

CALIFORNIA COASTAL COMMISSION

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W12a

MEMORANDUM

Date: December 8, 2023

To: Commissioners and Interested Persons

From: Shana Gray, Deputy Director
Melissa Kraemer, District Manager
Amber Leavitt, Coastal Resiliency Supervisor

Subject: Addendum to Commission Meeting for Wednesday, December 13, 2023
Item W12a, CDP Application No. 1-23-0353 (Manila CSD)

The purpose of this addendum is to make certain corrections to the findings and conditions of the November 30, 2023 staff recommendation in response to comments received from the applicant's representative (GHD) on December 5, 2023 related to wetland mitigation and from Humboldt Waterkeeper on December 6, 2023 related to water quality.

The comments from the applicant's agent relate to the recommended mitigation for anticipated impacts to coastal wetlands associated with drainage maintenance and enhancement activities and the requirements of Special Condition 10. Special Condition 10 requires (in part) submittal and implementation of a final revised Wetland Habitat Mitigation and Monitoring Plan (WHMMP) with improved success criteria, stronger monitoring and reporting requirements, and additional compensatory mitigation for certain permanent impacts to coastal wetlands. Under the submitted WHMMP, as part of a larger mitigation package, one component of the mitigation proposal involves the proposed creation of new and expanded wetlands in the form of new bioswales and expanded wetland drainage channels. As recommended, Special Condition 10 would disallow these new and enhanced drainage features from being considered as partial mitigation for permanent wetland impacts. However, after publication of the staff report, GHD submitted additional information to support its mitigation proposal with respect to the use of certain new bioswales and expanded wetland drainage channels for mitigation purposes. Specifically, the provided information clarifies that proposed mitigation areas, which include expanded forest shrub habitat and new and enhanced palustrine emergent swale habitat, were selected as mitigation sites because they are not needed for drainage system capacity purposes and are either directly adjacent to existing forested wetland channels or are areas where drainage infrastructure will be daylighted (which will substantially restore wetlands associated with an otherwise filled

drainage system). As the restoration of these areas will provide for the enhancement of wetland habitat values by connecting and expanding existing three parameter wetlands in the area, and these areas have a high likelihood of success at providing meaningful restored wetland habitat values to compensate for the project's permanent wetland impacts, use of these areas for mitigation purposes is appropriate. Thus, staff recommends minor changes to Special Condition 10 and related findings to remove the requirement to provide substitute wetland mitigation for the proposed creation of new and expanded wetlands in the form of new bioswales and expanded wetland drainage channels.

The comments from Humboldt Waterkeeper raise concerns regarding the potential for mobilization of legacy contamination from proposed grading, culvert replacement, and other ground disturbance in the vicinity of the former lumber mill that operated on the site of the Manila Community Park in the 1940s and 1950s. The comments note that the former lumber mill site has never been assessed for residual contaminants in soils and groundwater, and the proposed activities have the potential to mobilize to Humboldt Bay and its associated marine life dioxins, furans, and other harmful chemicals associated with historic lumber treatment practices.

During the environmental review phase, the applicant recognized the potential need to manage impacted soils and groundwater that have elevated concentrations of constituents of concern that exceed regulatory levels. Specifically, mitigation measure MM HAZ-1 from the Mitigated Negative Declaration proposes to prepare a Soil and Groundwater Management Plan to identify handling options and protocols for potentially contaminated soil and groundwater to reduce worker exposure and protect water quality. However, the proposed measures lack specificity with respect to testing for dioxins and furans and other details. Therefore, staff recommends changes to Special Condition 3 (Water Quality Protection Measures) and related findings to require implementation of added measures to conduct sediment sampling and mitigate the potential for mobilization of constituents of concern to Humboldt Bay.

Staff continues to recommend that the Commission, upon completion of the public hearing, approve the coastal development permit with the special conditions and findings included in the staff recommendation of November 30, 2023, as modified by the changes recommended herein.

Recommended Changes to the Staff Recommendation

Bullets below reference page numbers of the November 30, 2023 staff report where changes are made. Text to be deleted is shown in ~~bold double strikethrough~~, and text to be added is shown in **bold double underline** format.

I. Changes to the Special Conditions

- Pages 9-11: Revise Special Condition 3 as follows:
3. **Water Quality Protection Measures**. PRIOR TO COMMENCEMENT OF ANY INITIAL DEVELOPMENT AUTHORIZED BY CDP 1-23-0353, the Permittee shall

submit, for the review and written approval of the Executive Director, a suite of appropriate final measures to protect water quality during all development activities including project staging, stockpiling, construction, vegetation removal, grading, and ongoing maintenance activities, as applicable. The water quality protection measures may be implemented under an approved final Stormwater Pollution Prevention Plan (SWPPP).

