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Re: Analysis in Support of Wild Equity Institute's Appeal of the Significant Natural Resource Areas Management Plan Environmental Impact Report's Analysis of the Sharp Park Project – File No. 170044.

Dear Ms. Calvillo and Members of the Board of Supervisors,

Pursuant to Administrative Code § 31.16(b)(5), the following information is submitted on behalf of Appellant Wild Equity Institute in support of its appeal of the Environmental Impact Report and accompanying findings and certification prepared for the Significant Natural Resource Areas Management Plan (Planning Department Case No. 2005.1912E; State Clearinghouse No. 2009042102) (hereinafter "SNRAMP EIR" or "EIR").

Wild Equity has no objections to either the programmatic or maintenance activities applicable to all of the significant natural areas addressed in the SNRAMP EIR. Wild Equity's objections are limited to the portions of the SNRAMP EIR and findings addressing the one large-scale site-specific project – the "Sharp Park Restoration Project." A thorough review of the restoration alternatives and a full

scientific debate of the viable options for restoring the Laguna Salada wetlands complex at Sharp Park is critical to the survival of two listed species depending on that habitat – the endangered and fully-protected San Francisco garter snake and the threatened red-legged frog. An adequate review is also critical for the public and policy-makers to consider its options regarding multi-million dollar financial investments in a Pacifica-based golf course.

In response to comments received on the Initial Study prepared for the SNRAMP project, the Planning Department and Recreation and Park Department issued a scoping report that reassured the interested public that the SNRAMP and its EIR would not include any changes to the Sharp Park Golf Course, an area not included within a natural resource area:

Because redesigning or eliminating the Sharp Park Golf Course is a separate proposal being studied by SFRPD, it will not be included or evaluated as part of the proposed SNRAMP project analyzed in the EIR. Should changes to the Sharp Park Golf Course be proposed, they would undergo a separate regulatory review, including CEQA environmental review.

(DEIR, App. A, *Scoping Report For San Francisco Natural Areas Management Plan* (Nov. 2009) (“Scoping Report”), p. 2-5.) Despite this assurance, the DEIR proposed and the Planning Commission went on to certify an FEIR that did just that – proposing changes to the design of the golf course and even mandating through a mitigation measure that a fairway be replaced. (See DEIR, p. 261.)

In addition to the Departments’ assurance, the Sharp Park Restoration Project should be analyzed in a separate project-level EIR in order to cure the Commissions’ CEQA violations. Because the SNRAMP EIR’s analysis of potential significant environmental impacts of the Sharp Park Project is significantly flawed and fails to comply with CEQA, Wild Equity requests that the Board of Supervisors reject those portions of the SNRAMP EIR, instruct the Planning Commission on remand to remove that individual project from the programmatic-level EIR, and prepare a separate project-level EIR remedying each of the flaws identified below.

The Sharp Park Project is readily severable from the programmatic and maintenance level activities addressed by the EIR. The EIR’s significant flaws in addressing that discrete project should not stand as an obstacle to the Planning Commission proceeding expeditiously with a programmatic EIR approving the programmatic and maintenance activities applicable throughout the Significant Natural Resource Areas. The Board’s findings and remand should ensure that any delay to the programmatic review of the entire SNRAMP program be minimal by instructing the Planning Commission to promptly remove the Sharp Park Restoration Project from the EIR and expeditiously proceed to reconsider certification of the SNRAMP programmatic EIR excluding that project.

The Board of Supervisors should reject the EIR and Planning Commission's certification of the Sharp Park Project included in the SNRAMP EIR for the following reasons:

