

**CALIFORNIA STATE LANDS COMMISSION**  
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January 11, 2017

File Ref: SCH # 2016012012

Curtis Banks  
City of Foster City  
610 Foster City Blvd.  
Foster City, CA 94404

**Subject: Draft Environmental Impact Report (EIR) for the Foster City Levee Protection Planning and Improvements Project, San Mateo County**

Dear Mr. Banks:

The California State Lands Commission (CSLC) staff has reviewed the subject Draft EIR for the Foster City Levee Protection Planning and Improvements Project (Project), which is being prepared by the City of Foster City (City). The City, as a public agency proposing to carry out a project, is the lead agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.). The CSLC is a trustee agency for projects that could directly or indirectly affect sovereign lands and their accompanying Public Trust resources or uses. Additionally, if the Project involves work on sovereign lands, the CSLC will act as a responsible agency.

**CSLC Jurisdiction and Public Trust Lands**

The CSLC has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways. The CSLC also has certain residual and review authority for tidelands and submerged lands legislatively granted in trust to local jurisdictions (Pub. Resources Code, §§ 6009, subd. (c), 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 mean high tide line, 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 reviewing the information contained in the Draft EIR, staff has concluded that portions of the Project will extend onto State-owned sovereign lands. The CSLC has several existing leases that include portions of the existing levee and public accessway improvements thereon. The existing leases include:

- Lease No. PRC 8902.9 with the City of Foster City for a portion of a levee and public recreational asphalt pedway; and
- Lease No. PRC 7593.9 with the Foster City Estero Municipal Irrigation District for levee improvements and a recreational pathway system.

CSLC staff is conducting additional research to determine if there are portions of the City's levee system outside of the existing lease areas that extend onto State-owned sovereign land, and whether lease amendments will be required. Based on the extent of the Project, CSLC staff will need additional time to make such a determination. As additional information and Project specifics become available, please submit information to Nick Lavoie, Public Land Manager (see contact information below).

### **Project Description**

The City is proposing improvements to the City's levee system to protect properties landward of the levee from flooding by strengthening and elevating the height of the levee system. These improvements are intended to help safeguard the existing levee system from overtopping from high tides and wave run-up. Additionally, these improvements would help the City retain Federal Emergency Management Agency (FEMA) accreditation for its existing levee system. The Project is intended to meet the City's objectives and needs as follows:

- Meet current FEMA standards;
- Expedite permitting and construction of necessary levee improvements to the extent feasible to retain FEMA levee accreditation before accreditation is lost;
- Provide protection from current anticipated sea-level rise, as well as flexibility to adapt to increased levels of protection in the future, as needed;
- Maintain public access and recreational opportunities; and
- Minimize and/or avoid impacts to special-status species and sensitive habitats, such as jurisdictional waters of the United States (U.S.) and State (including wetlands) within San Francisco Bay and on the landward side of the levee system.

While the precise design and height of proposed levee improvements are not yet finalized, the Draft EIR studies two scenarios at an equal level of detail. The scenarios have different ranges of levee elevations and floodwall heights, as needed to meet

FEMA freeboard requirements and protect against future sea-level rise. The two scenarios are:

- FEMA Freeboard with Sea-Level Rise for the Year 2050; and
- FEMA Freeboard with Sea-Level Rise for the Year 2100.

Based on currently available data, preliminary evaluations, and City Council direction as explained in the Draft EIR, CSLC staff understands that the Project would use a combination of three different levee improvement types. The levee types would depend on location and adjacent site constraints, and are described as follows:

- Sheet pile floodwall (Type 1, Figure III-5 in the Draft EIR);
- Earthen levee (Type 2, Figure III-7 in the Draft EIR); and
- Conventional floodwall (Type 3, Figure III-8 in the Draft EIR).

According to the Draft EIR, this hybrid approach (combining improvement Types 1, 2, and 3) would provide the most flexibility for the City to meet current FEMA standards and retain FEMA accreditation, including the City's overall objectives and needs as discussed above.

### Environmental Review

CSLC staff requests that the City consider the following comments when preparing the Draft EIR.

#### Aesthetics

1. Fill and Floodwall Improvements: The Draft EIR explains that once the new levee and floodwalls are constructed, the appearance of the walls could be enhanced with a variety of landscaping and aesthetic treatments. However, the document does not provide further detail regarding the potential types of aesthetic wall treatments that may be used. Please include illustrations or visual simulations of the different wall types (in particular as viewed from the waterside) to provide examples of potential aesthetic treatments. The EIR should include a discussion that any improvements made to the levee should be designed so they blend, rather than contrast, with the natural environment to minimize the visual impacts of the Project. For example, new fill should be similar in color and type as existing fill on the levee, and aesthetic wall treatments should include natural materials and colors that complement and blend into the City's waterfront and San Francisco Bay's visual setting.

