) appreciates the opportunity to comment on the Notice of Preparation (NOP) of an Environmental Impact Report (EIR) for the Strategy to Advance Flood Protection, Ecosystems and Recreation (SAFER) along San Francisco Bay (Project), prepared by the San Francisquito Creek Joint Powers Authority (JPA). The Project, located within the cities of Menlo Park and East Palo Alto, proposes to construct engineered and natural features to protect property and infrastructure from current tidal flooding and projected sea level rise, enhance shoreline ecosystems, and improve recreational opportunities. The purpose of this letter is to provide feedback on the Project's potential environmental effects and potential alternatives to avoid and minimize these impacts to aquatic resources.

Avoidance & Minimization of Impacts, Alternatives Analysis

The Water Board adopted U.S. EPA's CWA Section 404(b)(1) "Guidelines for Specification of Disposal Sites for Dredge or Fill Material," dated December 24, 1980 (Guidelines), in its Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan) for determining the circumstances under which filling of wetlands, streams, or other waters of the State may be permitted. Additionally, the State Water Resources Control Board adopted the Procedures for the Discharge of Dredged or Fill Materials to Waters of the State (Procedures) on April 2, 2019. The Procedures incorporated the Guidelines and detail the procedures for the submission, review, and approval of applications for activities that could result in the discharge of dredged and fill material to waters of the state. The Guidelines prohibit all discharges of fill material into regulated waters of the United States, unless a discharge, as proposed, constitutes the least environmentally damaging practicable alternative (LEDPA) that will achieve the basic project purpose. As such, before issuing water quality certification for the Project, we need to be able to find that the Project has avoided and minimized impacts to the maximum extent practicable as described in the Procedures and Basin Plan Section 4.23.4.

The EIR should evaluate a range of potential alternatives under reasonably foreseeable climate change conditions and assess the short-term vs. long-term impacts and benefits to identify the circumstances under which proposed dredge or fill discharges appropriately avoid, minimize, or

compensate for impacts to waters of the State. The alternatives should also discuss existing constraints to explain whether various flood protection alignments can shift landward to further avoid impacts to waters of the State. For example, has the Project evaluated shifting alignments landward by modifying/raising Highway 84 to serve as the landward flood barrier; identifying a more suitable long-term location for PG&E's substation; and in areas where land uses include low density buildings and surface parking? Climate adaptation measures should be designed to provide flood protection in the near-term while allowing for a range of future actions to address uncertainty. As such, actions that provide flood protection as far landward as practicable are preferable.

Natural and nature-based infrastructure are preferable to traditional infrastructure (e.g., levees, seawalls, riprap) to support beneficial uses. Since nature-based approaches rely on natural processes to adapt to climate change, their location and design must be tailored to site-specific conditions and desired functions. Ecotone levees should be built as far landward as practicable to minimize settling and impacts to aquatic resources and to maximize habitat restoration. Where practicable, different nature-based measures can be combined to provide enhanced shoreline protection and beneficial uses. For example, beaches can be combined with wetland restoration to further dissipate wave energy, naturally armor shorelines from erosion, and provide valuable habitat.

Where nature-based infrastructure is not practicable, hybrid approaches combining traditional and nature-based measures are preferable to alternatives that only include traditional infrastructure. For example, engineered features should incorporate habitat enhancements as much as practicable, such as living seawalls or construction of habitat mounds to provide high tide refugia.

For additional information related to climate change and adaptation relevant to Water Board permitting of dredge or fill activities, please refer to the proposed Climate Change Basin Plan Amendment. The Amendment incorporates into the Basin Plan (1) information on climate change and how it might affect the region's waters, (2) efforts to support long-term resilience of aquatic habitats in the region, and (3) questions and information that may be relevant when the Water Board permits dredge or fill activities in or near the region's shorelines, especially climate adaptation projects.