1. The dredging mitigation measures to relocate San Francisco garter snakes, a fully-protected species under Fish & Game Code § 5050, are in violation of that section's strict prohibition on pursuing, catching or capturing fully-protected species and cannot be used as a mitigation measure for any CEQA project. (See *Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 62 Cal.4th 204.)
2. The EIR fails to consider cumulative water quality and biological impacts of the Sharp Park Project resulting from anticipated sea level rise. Nor does the EIR evaluate the Project's cumulative impacts and the effectiveness of various alternatives in light of anticipated changes to the Sharp Park seawall. The Laguna Salada and the adjacent seawall exist at the battlefront of global warming and sea level rise. For any long-term restoration of the Laguna to make any scientific or even common sense, sea level rise must be taken into account. Relatedly, by not addressing the foreseeable changes to the sea wall as part of the Sharp Park Project's cumulative impact analysis, the EIR's analysis falls short of CEQA's requirements. The Board of Supervisors should not countenance an environmental review that actively seeks to avoid considering restoration alternatives for Sharp Park in light of their ability to withstand sea level rise and necessary changes to the degrading sea wall along its western edge.
3. The EIR fails to address the proposed Sharp Park Project's likely impacts to wetlands as defined by the California Coastal Commission that are located on golf fairways where dredged materials may be disposed by the proposed project. Alternatives left unanalyzed by the EIR would avoid this impact.
4. The EIR fails to address an adequate range of non-dredging alternatives to the Sharp Park Project, including an alternative consistent with the project proposed by the Planning Department and Recreation and Park Department in the Notice of Preparation and Initial Study and a detailed alternative prepared by PWA and wetland restoration expert, Peter Baye, Ph.D. These alternatives would significantly reduce the proposed Sharp Park Project's significant and unavoidable NOx emissions, would avoid any impacts to Coastal Commission wetlands, and would allow for migration of wetlands habitat that evolves with sea level rise.

Wild Equity respectfully requests that, applying its independent authority, the Board of Supervisors make findings that the SNRAMP EIR's analysis of the Sharp Park Project fails to comply with CEQA, reverse the Planning Commission's findings and

certification of the SNRAMP EIR, instruct the Planning Commission to remove the Sharp Park Project from the projects considered in the SNRAMP EIR, promptly complete the SNRAMP EIR for the programmatic and maintenance activities, and prepare a separate EIR for the Sharp Park Restoration Project addressing each of the flaws in the current analysis.¹

- 1. Like every other natural resource area's project level actions and due to the serious flaws in the project-level analysis of the Sharp Park Project, the Board of Supervisors should instruct the Planning Commission to separate the CEQA review of the Sharp Park Project from the programmatic EIR.**

There is no reason for the significant CEQA flaws found in the project-level analysis of the Sharp Park Project to impede the City's adoption of a programmatic level EIR for the SNRAMP. The Sharp Park Project is not necessary to the programmatic-level review of the SNRAMP or the project-level analysis of SNRAMP-wide maintenance activities. The Planning Department and Recreation and Park Department acknowledged as much, assuring the public during the scoping phase that the SNRAMP EIR would not include any changes to the Sharp Park Golf Course. (Scoping Report, p. 2-5.)

The Board of Supervisors is invested with plenary authority to reject the Planning Commission's certification and the EIR and remand the decision back to the Commission with instructions to remove the Sharp Park Project from the projects

¹ Additionally, the Board of Supervisors should reject the Statement of Overriding Considerations adopted by the Recreation and Park Department as it pertains to the Sharp Park Project. The Recreation and Park Commission adopted a statement of overriding considerations finding that the significant and unavoidable impacts of the Sharp Park Project are acceptable because the Sharp Park Project "would ... ensure the sustained and increased populations of the endangered San Francisco garter snake and the threatened California red-legged frog, both protected under the Endangered Species Act, through the Laguna Salada restoration at Sharp Park." (San Francisco Recreation and Park Commission, California Environmental Quality Act Findings: Findings of Fact, Evaluation of Mitigation Measures and Alternatives, and Statement of Overriding Considerations, pp. 22-23 (Dec. 15, 2016).) This finding is not supported by substantial evidence because substantial evidence in the record indicates that sea level rise and the continued degradation of the Sharp Park sea wall will undermine the Project and neither sustain nor increase populations of the garter snake and red-legged frog. In addition, because the Sharp Park Project continues to limit the scope and type of habitat restoration in and adjacent to the Laguna Salada wetlands because of its existing and redevelopment features, including raising of golf holes, large-scale dredging and continued pumping operations, the Sharp Park Project does not ensure sustained and increased populations of San Francisco garter snakes and red-legged frogs. Thus, the Board should resolve to reject the Commission's statement.

considered in SNRAMP EIR, instruct the Commission to promptly recertify the SNRAMP EIR without that project, and prepare a separate EIR for the Sharp Park restoration activities for later tiered consideration.

a. The Sharp Park Project can be readily severed from the program-level and maintenance activity categories addressed in the EIR.

