

## Memorandum

DATE	September 11, 2023		
TO	Francine Magno, Senior Civil Engineer City of Foster City	FROM	Carla Violet, Associate Principal, Urban Planning Partners Patrick Sutton, P.E., Principal, Baseline

**RE: CEQA Compliance for O'Neill Slough Tidal Action Restoration**

### INTRODUCTION

The City of Foster City, as part of the Levee Protection Planning and Improvements project (project) obtained a permit from the San Francisco Bay Conservation and Development Commission (BCDC) on December 2, 2019. As part of the BCDC Permit for the project, regulatory permitting agencies (U.S. Army Corps of Engineers, San Francisco Bay Regional Water Quality Control Board (RWQCB), BCDC, and National Oceanic and Atmospheric Administration (NOAA Fisheries) implemented a mitigation measure to provide unimpeded tidal flow in the O'Neill Slough. The purpose of this memo is to confirm that currently proposed actions will be consistent with the approved mitigation measure, consistent with the certified 2017 Foster City Levee Protection Planning and Improvements Project Final EIR (2017 Levee FEIR) and addenda thereto, and would not result in any new or more significant environmental effects beyond those identified in the 2017 Levee FEIR and addenda thereto.

The project includes removal of the existing temporary coffer dam located at Baffin Street bridge to allow water flow back into the slough.

### EXECUTIVE SUMMARY

This memo, prepared pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15164, is an addendum to the certified 2017 Levee FEIR, State Clearinghouse #2016012012 and subsequent 2020 CEQA Compliance for Change to Levee Protection Planning and Improvements Project Construction Restrictions, Hours, and Staging Areas Addendum (2020 Addendum #1), and 2021 CEQA Compliance for Temporary Storage/Staging Area on Caltrans Site for Levee Protection Planning and Improvements Project Construction (2021 Addendum #2). The

purpose of this memo is to analyze restoring tidal action into the O'Neill Slough. The scope of the project consists of removing the temporary coffer dam at Baffin Street bridge to allow unimpeded tidal flow back into the slough.

Previously, there was a 36-inch culvert at the eastern end of O'Neill Slough that allowed tidal flow into the area, but over the years, the culvert has been crushed due to differential settlement of the underlying bay mud and the pipe has partially filled with sediment. Another culvert may have also existed at the western end of the slough, but remnants of this culvert have not been discovered during recent construction activities. As a result, the tidal flow into O'Neill Slough has been muted (i.e., substantially reduced) due to the damaged culvert pipe(s) blocking the tidal action. A map showing the location of the O'Neill Slough and two pedestrian bridges is provided in Figure 1 below.

Construction for the Baffin Street bridge (bridge to the right) started in July 2021. A temporary sheet pile coffer dam was installed in June 2021 in order to provide a temporary water protection barrier to construct the bridge. The Baffin Street bridge and related work was completed in November 2021. On January 29, 2022, the Contractor removed the temporary sheet pile coffer dam. Water filled the slough and caused concern with adjacent residents in the City of Belmont. Because this level of tidal action had not been experienced for years (decades), some of the residents perceived the tidal flows from the bay to be flooding. City staff determined it was prudent to reinstall the coffer dam to restrict tidal flows until the City has completed discussions/evaluations of the effects of unimpeded tidal action.

As discussed in this memo, the proposed tidal action restoration of the O'Neill Slough includes removal of the temporary sheet pile coffer dam. This removal of the coffer dam for the purpose of restoring the tidal action would not result in any new or more significant environmental effects beyond those identified in the 2017 Levee FEIR and addenda thereto.

## **CEQA GUIDELINES SECTION 15164 FINDINGS**

This memo is prepared pursuant to CEQA Guidelines Section 15164 which states: "The lead agency or a responsible agency shall prepare an Addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred." Section 15162 specifies that no subsequent EIR shall be prepared for a project unless:

1. Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
2. Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions to the previous EIR or negative declaration due to the involvement of new significant environmental effects of a substantial increase in the severity of previously identified significant effects; or

**FIGURE 1 O'NEILL SLOUGH & PEDESTRIAN BRIDGE LOCATIONS**



Source: City of Foster City, 2022

3. New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:
  - a. The project will have one or more significant effects not discussed in the previous EIR or negative declaration;
  - b. Significant effects previously examined will be substantially more severe than shown in the previous EIR;
  - c. Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative;
  - d. Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measures or alternative.

Urban Planning Partners reviewed the proposed use and location of the tidal action restoration which includes removal of the temporary coffer dam and based on the analysis in this memo, has concluded that there are no substantial project changes, substantial changes in circumstances, or new information that would result in any new significant effects or any substantial increase in the severity of a previously identified significant effect.

Therefore, under CEQA Section 21166 and CEQA Guidelines Sections 15162, no further environmental review is required.