Project Impacts

To facilitate evaluation of potential impacts to waters of the State, the EIR should include sufficient information on the Project's impacts by distinguishing between temporary impacts, permanent impacts, conversion of waters to uplands, and conversion from one aquatic habitat to another type of aquatic habitat (type conversion). A better understanding of the Project's impacts will assist the JPA to plan for appropriate compensatory mitigation since different types of impacts will require different types of mitigation as discussed in more detail below.

Compensatory Mitigation

We support the Project's coordination with the South Bay Salt Ponds Restoration Project to restore either tidal marsh or a mix of tidal marsh and enhanced managed pond habitat in Ponds R1 and R2. The NOP also notes the potential for tidal marsh restoration of the bayward portion of Pond SF2 and the adjacent diked marsh between Pond SF2 and the Cooley Marsh, and western snowy plover breeding habitat enhancement in Pond R3.

The EIR should include information on how the Project will meet the California Wetland Conservation Policy, the primary goal of which is to ensure no overall net loss and to achieve a long-term net gain in the quantity, quality, and permanence of wetland acreage and functions. In

doing so, it is important to distinguish between different types of mitigation such as creation, restoration, and enhancement. Fill placed in waters of the State that converts wetlands to uplands will require mitigation through wetland creation (i.e., wetlands created/restored in current uplands), thereby resulting in no net loss or a net gain in waters of the State. Impacts from Project activities that convert one aquatic habitat type to another aquatic habitat type (type conversion) may be offset by the enhanced beneficial uses and overall long-term environmental net benefit resulting from the type conversion.

We recognize that nature-based features such as ecotone levees can result in near-term impacts to the acreage, functions, and values of waters of the State, but in the context of climate change can have less impacts and more benefits over the long term. For climate adaptation projects where fill placed in waters of the State converts wetlands to uplands in the near-term, mitigation is not required if these areas are inundated within 30 years and are converted back to waters of the State again. Please refer to the Ocean Protection Council's guidance and evaluate the medium-high risk aversion scenario to estimate the extent of fill placement that will be inundated within 30 years.

Construction Fill Material

Project construction will require importing a considerable amount of fill material. The Project should develop a quality assurance project plan (QAPP) that establishes a process for evaluating the quality of fill material to ensure that imported fill is suitable for placement and is protective of aquatic habitat. The QAPP should detail how fill material will be screened, screening levels for contaminants including laboratory testing methods, and transport and placement procedures.

Post-construction Stormwater Management

The Project proposes improvements to recreational access along the shoreline which will result in newly created or replaced impervious surfaces. Impervious surfaces are known to impact waters of the State by increasing erosion and sedimentation through hydromodification (i.e., changes in runoff volume and duration) and by collecting and concentrating pollutants in runoff. The EIR should describe measures that will be implemented to avoid and minimize impacts to water quality from runoff. For impervious surfaces associated with trails, runoff can be directed to adjacent vegetated areas, to non-erodible permeable areas, or towards the outboard side of levees. If runoff is directed to adjacent vegetated areas, a 2:1 or lesser ratio of impervious to pervious surface (or a vegetated area that is at least half the width of the trail) is preferred. Management of runoff from project impervious surfaces should be consistent with Provision C.3 of the Municipal Regional NPDES Stormwater Permit (Order No. R2-2022-0018), and associated technical guidance.

Closing

If you have any questions, please contact Agnes Farres of my staff at (510) 622-2401 or by email to agnes.farres@waterboards.ca.gov.

Sincerely,

Keith H. Lichten, Chief
Watershed Management Division

Cc: Water Board, Victor Aelion, victor.aelion@waterboards.ca.gov
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SAN FRANCISQUITO CREEK
JOINT POWERS AUTHORITY