Because of its numerous flaws pursuant to CEQA described below, the City should review the Sharp Park Project and a reasonable range of alternatives in a separate tiered EIR. The EIR is a programmatic EIR for large-scale projects in the other natural resource areas. (See DEIR, p. 72.) The EIR addresses all of the natural resource areas on a programmatic level for “[r]erouting or constructing trails, using heavy equipment (such as bobcats, backhoes, and excavators) at a typical grading depth of two feet[,]... [s]tabilizing hillsides, using erosion control measures that require heavy equipment and grading and possible installation of structures, such as gabions[,] [and] [u]ndertaking initial invasive weed or tree removal projects that typically exceed half an acre (or on average 20 trees) at any one time.” (DEIR, p. 96.) Wild Equity does not contest the EIR’s programmatic review.

The EIR also conducts project-level review of two projects. One project is routine maintenance which includes “[r]emoving invasive weeds by hand, either as follow-up on a previously treated site or as initial treatment in small areas (less than half an acre).... Installing plants using hand tools and plants in one-gallon containers or smaller.... Removing invasive trees (mostly eucalyptus), as well as overhanging tree limbs.... Typically, no more than 20 trees (or half an acre) are treated at one time.... Maintaining trails, which includes clearing deposited soil from steps, replacing or installing steps or trail edging, and rerouting and benching trails... [and] Maintaining catchment basins and sediment dams through hand removal of accumulated materials.” (DEIR, pp. 96-97.) Like the programmatic components, the maintenance activities are SNRMP-wide and not specific to any particular natural area. Wild Equity does not contest this project-level review of maintenance activities throughout the natural resource areas, including where maintenance will be applied in Sharp Park.

The EIR’s second project considered at project-level review is for the proposed “Sharp Park restoration activities.” This project is focused on the Laguna Salada wetlands complex and Sanchez Creek, which flows into the complex. (DEIR, pp. 97-99.) In particular, this project-level component includes:

Create upland mounds for foraging, resting, and escape cover for the California red-legged frog and the San Francisco garter snake; • Dredge excess sediments and accumulated organic matter, including stands of encroaching tules, to maintain open water and fringe habitat in the wetlands complex and use appropriate dredged material on site to create or enhance upland habitat or to increase the elevation of certain golf course fairways; • Continue monitoring for California red-legged frogs

and San Francisco garter snakes; and • Install and maintain signs and barriers to prevent disturbance of sensitive habitat in Horse Stable Pond and Laguna Salada by dogs or other possible nuisances. • SP-4b— Construct upland mounds in the area directly south and southeast of Laguna Salada and plant with native grasses and herbs to provide snake and frog basking sites, and to provide nesting habitat for riparian birds; and • SP-9b—Establish a vegetation management plan for the canal connecting Laguna Salada and Horse Stable Pond that would allow channel maintenance without affecting the forktail damselfly, California red-legged frog, or San Francisco garter snake.

(*Id.*) The main components of the Sharp Park Project include:

- Dredging up to 60,000 cubic yards of material to remove sediment, encroaching plant species, and decaying vegetation in Laguna Salada, Horse Stable Pond, and the channel that connects the two water bodies, resulting in the conversion of freshwater marsh, willow scrub, and wet meadow wetland habitat to open water habitat;
- Recontouring freshwater marsh wetland and ruderal (disturbed) habitat along the Laguna Salada, Horse Stable Pond, and channel shorelines to create shallow water wetland habitat;
- Creating an upland and wetland habitat corridor between Horse Stable Pond and Laguna Salada;
- Converting about half an acre of wet meadow/freshwater marsh wetland to upland habitat, creating an upland refuge in the middle of Laguna Salada to provide snakes and frogs with refugia from feral cats and other terrestrial predators, and creating about an acre of replacement wetland along the northern and western edges of the lagoon in place of coastal scrub habitat; and
- Constructing up to four acres of upland mounds on landscaped grass on the east side of the lagoon and between Laguna Salada and Horse Stable Pond. These mounds would be placed in the area currently occupied by part of the Hole 13 fairway, which would be narrowed and reconfigured.