The discussion below provides: (1) an overview of the Levee Protection Planning and Improvements Project and 2017 Levee FEIR, 2020 Addendum #1, and 2021 Addendum #2; (2) a discussion of the project changes resulting from the pedestrian bridges that would allow unimpeded tidal flow back into the slough; and (3) an analysis concluding that the proposed tidal action restoration falls within the scope of the 2017 Levee FEIR and subsequent 2020 and 2021 Addenda and does not require preparation of subsequent or supplemental environmental review pursuant to CEQA Guidelines Section 15162 and 15163.

## **PRIOR PROJECT APPROVALS AND ENVIRONMENTAL REVIEW**

Urban Planning Partners and a team of technical experts prepared an EIR for the Levee Protection Planning and Improvements Project. On May 8, 2017, the City Council certified the 2017 Levee FEIR to improve the City's existing levee system to provide flood protection in accordance with updated Federal Emergency Management Agency (FEMA) guidelines, retain FEMA accreditation for the levee, and protect against future sea level rise. The EIR studied the following two scenarios at an equal level, which would have different ranges of levee elevations/floodwall heights as needed to meet FEMA freeboard requirements and protect against future sea level rise: (1) FEMA Freeboard +

15 inches of Sea Level Rise for the Year 2050 (2050 SLR); and (2) FEMA Freeboard + 46 inches of Sea Level Rise for the Year 2100 (2100 SLR).

The 2017 Levee FEIR prepared in accordance with CEQA concluded that, with the exception of two impacts, all project impacts would be mitigated to a less-than-significant level with implementation of the 2017 FEIR's mitigation measures included in the Mitigation Monitoring and Reporting Program (MMRP). The two significant and unavoidable impacts from the 2017 Levee FEIR are associated with aesthetics and noise and vibration. The increased elevation of the levee would alter the existing visual character and may adversely impact scenic vistas of the San Francisco Bay from Shorebird Park (segment 4) under the two project scenarios (2050 SLR and 2100 SLR) and scenic vistas of the Belmont Hills from Sea Cloud Park (segment 6) under the 2100 SLR project scenario (AES-1). The construction of the project could also result in the exposure of nearby sensitive receptors to temporary noise levels that would conflict with Foster City Municipal Code regulations, and could generate substantial increases in noise levels for intermittent periods when certain construction activities occur (e.g., pile driving) (NOISE-3).

Below is a list of required project permits and approvals obtained from regulatory agencies with permitting jurisdiction over the project:

- United States Army Corps of Engineers – USACE Permit, File No. 2015-00391S, dated January 6, 2020
- San Francisco Regional Water Quality Control Board – SF RWQCB Amended Clean Water Act Section 401 Water Quality Certification, CIWQS No. 851477, dated November 26, 2019
- San Francisco Bay Conservation and Development Commission - BCDC Permit, No. 2018.005.00.00, dated December 2, 2019
- National Oceanic and Atmospheric Administration - NOAA/NMFS ESA Concurrence Letter, File No. WCRO-2018-00327, dated August 28, 2019
- United States Fish and Wildlife Service - USFWS BO, O8FBDT00-2019-F-0036, dated October 2, 2019
- California Department of Fish & Wildlife - CDFW Executed Temporary Entry Permit, dated October 2, 2019
- State Lands Commission - SLC Lease Agreement, File Ref. PRC 9539.9, dated September 10, 2019

A 2020 Addendum #1 was completed on November 11, 2020 to analyze the following modifications to the project construction restrictions, assumptions, phasing, schedule, and staging since certification of the 2017 Levee FEIR:

- (1) Bay Trail closure plan allowing closure of contiguous segments in three phases and ultimate closure of the entire Bay Trail;
- (2) Modified soil sourcing and hauling assumptions;
- (3) Partial closure of Shorebird Park to use as an additional staging area; and
- (4) Saturday construction activities.

The 2020 Addendum #1 concluded that these modifications would not require preparation of a subsequent or supplemental EIR under CEQA Section 21166 or CEQA Guidelines Sections 15162 and 15163 and the proposed changes/modifications would not result in a new or greater impact than those previously analyzed in the certified 2017 Levee FEIR.

A 2021 Addendum #2 was completed on July 30, 2021 to analyze use of a 0.83-acre site for temporary storage and staging of equipment and materials on Caltrans property along East Third Avenue near the intersections of Marsh Drive and Lakeside Drive ("Caltrans Site"). The Caltrans Site would replace the proposed storage/staging area on a portion (about half) of Shorebird Park analyzed in the 2020 Addendum #1. The 2021 Addendum #2 concluded that these modifications would not require preparation of a subsequent or supplemental EIR under CEQA Section 21166 or CEQA Guidelines Sections 15162 and 15163 and the proposed changes/modifications would not result in a new or greater impact than those previously analyzed in the certified 2017 Levee FEIR.