- A. The final water quality protection measures shall include, but not be limited to, the following required components:
- i Measures to Minimize Erosion and Sediment Discharge During Project Activities: During initial construction and maintenance activities and post-construction during ongoing maintenance activities, erosion and the discharge of sediment off-site or to coastal waters shall be minimized through the use of appropriate BMPs, including, but not limited to:

[...]
 - ii Measures to Minimize Discharge of Pollutants During Project Activities: The discharge of other pollutants (such as chemicals, vehicle fluids, petroleum products, asphalt and cement compounds, debris, and trash) into runoff or coastal waters during initial construction and maintenance activities and post-construction during ongoing maintenance shall be minimized through the use of appropriate BMPs, including, but not limited to:

[...]
 - iii Measures to Prevent Mobilization of Contaminants:
 - a. PRIOR TO ANY GROUND DISTURBANCE IN THE AREA BETWEEN MILL STREET AND HUMBOLDT BAY, and prior to any ground disturbance in the proposed equipment staging area at the end of Mill Street, sediment sampling for dioxins and furans, PCBs, metals, and petroleum hydrocarbons shall be conducted. At a minimum, composite sampling shall be conducted as an initial screening method. Concentrations of contaminants should be evaluated using environmental screening levels (ESLs) of significance that could be harmful to Humboldt Bay aquatic life using the San Francisco Regional Water Quality Control Board (SFRWQCB) ESLs for aquatic life (SFRWQCB 2019). Sampling results shall be submitted to the Executive Director for review and written approval.
 - b. If test results reveal that dioxins and furans (measured in TEQs) or other constituents of concern are encountered at ESLs of significance that could be harmful to Humboldt Bay

aquatic life, the Permittee shall submit an updated Soil and Groundwater Management Plan that provides, at a minimum, recommendations to mitigate the potential for mobilization of constituents of concern. The plan shall be processed as an amendment to this CDP, unless the Executive Director determines that no amendment is legally required.

iii iv Schedule. A schedule for the management of all water quality protection measures and BMPs (including installation and removal; training for construction personnel; and ongoing operation, inspection, maintenance, and monitoring and reporting, as applicable).

[...]

- Page 18: Revise Special Condition 10 as follows:

10. **Mitigation for Impacts to Wetland Habitat.**

[...]

D. **Mitigation Ratios.** Wetland habitat impacts shall be mitigated consistent with the following ratios (mitigation area: impact area), where these base ratios assume mitigation as either habitat creation or substantial restoration. The final plan may alternatively propose habitat enhancement or preservation at appropriate increased ratios, as determined by the Executive Director. No net loss of wetland acreage shall be ensured by a minimum 1:1 in-kind habitat creation or substantial restoration and the remaining obligation may be satisfied by any of the mitigation strategies as described above. ~~The creation of new drainage infrastructure (e.g., new bioswales and expanded channel areas) shall not be considered compensatory mitigation for permanent wetland impacts.~~

[...]

II. Changes to the Findings

- Pages 34-35: Revise Section E (Wetlands) as follows:

...

MCSD has submitted a draft Wetland Habitat Mitigation and Monitoring Plan (WHMMP, Exhibit 7), describing proposed post-construction wetland revegetation efforts for anticipated impacted areas and additional wetland habitat creation as mitigation for anticipated permanent impacts, including proposed monitoring procedures and success criteria. Specifically, MCSD proposes 17,932 square feet (0.412 acre) of wetland creation within and immediately adjacent to the project area through the following activities:

- Expand existing freshwater forested shrub wetland drainage channel by 400 square feet in an area not needed for drainage system capacity purposes.
- Excavate 256 square feet of one-parameter wetland to create a new bioswale three-parameter wetland to daylight a buried drainage channel and substantially restore it.
- Excavate 775 square feet of uplands to create a new bioswale three-parameter wetland to daylight a buried drainage channel and substantially restore it.
- Create a total of 16,038 square feet of one-parameter wetlands by planting willows, wax myrtles, or other FACW species in uplands in the Manila Community Park.
- Create 463 square feet of marine wetland on the shore of Humboldt Bay by excavating an area of upland non-native grasses, exposing the area to tidal influence, and removing invasive *Spartina* grass (*Spartina densiflora*) around the mitigation area.

MCSD proposes to monitor the revegetation and mitigation areas annually until success criteria have been met.

Although the majority of anticipated wetland impact areas are expected to be restored to wetlands following project implementation and proposed site revegetation efforts, the proposed mitigation plan is not adequate to fully ~~compensate~~ mitigate for anticipated permanent impacts, including sustained temporal losses of habitat structure and function. For example, not all of the proposed success criteria are appropriate metrics from an ecological perspective, and some of the proposed thresholds for success are overly subjective and/or too low (e.g., percentage cover of wetland vegetation). ~~Furthermore, the Commission has not historically credited new infrastructure as mitigation (e.g., areas of new and expanded drainage channel and bioswales), because the primary purpose of the infrastructure is for drainage rather than habitat restoration. Given this, the existing plan does not provide sufficient mitigation for “permanent” wetland impacts as described above.~~ In addition, more thorough monitoring and reporting procedures are needed to ensure that the wetland revegetation and mitigation areas will be self-sustaining going forward.