(*Id.*, pp. 98-99.) As discussed in detail below, the Sharp Park Project is the only project for which the EIR fails to comply with CEQA.

The Sharp Park Project is severable from the programmatic and maintenance activities analyzed in the SNRAMP EIR. The Project does not extend into any other natural resource area. As the Final Draft Significant Natural Resource Areas Management Plan (Feb. 2006) (“2006 SNRAMP”) acknowledged, “Sharp Park occupies a unique position amongst the Natural Areas. Not only is it located outside of the City proper, but it is bordered by designated open spaces (Sweeny and Milagra Ridges).” (2006 SNRAMP, p. 6.4-9). The issues relating to habitat for the San Francisco garter snake and California red-legged frog are specific to the Laguna Salada wetland complex. Although the SNRAMP assigns an objective to all of the natural resources

areas to “identify, prioritize, and implement restoration and management actions designed to promote the functioning of San Francisco’s native ecosystem, including the maintenance and enhancement of native biodiversity[.]” it is only the Sharp Park Project that the EIR reviews at a site-specific project-level. In addition, the Sharp Park Project is the only project that involves activities outside of the SNRMP, including work and dredge disposal sites on portions of the golf course that are not designated natural areas. (See Final Draft Significant Natural Resource Areas Management Plan, p. 6.4-21, Fig. 6.4-1; *Compare* DEIR, p. 100, Fig. 2.)

The City claims that “[i]f the Sharp Park component of the SNRAMP project were to be removed, one of the CEQA project objectives would not be achieved (i.e., restoring the Laguna Salada wetland complex), and the other objective would be achieved to a lesser extent (i.e., implementing restoration activities).” (Responses to Comments, p. 4-169.) This response is illogical and inconsistent with the main programmatic review conducted by the SNRAMP EIR. Separating out project level review of the Sharp Project would not eliminate an objective to restore Sharp Park. It would simply move that objective to the separate Sharp Park EIR that would focus on the unique species and habitat issues associated with that natural area and allow the City to cure the many CEQA problems with the current analysis discussed below and in previous comments. The objective could still remain in the program EIR as well but limited to a program-level review, allowing the details of the specific Sharp Park restoration project to be worked out in a later tiered EIR. This procedure would not implement restoration activities to a lesser extent. Indeed, it would be the same extent as every other natural area, none of which have any large-scale, project-specific restoration activities currently proposed. An EIR focused solely on the Sharp Park Restoration would instead ensure that effective restoration activities are conducted in that critical area.

The City also suggests that removing the Sharp Park project will have an unidentified adverse effect on the City’s review of cumulative impacts in the EIR. (Response to Comments, p. 4-169.) This is not the case. Although the City’s analysis thus far has been deficient, the Sharp Park Project is foreseeable and fully capable of being factored into any relevant cumulative impact analysis. The only conceivable cumulative impact would appear to be NOx emissions. Nothing would preclude the City from acknowledging those potential impacts even if the SNRAMP programmatic EIR does not yet include a project-level review of the Sharp Park Project. Likewise, the cumulative impact analysis relies for the most part on a long list of projects located in and around San Francisco. (DEIR, App. G.) Excluding the project-level CEQA review of the Sharp Park Project would not change that list of projects considered by the Commission in its cumulative impacts analysis.

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b. The Board of Supervisors has ample authority to instruct the Planning Commission to sever the Sharp Park restoration activities project from the program-level and maintenance project CEQA review.