May 19, SAFER Bay Scoping Meeting
Public Comments

Question	Asker Name	Answer
Will this project help with not having a need for flood insurance?	Anonymous Attendee	Answered live. The project scope includes submitting a request to FEMA for a Letter of Map Revision to remove properties from special flood hazard area.
Would you provide a link to the maps in this presentation?	Anonymous Attendee	Answered live. Yes. All of these slides are available on our website.
This is a comment not questions. It was stated that SAFER will work with the US Forest Service re. salt pond restoration. Correctly, it is the US Fish & Wildlife Service.	Eileen McLaughlin	Answered live. Yes. that's right. We know that! Thanks for catching that. We'll make that clear.
Feedback - on the lower right-hand corner, you may increase the size of the slide in edit mode to 100%	Marlene Santoyo	Answered live. Thank you for your suggestion.
It seems that the marsh located East of Hwy 84 and North of University has not revegetated very well? Is there a new way to recreate the marsh habitat?	Scott Marshall	Answered live. These are managed ponds and not tidal marsh.
Can you zoom in on the slides?	Virginia Portillo	We are. The system is only doing it a little at a time. Thanks!
The road proposed through pond SF2 is Federal land owned by the Don Edwards National Wildlife Refuge. Administrative law of National Wildlife Refuges authorize lands held for the primary purpose of protection of wildlife and habitat to public use. You must discuss this concept with USFWS staff.	Eileen McLaughlin	We are aware of the limitations. Under CEQA we need to analyze and disclose all potential impacts within our document.

SAN FRANCISQUITO CREEK
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May 19, SAFER Bay Scoping Meeting
Public Comments

Question	Asker Name	Answer
East Palo Alto Engineering Division 1.) Since the newer Bay Road construction, I am wondering what type of wear if any that it might have in terms of construction traffic. 2.) How will this levee be maintained? I am assuming for long veg in terms of vegetation growth 3.) What environmental impacts will this have on the residents leading up to the 84 via the Dumbarton. 4.) What features would this leveee have that might be accommodating to the newer buildings that will exist within the very near future	Kevin Lewis	Because the project designs are still very preliminary, we can't answer these questions specifically. SFCJPA will continue to coordinate closely with the City on planning, design, construction, and maintenance issues.
Kevin and/or Tess 1.) Will this new trail have a portion within the 20ft wide travel a paved dedicated bike lane extended from the 84? 2.) Will there be any emergency ingress/egress of this new trail? If so, where would ingress/egress show within your design?	Kevin Lewis	SFCJPA will continue to coordinate closely with the City on design and construction issues.
Will the EIR include concerns about light pollution from new buildings?	Sheila Brady	The SAFER Bay project is not proposing any new buildings. The issues associated with light pollution would be evaluated by developers. Safety lighting on new Bay Trail segments that are constructed on top of levees may be evaluated in the SAFER EIR.
What is the sequence of projects?	Anonymous Attendee	Sequence of both design and construction are going to be based significantly by available funding. The actual construction schedule would be established by selected contractor.

SAN FRANCISQUITO CREEK
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Question	Asker Name	Answer
Once all parcels are removed from the flood plain, will there be no need any more to measure Base Flood Elevation and build only above it, for development planning/approval?	Grace Popple	After construction is completed, a Letter of Map Revision (LOMR) will be submitted to FEMA. The LOMR package will include relevant documentation, such as collected field data, engineering analyses and design, and operations and maintenance systems. FEMA will review the documentation to verify if it satisfies Title 44 of the Code of Federal Regulations Section 65.10. If the flood control system provides reasonable assurance that protection from the base flood exists, FEMA will accredit the levee system and the Special Flood Hazard Area will be modified to remove parcels from the floodplain. .
Thank you for engaging. How does your work on "loop road" interact with other public consultation and decision-making on whether and how to build this?	Grace Popple	Any decision on a loop road would be made in consultation with many entities including property owners, stakeholders, and the community. The City of East Palo Alto has commissioned a traffic study to evaluate traffic flow and results of this will also be considered.
Tess & Kevin 1 Because the Runnymede School is often heavily trafficked, what would be your approach/process to mitigate any conflict in terms of construction vehicles?2 2 Will the existing drainage ravine coming into the Runnymede area traveling towards Bay Road be widened much like our previous creek project?	Kevin Lewis	Design details will be worked out with the City of East Palo Alto, and other key stakeholders.
I have asthma and health complications how will that affect me?	Anonymous Attendee	We assume the question is in regard to potential air quality issues during construction. Construction activities and its impacts on several sensitive receptors will be analyzed in depth in the draft EIR.