## **CEQA ANALYSIS**

Urban Planning Partners reviewed the BCDC permit mitigation measure to provide unimpeded tidal flow into the O'Neill Slough for the project and found that there: (1) are no substantial project changes, (2) are no substantial changes in the project circumstances, and (3) is no new information of substantial importance which could not have been known with the exercise of reasonable diligence when the 2017 Levee FEIR was certified and that would require major revisions of the certified 2017 Levee FEIR because of a new significant effect or an increase in the severity of a previously identified significant effect. Under CEQA Section 21166 and CEQA Guidelines Sections 15162 and 15163, no further environmental review is required.

CEQA Guidelines Section 15164, subd. (a) provides that the lead agency or a responsible agency shall prepare an addendum to a previously certified Environmental Impact Report or Negative Declaration (ND) if some changes or additions are necessary but none of the conditions described in CEQA Guidelines Section 15162 calling for preparation of a subsequent EIR or ND have occurred (CEQA Guidelines, Section 15164, subd. (a)).

An addendum need not be circulated for public review but can be included in or attached to the Final EIR or ND (CEQA Guidelines Section 15164, subd. (c)). The decision-making body shall consider the addendum with the Final EIR prior to making a decision on the project (CEQA Guidelines Section 15164, subd. (d)). An agency must also include a brief explanation of the decision not to prepare a subsequent EIR or ND pursuant to Section 15162 (CEQA Guidelines Section 15164, subd. (e)).

Each environmental topic assessed under CEQA (Appendix G of the CEQA Guidelines) and in the 2017 Levee FEIR was considered, including Aesthetics and Shade and Shadow; Air Quality; Biological Resources; Cultural Resources; Soils, Geology, and Seismicity; Greenhouse Gas Emissions; Hazards and Hazardous Materials; Hydrology and Water Quality; Land Use; Noise and

Vibration; Traffic and Transportation; and Recreation, to evaluate the categories in terms of any changed condition (e.g., changed circumstances, project changes, or new information of substantial importance) that may result in a changed environmental result (e.g., a new significant impact or substantial increase in the severity of a previously identified significant effect) (CEQA Guidelines Section 15162).

The MMRP requires the project obtain applicable resources agency permits and approvals and comply with permit requirements regarding water quality (see MM HYD-1a). Restoring tidal flow at the O'Neill Slough as detailed in the 2019 BCDC permit would be required to comply with the 2017 Levee FEIR MMRP along with all the conditions adopted as a part of City Council Resolution 2018-28. As discussed below, there are no new impacts or more severe impacts not already identified and analyzed in the 2017 Levee FEIR that would result due to project changes, new information, or changed circumstances and therefore, no new or different mitigation measures would be required.

A summary of the assessment prepared for Biological Resources and Hydrology and Water Quality findings is provided below as these were the topics determined to be affected by the proposed tidal action restoration.

## **BIOLOGICAL RESOURCES AND HYDROLOGY AND WATER QUALITY**

The current project site (O'Neill Slough) consists of Pacific Coast Salt Marsh. Vegetation within the Pacific Coast Salt Marsh habitat type is primarily Virginia pickleweed (*Salicornia virginica*) and cordgrass (*Spartina foliosa*). These salt marsh habitats provide suitable foraging and nesting habitat for special-status species Ridgway's rail and salt marsh harvest mouse.

The biological resources impacts of the project are described in *Section V.C.* of the 2017 Levee FEIR. The 2017 Levee FEIR did not identify any significant biological impacts related to special-status plant species, two federally listed animal species (Snowy Plover and California Least Tern), or fish species. There were also no significant impacts related to conflicts with local policies or ordinances protecting biological resources or provisions of an adopted Habitat Conservation Plan or Natural Community Conservation Plan. The 2017 Levee FEIR identified four significant impacts related to special-status animal species (Ridgway's rail, California Black Rail, and salt marsh harvest mouse), riparian habitat or other sensitive natural community, federal protected wetlands, and substantial interference with fish or wildlife movement, corridors, or nursery sites. Mitigation Measures BIO-1a and 1b, BIO-2, BIO-3, and BIO-4 would mitigate these impacts to a less-than-significant level. These mitigation measures include measures such as protecting the Ridgway's rail and salt marsh harvest mouse during construction, preparing a wetland mitigation plan, and implementing water quality controls with Best Management Practices during construction.