The Board of Supervisors has plenary authority to review the merits of the EIR, the underlying record, and the Planning Commission's findings and certification of the EIR. Under the City's CEQA regulations, the Board of Supervisors, the Planning Commission and the Recreation and Park Department are treated as a single entity, *i.e.* the City and County of San Francisco. (Administrative Code § 31.04(a) ("The City and all its officials, boards, commissions, departments, bureaus and offices shall constitute a single "local agency," "public agency" or "lead agency" as those terms are used in CEQA"). Accordingly, the Code automatically suspends any activity by any other department addressed in an EIR that has been appealed to the Board of Supervisors. (§31.16(b)(3) ("For projects that require multiple City approvals, after the Clerk has scheduled the appeal for hearing and until the CEQA decision is affirmed by the Board, ... (B) other City boards, commissions, departments and officials shall not carry out or consider further the approval of the project that is the subject of the CEQA decision on appeal except activities that are essential to abate hazards to the public health and safety...").)

The Board of Supervisors conducts a plenary review of an EIR and the Planning Commission's findings and certifications. "The Board shall conduct its own independent review of whether the CEQA decision adequately complies with the requirements of CEQA." (§ 31.16(b)(6).) "The Board **shall consider anew all facts, evidence and issues related to the adequacy, accuracy and objectiveness of the CEQA decision, including, but not limited to, the sufficiency of the CEQA decision and the correctness of its conclusions.**" (*Id.* (emphasis added).) The Board of Supervisors is required to reverse the Planning Commission's certification of an EIR "if the Board finds that the EIR does not comply with CEQA, including that it is not adequate, accurate and objective, is not sufficient as an informational document, that its conclusions are incorrect or it does not reflect the independent judgment and analysis of the City, or that the Planning Commission certification findings are incorrect." (§ 31.16(c)(5).) When the Board of Supervisors' reverses the Planning Commission's decision, that reversal automatically extends to all other actions by any other city department or commission approving the project at issue. (§ 31.16(b)(10) ("If the Board reverses the CEQA decision, the prior CEQA decision and **any actions approving the project in reliance on the reversed CEQA decision, shall be deemed void**") (emphasis added).) However, the Board's reversal is limited to those aspects of the EIR that are deficient. The Administrative Code provides that a remand of an EIR and its certification to the Planning Commission is limited to further action by the Commission "consistent with the Board's findings." (§ 31.16(c)(5) ("If the Board reverses the Planning Commission's certification of the final EIR, it shall remand the final EIR to the Planning Commission **for further action consistent with the Board's findings**") (emphasis added).) Indeed, the Code ensures that the entire FEIR not have to be reopened and

subjected to future Board review and repetitive appeals by limiting any future appeals only to those portions of an EIR that are subsequently revised. (*Id.* (“Any further appeals of the EIR shall be limited **only to the portions** of the EIR that the Planning Commission has revised.... The Board's subsequent review, if any, also shall be limited to the **portions of the EIR** that the Planning Commission has revised including, without limitation, new issues that have been addressed”) (emphasis added).)

Because the Board of Supervisors has plenary review authority and the Planning Commission is obliged to revise the EIR on remand consistent with the findings of the Board of Supervisors, the Board may, based on its review, find that (1) the SNRAMP EIR is not adequate, not sufficient as an informational document, and its conclusions and accompanying findings are incorrect in considering the Sharp Park Project (as discussed further below); (2) the SNRAMP EIR is adequate regarding the programmatic and maintenance projects included in the EIR; (3) the Planning Commission, on remand, delete the Sharp Park Project from the project's considered in the SNRAMP program EIR, (3) the Planning Commission promptly recertify the Program-level and Maintenance Projects already included in the EIR, and (4) the Planning Commission prepare a separate EIR reviewing any proposal for Sharp Park restoration activities that addresses each of the inadequacies discussed below.