#### Biological Resources

2. Mitigation Measure (MM) BIO-1a: MM BIO-1a includes multiple measures to minimize potential effects to Salt marsh harvest mouse (SMHM), Ridgway's rail, and the California black rail. Measures "n" and "o" explain that U.S. Fish and Wildlife Service (USFWS) personnel could inspect work areas for effects to SMHM or Ridgway's rail, and that any effects to these species would be included in a post-construction compliance report to the USFWS. However, the California black rail is not included in either measure. It is unclear if the California black rail is not included

because it is a State listed species, and not a federally listed species. As a State listed species, please clarify if the California Department of Fish and Wildlife would be given similar access to the Project site, as well as a post-construction compliance report.

### Climate Change

3. Sea-Level Rise: A tremendous amount of State-owned lands and resources under the Commission's jurisdiction, including portions of the Project, will be impacted by rising sea levels. Please note that when considering a lease application for the Project, CSLC staff will:

- Request information from applicants concerning the potential effects of sea-level rise on their proposed projects;
- If applicable, require applicants to indicate how they plan to address sea-level rise and what adaptation strategies are planned during the projected life of their projects; and
- Where appropriate, recommend project modifications that would eliminate or reduce potentially adverse impacts from sea-level rise, including adverse impacts on public access.

With these Public Trust responsibilities in mind, CSLC staff appreciates the inclusion of sea-level rise information in the Draft EIR. Clarification and expansion of the two scenarios for levee height and design would facilitate the Commission's evaluation of the Project's design and potential vulnerability when considering any new or amended lease application.

The sea-level rise projections used in the Draft EIR for the 2050 and 2100 scenarios are 1.25 feet and 3.83 feet, respectively. These projections are based on the National Research Council's (NRC 2012) regional projections for the City of San Francisco, and planning guidance established by the City and County of San Francisco. Given the high-range estimate of 5.48 feet of sea-level rise by 2100 (as described in NRC [2012] and the State of California Sea-Level Rise Guidance Document [2013]), the City should explain in the EIR why Project design considerations only incorporate 3.83 feet of sea-level rise by 2100. In the 2050 scenario, the Draft EIR also discusses the potential for the levee to be designed to adapt to future sea-level rise, with the option to install a floodwall suitable for the 2100 scenario at a later date. Given this potential for adaptability, as well as the NRC's (2012) high-range sea-level rise estimate of 5.48 feet by 2100, the EIR should explore and describe whether the 2050 or 2100 scenarios have the potential to adapt to water levels higher than the estimates used in the Draft EIR.

Additionally, the City should also consider developing a long-term monitoring program to track shoreline changes and monitor other climate change-related impacts (e.g., storms, high tides) on the improved levee system. The information gathered from such monitoring efforts could help identify triggers that might lead to future modifications of the levee system or additional adaptation efforts.

Recreation

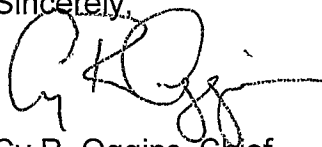
4. Temporary Public Access Impacts for Water-Dependent Uses: The Draft EIR explains that the existing pedway (Bay Trail; Class 1 pathway) on the levee crown provides access to San Francisco Bay, Belmont Slough, and Marina Lagoon. Please update the environmental setting for the Recreation section to further explain any existing water-dependent recreation uses associated with access to these waterways, such as, fishing, non-motorized watercraft uses, etc.

In addition, Mitigation Measure REC-1 explains that detour routes would be provided for the Bay Trail during temporary closures of the trail during construction, to maintain uses specifically for the Bay Trail and minimize associated impacts. However, there is no impact discussion regarding temporary loss of access to adjacent waterways for water-dependent recreation. Please update the Draft EIR to identify and explain any impacts for temporary loss of water-dependent recreation, and if applicable, provide appropriate mitigation.

Thank you for the opportunity to comment on the Draft EIR for the Project. As a responsible and trustee agency, the CSLC will need to rely on the Final EIR for the issuance of any new or amended lease as specified above, and therefore, we request that you consider our comments prior to certification of the EIR.

Please send copies of future Project-related documents, including electronic copies of the Final EIR, Mitigation Monitoring and Reporting Program, Notice of Determination, CEQA Findings, and if applicable, Statement of Overriding Considerations when they become available. Refer questions concerning environmental review to Kelly Keen, Environmental Scientist, at (916) 574-1938 or via e-mail at [kelly.keen@slc.ca.gov](mailto:kelly.keen@slc.ca.gov). For questions concerning CSLC leasing jurisdiction, please contact Nick Lavoie, Public Land Manager, at (916) 574-0452 or via e-mail at [nicholas.lavoie@slc.ca.gov](mailto:nicholas.lavoie@slc.ca.gov).

Sincerely,



Cy R. Oggins, Chief  
Division of Environmental Planning  
and Management

cc: Office of Planning and Research  
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