According to BCDC Permit No. 2018.005.00, restoring the tidal flow will lower water temperatures, nitrogen levels, and biological oxygen demand and enhance tidal marsh vegetation along the banks, resulting in vegetated connectivity between the adjacent marsh habitat within Belmont

Slough. Full tidal connectivity also allows for enhanced carbon import and export and unimpeded movement connectivity of aquatic organisms and wildlife with Belmont Slough and the Bay. Therefore, removing the temporary sheet pile coffer dam to restore tidal action through Baffin Street bridge would not result in any new or more severe biological resources impacts than what was previously analyzed in the 2017 Levee FEIR.

Hydrology and water quality impacts of the project are described in *Section V.H.* of the 2017 Levee FEIR. The 2017 Levee FEIR did not identify any significant project hydrology impacts related to groundwater supplies, drainage patterns resulting in erosion/siltation or flooding, runoff or storm drain system capacity, placing housing or structures in flood hazard areas, dam and levee failure, or water quality related to project operation. The 2017 Levee FEIR identified a significant impact of the project on water quality related to project construction and identified Mitigation Measures HYD-1a and HYD-1b which mitigate the impact to a less-than-significant level. Mitigation Measure HYD-1a includes measures, such as specifying properly-designed centralized storage areas to keep hazardous materials out of the rain, to reduce the risk of spill/releases and disturbed soils from impacting water quality in nearby surface waters during construction activity. Mitigation Measure HYD-1b requires the project contractor(s) to obtain applicable resource agency permits and approvals and comply with permit requirements to prevent impacts to water quality and demonstrate that water quality standards and/or waste discharge requirements are not violated. The project contractor obtained applicable resource agency permits from BCDC on December 2, 2019 to proceed with construction.

Removal of the temporary coffer dam to restore tidal flow back into the O'Neill Slough would alter the current drainage patterns. Under the current conditions, the rate of tidal flows into O'Neill Slough is blocked due to the sheet pile coffer dam.

As shown in Figure 2, the slopes of the slough are vegetated and restoring the gradual rising and lowering of tidal water levels into the slough would not be expected to increase erosion or siltation.

As shown in Figure 3, the slough and the existing housing developments to the south are included in the FEMA 100-year flood hazard zone with a base elevation of 10 feet North American Vertical Datum (NAVD). With or without tidal restoration within O'Neill Slough, the effective base flood elevation remains 10 feet NAVD. On January 29, 2022, after the O'Neill Slough was restored to full tidal action and equalized in elevation with Belmont Slough, the maximum tide recorded by NOAA at Redwood City was 8.06 feet NAVD. As discussed, the top of the floodwall is at about 10 feet NAVD. Mean Higher High Water is 7 feet NAVD. Under current conditions (with tidal flows impeded), flood waters from a 100-year flood event would spill over the southern embankment of the slough which could cause rapid flooding, erosion, and siltation within the slough. Restoring tidal flows back into the slough would allow flood waters to rise more gradually in the slough to minimize potential erosion and siltation. Restoring tidal flows would not change the amount or course of flooding. Therefore, restoring tidal flow back into the O'Neill Slough would not alter drainage patterns in a manner which would result in substantial erosion, siltation, or flooding.



**FIGURE 2 VIEW OF VEGETATED BANKS ALONG O'NEILL SLOUGH**



Note: View looking west from the southeast corner of the slough.  
Source: Google Earth, 2016. Street View, Imagery Dated December 2016.

**FIGURE 3 FEMA 100-YEAR FLOOD HAZARD ZONE**



Source: FEMA, 2019. National Flood Insurance Program, Flood Insurance Rate Map, San Mateo County, California, Panel 167 of 510, Map Number 06081C0167G. Revised April 5.

Removal of the temporary coffer dam to restore tidal flow back into the O'Neill Slough would not adversely affect local groundwater supplies; contribute to runoff or storm drain system capacity;

add housing or structures in flood hazards area; contribute to dam and levee failure; or degrade water quality from project construction or operation. Therefore, removing the temporary sheet pile coffer dam to restore tidal action through Baffin Street bridge would not result in any new or more severe hydrology and water quality impacts than what was previously analyzed in the 2017 Levee FEIR.

## **CONCLUSION**

For the reasons set forth above, removal of the temporary coffer dam at Baffin Street bridge to restore tidal action at the O'Neill Slough would not require preparation of a subsequent or supplemental EIR under CEQA Section 21166 or CEQA Guidelines Sections 15162 and 15163. Specifically, there are no substantial changes that would result from providing unimpeded tidal flow back into the O'Neill Slough nor changes in circumstances under which the tidal action restoration will be undertaken, and there is no other relevant new information of substantial importance which will require any major revisions to the 2017 Levee FEIR. Therefore, no further environmental review is required and in considering restoring tidal flow back into the O'Neill Slough as required by the BCDC permit for the Levee project, the City should rely on the previously certified 2017 Levee FEIR and subsequent addenda.

## **Attachment**

San Francisco Bay Conservation and Development Commission, Permit No. 2018.005.00, dated December 2, 2019