SAN FRANCISQUITO CREEK
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Question	Asker Name	Answer
In the previous project a trail was dug up unexpectedly and we had to scramble to get it fixed. How will we avoid similar events this time?	Grace Popple	Answered Live Posting and notices for trails closures and alternative route were posted as required during the completed creek project. Closer engagement with residents and the bicycling community is planned as part of SAFER.
I have PTSD and already suffer from the traffic on Willow and getting to my home on Haven, how will this effect it? is it going to be worst?	Anonymous Attendee	The project will have temporary construction traffic (trucks and equipment) during construction, but there will be no long term change in traffic flow on Willow as a result of this project.
To Kevin: Please provide documents showing that the Federal government has agreed in any way to hand over lands in SF2 to anyone.	Eileen McLaughlin	Answered live. This appears to be a misunderstanding. The SFCJPA did not state and would not state that lands would be 'handed over' to the SFCJPA. We are coordinating closely with the South Bay Salt Ponds Project and the Don Edwards refuge regarding mutually beneficial habitat restoration and sea level rise resiliency actions.
If the levees are increased in height a few feet, how will the local creeks drain into the bay during a high tide and a heavy rain event? Yes, I will contact you directly in the future.	Scott Marshall	SAFER will address high tides, rising seas and the overall effects on local hydrology, including high precipitation events and rising groundwater. We recognize the need to preserve creek and storm drain conveyance and will consider appropriate engineering solutions.
Kevin & Tess Please look to me in terms of construction travel, which streets via approach and exiting the project.	Kevin Lewis	Answered Live. We will convene a project management team as we get closer to construction that you will be invited to be on. Many of these issues will need to be worked out through cooperative planning.

SAN FRANCISQUITO CREEK
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Question	Asker Name	Answer
Our wildlife is already suffering from Facebook building and how is this helping?	Anonymous Attendee	The SAFER Bay project's effects on wildlife will be evaluated in the DEIR. Overall, the project is being planned to have an overall positive long-term effect on habitat that will be beneficial to local flora and fauna.
In the previous project there were very limited months of the year in which construction could occur because of the breeding cycles of various endangered animals and birds. What are the construction months that are possible for this area?	Grace Popple	There will likely be similar restricted, specific work windows due to the presence of special status species in the area.
In your slide about issues to be investigated in the EIR I don't see any mention about wildlife, particularly threatened species and migratory birds. Will that be addressed?	Davena Gentry	Yes, wildlife will be evaluated in the DEIR. Overall, the project is being planned to have an overall positive long-term effect on habitat that will be beneficial to threatened species and migratory birds.
Will there will be opportunities for the public to help with the replanting of the salt ponds?	Sheila Brady	Answered live. Yes, likely with our educational outreach partner at Grassroots Ecology.
Would you be able to point to what you are talking about?	Anonymous Attendee	Answered live
Hi there - Long-time listener, first-time caller...Where are all of these questions from the other attendees? I only see two from Eileen McLaughlin. I'd love to see what everyone else is asking.	Dave Halsing	Answered Live Dave - I have no idea why you can't see all of the questions!!!
The Belle Haven neighborhood suffers very similar impacts and will need some mitigation.	Pam D Jones	Answered live Agreed. Belle Haven will be addressed at a project level under the City of Menlo Park's FEMA BRIC SAFER Bay project.
Thank-you!	Pam D Jones	Thank you, Pam
Thank you for getting momentum behind the effort to protect us from floods, and for sharing the plans and taking our questions!	Grace Popple	Thank you, Grace

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Question	Asker Name	Answer
@SheliaBrady Save the Bay is always doing restoration work, check them out!	Davena Gentry	No response needed
Please tell Sheila Brady that Save The Bay also plans and organizes volunteer revegetation efforts at Ravenswood.	Dave Halsing	No response needed