The Board of Supervisor's plenary authority to review the EIR and sever the deficient project level review of the Sharp Park Project is consistent with CEQA's recognition that errors in an EIR be cured with the least disruption to implementation of separate and severable related projects or even portions of projects. The Supervisors' de novo review of the Planning Commission's EIR certification and findings is broader than the review role exercised by the California courts. Nevertheless, CEQA plainly contemplates that the courts, even with their more limited review powers, are authorized to tailor any relief to cure an inadequate EIR or accompanying finding to fit the violation. (See Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (Cont.Ed.Bar 2nd Edition, March 2016 Update), § 23.124.) Thus, under PRC § 21168.9(b), any order of a court addressing a violation of CEQA:

shall include only those mandates which are necessary to achieve compliance with this division and only those specific project activities in noncompliance with this division. The order shall be made by the issuance of a peremptory writ of mandate specifying what action by the public agency is necessary to comply with this division. However, the order shall be limited to that portion of a determination, finding, or decision or the specific project activity or activities found to be in noncompliance only if a court finds that (1) the portion or specific project activity or activities are severable, (2) severance will not prejudice complete and full compliance with this division, and (3) the court has not found the remainder of the project to be in noncompliance with this division.

(PRC § 21168.9(b).) The Sharp Park Project is not just a severable activity – it is a separate project. The Board of Supervisors, exercising its de novo review authority, has even more discretion than the courts to remand the EIR back to the Planning Commission with instructions to remove those portions addressing the project level Sharp Park Restoration Project, promptly certify the programmatic-level EIR, and prepare a separate EIR for that project-level proposal consistent with Chapter 31. Because the programmatic and maintenance project components of the EIR are consistent with CEQA, those project components should be allowed to proceed, with instructions to the Planning Commission to promptly excise the Sharp Park Project from the EIR and recertify the programmatic EIR without that objectionable component.

2. The mitigation measures for addressing impacts to the San Francisco garter snake, a fully-protected species under Fish & Game Code § 5050, are not authorized by law and thus fail to mitigate impacts to the snake.

The City proposes to mitigate the Sharp Park Project's impacts to the San Francisco garter snake by having a biologist relocate any snakes found in the way of the proposed dredging. (DEIR, p. 320.) Because this proposed mitigation scheme amounts to a take of the fully-protected San Francisco garter snake, it is precluded by Fish & Game Code § 5050 and is inconsistent with law under CEQA.

The San Francisco garter snake is a fully protected species under Fish & Game Code § 5050(b). (Fish & Game Code § 5050(b)(2) (“The following are fully protected reptiles and amphibians:... (2) San Francisco garter snake (*Thamnophis sirtalis tetrataenia*”); DEIR, p. 279, Table 9; DEIR, p. 275 (“The San Francisco garter snake, which occurs at the Sharp Park Natural Area, is listed as fully protected under the Fish and Game Code”).)

The DEIR identifies the proposal to extensively dredge the Laguna Salada wetlands complex as a potential significant impact on the garter snake absent mitigation. (DEIR, pp. 319-320, 323.) As mitigation, the DEIR calls for relocation the garter snake when they are in the way of the dredging operations. (DEIR, p. 42, 323, 327.)

Any take or possession of a fully protected species is forbidden, in particular when the take or possession is done as part of specified mitigation for a project defined by CEQA:

(1) Except as provided in this section, Section 2081.7, Section 2081.9, or Section 2835,² a fully protected reptile or amphibian may not be taken or

² None of these exceptions apply to the San Francisco garter snake or Sharp Park. Only F&G Code § 2835 could conceivably apply, allowing for the Department of Fish & Wildlife to authorize take of fully-protected species “whose conservation and management is provided for in a natural community conservation plan approved by the

possessed at any time. No provision of this code or any other law shall be construed to authorize the issuance of a permit or license to take a fully protected reptile or amphibian, and no permit or license previously issued shall have any force or effect for that purpose. However, the department may authorize the taking of a fully protected reptile or amphibian for necessary scientific research, including efforts to recover fully protected, threatened, or endangered species. ...

(2) As used in this subdivision, "scientific research" does not include an action taken as part of specified mitigation for a project, as defined in Section 21065 of the Public Resources Code.

(Fish & Game Code § 5050(a)(1)-(2).)³ Fish & Game Code § 86 defines "take" as to "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill."