Therefore, to ensure that wetlands impacted by dredging and filling activities are fully revegetated and appropriately mitigated, **Special Condition 10 (Mitigation for Impacts to Wetland Habitat)** requires submittal of a final Wetland Habitat Mitigation and Monitoring Plan that substantially conforms with the draft WHMMP submitted as part of the permit application (Exhibit 7), with certain modifications. These modifications include clarified goals and objectives supported by clearer rationales, ~~alternative additional mitigation (e.g., additional riparian restoration planting in the area) to compensate for the proposed crediting of ~1,431 square foot of new/expanded drainage system infrastructure,~~ improved success criteria, and stronger monitoring and reporting requirements, which collectively will better ensure appropriate mitigation

and revegetation and wetland creation success, including management of invasive species which have the potential to spread or be introduced to the site during project activities.

....

- Pages 44-45: Revise Section F (Marine Resources and Water Quality) as follows:

....

Although MCSD has proposed to dispose of all trash, debris, and other excess materials at an appropriately permitted upland disposal facility, specific details on debris disposal for the project have not been provided, such as the names of authorized disposal site(s) where materials may be lawfully disposed of and a schedule for when materials would be removed from the construction site, as this information normally is determined by the contractor at the time of construction. Thus, to avoid potential adverse impacts to coastal waters and marine resources from unlawful disposal and discharges of debris, **Special Condition 13 (Debris Disposal Plan)** requires submittal of a plan for the review and approval of the Executive Director prior to the commencement of construction for the disposal of excess construction debris and any hazardous materials. The plan must list the names of all authorized disposal site(s) where materials will be lawfully disposed of and that describes the manner and schedule by which the materials will be removed from the construction site and transported for disposal.

Potential for Mobilizing Legacy Contaminants

The proposed grading, culvert replacement, and other ground disturbance in the vicinity of the Manila Community Park has the potential to mobilize legacy contaminants associated with a former lumber mill that operated on the site in the 1940s and 1950s. The site has never been assessed for residual contaminants, but it operated during an era when the fungicide pentachlorophenol (PCP) was used to treat lumber. This chemical contained dioxins and furans, which are highly toxic chemical compounds that can persist in the environment for decades. Although a Corridor Study Report was completed to identify areas of potentially impacted soil and/or groundwater in the project area that may require special handling and disposal during construction or would potentially pose a health exposure risk to construction workers, the report does not mention the past lumber mill. Given the potential for the presence of dioxins and furans in some areas of the site, soil disturbance within potentially contaminated soil could result in mobilization or discharge of contaminants to surface waters or groundwater connected to Humboldt Bay. As no known appropriate testing has been completed in this area, and as none is planned as part of the proposed mitigation measures identified in the Corridor Study Report or CEQA document, the status of contamination in the area proposed for ground disturbance is unknown.

Thus, to ensure protection of the biological productivity and quality of coastal waters, the Commission imposes Special Condition 3-A-iii. This condition requires sediment sampling for dioxins, furans, and other constituents of concern to be completed prior to any ground disturbance in the vicinity of the former lumber mill. At a minimum, composite sampling should be used as an initial screening method. Sampling results shall be submitted to the Executive Director for review and written approval to confirm that no soils contaminated with dioxins or other constituents of concern (COCs) at environmental screening levels (ESLs) of significance that could be harmful to Humboldt Bay aquatic life will be inadvertently mobilized or discharged to surface water or groundwater connected to Humboldt Bay. The appropriate ESLs to reference for soil samples are the San Francisco Regional Water Quality Control Board (SFRWQCB) environmental screening levels for aquatic life (SFRWQCB 2019)¹ because the North Coast Regional Water Quality Control Board does not currently have its own ESLs for Humboldt Bay aquatic life. In the event dioxins/furans (measured in TEQs)² or other COCs are encountered at harmful levels, the permittee shall submit an updated Soil and Groundwater Management Plan that provides additional recommendations to mitigate the potential for mobilization of COCs. The revised plan shall be processed as an amendment to this CDP, unless the Executive Director determines that no amendment is legally required.

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¹ The current ESL files are dated July 25, 2019. See https://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/esl.html.

² **Scientists have developed Toxicity Equivalency Factors (“TEFs”) to compare the potential toxicity of the many different dioxins and furans to the relative toxicity of TCDD (2,3,7,8-tetrachlorodibenzo-p-dioxin), which is the most well-known and most toxic of these compounds. Given these TEF factors, the toxicity of a mixture of dioxins/furans can be expressed in terms of its Toxicity Equivalents (“TEQs”), which is the amount of TCDD it would take to equal the combined toxic effect of all the dioxins found in that mixture.**