The California Supreme Court recently interpreted a related provision of the Fish & Game Code applicable to fully-protected bird species, Fish & Game Code § 5515, which contains identical language as in Section 5050 quoted above.⁴ The Supreme Court made clear that the Fish & Game Code provides no authority for any incidental take of fully protected species in the context of mitigation for any CEQA project. As the Court explains:

In light of the definition of "take" in section 86 as including an animal's "pursu[it]," "catch," or "capture," the capture and relocation of [fully protected] stickleback contemplated by mitigation measures BIO-44 and BIO-46 violates Fish and Game Code section 5515. Although trapping and translocation are defined as possible conservation measures for endangered species under Fish and Game Code section 2061, the stickleback, as a fully protected species, is subject to the stricter prohibitions against taking set forth in Fish and Game Code section 5515,

department." (F&G Code § 2835.) However, "[n]o ... Natural Community Conservation Plans overlap with the Natural Areas." (EIR, p. 276.)

³ PRC § 21065 defines "project" as "an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and which is any of the following: (a) An activity directly undertaken by any public agency. (b) An activity undertaken by a person which is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies. (c) An activity that involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies." PRC § 21065

⁴ The Court of Appeal expressly identified Fish & Game Code § 5050 as a "[p]arallel provision[]" to Fish & Game Code 5515. (*Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 62 Cal.4th 204, 232.)

including an express prohibition on taking as mitigation for a project under CEQA. (§ 5515, subd. (a)(2).)

Center for Biological Diversity v. Department of Fish & Wildlife (2015) 62 Cal.4th 204, 232-233. The Court continues:

We must reject the claim DFW may authorize, as CEQA mitigation, actions to protect a fully protected species from harm when, as here, those actions are otherwise prohibited as takings. The Legislature has expressly precluded this interpretation of the statutes by providing, in Fish and Game Code section 5515, subdivision (a), that permitted taking of a fully protected species for “scientific research” may include “efforts to recover” the species but that such “scientific research” does not include “any actions taken as part of specified mitigation for a project” as defined in CEQA. We cannot give effect to this provision and at the same time hold that DFW may, as CEQA mitigation, authorize the trapping and transplanted of stickleback—actions that plainly call for the fish's “catch,” or “capture” (Fish & G. Code, § 86). That such catch or capture is intended to protect the stickleback from harm caused by the project's construction is inherent in its adoption as CEQA mitigation and is expressly barred under section 5515.

(*Id.* at 233; *see also id.* (“The Legislature evidently believed the prohibition on taking or possessing fully protected species should be relaxed to permit the use of wildlife management techniques needed for species recovery, but that agencies should not be allowed to rely on the availability of such techniques in approving or carrying out projects that would have significant adverse effects on a fully protected species..... such actions may not be relied on or “specified” as project mitigation measures pursuant to CEQA”).) Rather than restoration, the Sharp Park Project is more accurately described a mitigation project for operating the Sharp park golf course. However, even assuming Sharp Park were to qualify as a “restoration” project, the Supreme Court has made clear that takings to mitigate impacts of such a project are forbidden, (*Id.* at 232 (“DFW may conduct or authorize capture and relocation of the stickleback as a conservation measure to protect the fish and aid in its recovery, but the agency may not rely in a CEQA document on the prospect of capture and relocation as mitigating a project’s adverse impacts”).)

The City cannot distinguish its proposed relocations of the fully-protected San Francisco garter snake from the stickleback relocation mitigations prohibited by the Fish & Game Code and rejected by the Supreme Court in *Center For Biological Diversity*. This error only applies to the proposed Sharp Park project and its reliance on massive dredging of the Laguna Salada. Because the mitigation proposed by the City is illegal, it cannot be relied upon in the project-level CEQA analysis for Sharp Park. As a result, this project level component should be stripped out of the programmatic EIR. Future

review of any Sharp Park wetlands project must consider the feasible alternatives discussed that do not include extensive dredging.

3. The DEIR fails to address the likely cumulative impacts the Sharp Park Project will have on wetlands and aquatic resources when combined with future changes to the sea wall and sea level rise.

By refusing to address impacts beyond 20 years and future changes to the Sharp Park sea wall, the City's EIR fails to address the Sharp Park Project's cumulative impacts on water quality and biological resources. Although a 20 year management period may make sense for the general maintenance activities and programmatic activities, it makes no sense for a project-level analysis of the Sharp Park restoration activities. In particular, by avoiding looking at cumulative impacts of the Sharp Park dredging project beyond 20-years, the DEIR cannot assess those cumulative impacts in light of expected sea level rise. In addition, the City chooses to ignore the cumulative impacts associated with the reasonably foreseeable project that will be necessary to address the Sharp Park sea wall. Alternatively, future sea wall management is so intertwined with any long-term Sharp Park restoration project, omitting future changes to the sea wall improperly piecemeals review of the Sharp Park project.

An EIR must discuss significant cumulative impacts. (CEQA Guidelines § 15130(a).) This requirement flows from PRC § 21083, which requires a finding that a project may have a significant effect on the environment if "the possible effects of a project are individually limited but cumulatively considerable.... 'Cumulatively considerable' means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects." "Cumulative impacts" are defined as "two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts." (CEQA Guidelines § 15355(a).) "[I]ndividual effects may be changes resulting from a single project or a number of separate projects." (CEQA Guidelines § 15355(a).)

"The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time." (*Communities for a Better Environment v. Cal. Resources Agency*, (2002) 103 Cal.App.4th 98, 117.) A legally adequate cumulative impacts analysis views a particular project over time and in conjunction with other related past, present, and reasonably foreseeable probable future projects whose impacts might compound or interrelate with those of the project at hand.

Under CEQA, an EIR's cumulative impacts analysis must address all reasonably foreseeable projects. As the EIR acknowledges, "management options for the Sharp Park sea wall, including a naturally managed sea wall and shoreline, have been

considered by the SFRPD....” (DEIR, p. 103.) Despite that foreseeable sea wall project, the DEIR asserts that “those options are not proposed as part of the SNRAMP. Thus, they are not addressed in this EIR.” (*Id.*) Whether or not a future project must be included in an EIR’s cumulative impact analysis does not turn on whether it is part of the proposed management program. (See CEQA Guidelines § 15355(a).) Indeed, the list of projects included in the cumulative impact analysis in the current EIR are not limited to SNRMP projects. (See DEIR, App. G.) Moreover, the future sea wall project has no relevance to cumulative impacts for either the programmatic or maintenance activities that apply to the entire SNRAMP. However, the future management of the sea wall is directly linked to the Sharp Park Project’s impacts.

The City exacerbates this omission by invoking the SNRAMP’s 20 year management term to cut off any serious discussion of the Sharp project’s impacts in light of sea level rise: “During the 20-year project planning period for the project, the sea level is expected to rise less than one foot.” (DEIR, p. 381.) The SNRMP planning period should not act as a barrier to evaluating impacts or considering the long-term viability of Sharp Park restoration proposals. This is another reason why the Sharp Park Project should be evaluated under CEQA separately from the overall SNRMP program.

The City is very aware of inevitable sea level rise. “Recent computer modeling performed for this project indicates the potential for more widespread flooding of the golf course next to Laguna Salada (KHE 2009), including inundation as a result of sea level rise.” (DEIR, p. 358.) “Sea levels have risen over seven inches along the California coast in the past century and are projected to rise another 12 inches by 2040 and as much as 4.6 feet by 2100, in response to global climate change....” (*Id.*)

The City also anticipates that sea level rise will affect the Sharp Park sea wall and affect the performance of the proposed Sharp Park Project:

Sea level rise will put additional stress on the seawall at Sharp Park and could result in more frequent overtopping (SFRPD 2009a). Rising sea levels will also result in higher groundwater levels near the coast, as the water table rises to maintain net groundwater outflow to the ocean. Higher groundwater levels will reduce storage capacity of Laguna Salada somewhat and will require more frequent or increased rates of pumping to maintain the water level in Laguna Salada below the elevation at which flooding impacts could occur.

(DEIR, p. 361.) The City also acknowledges the inevitability of changes to the sea wall:

While portions of the seawall are in fair to good condition, mainly in armored areas, there are other portions of the seawall that are in poor condition. Significant erosion rills, near-vertical slope faces, and beach sand within two feet of the seawall are all issues that negatively affect the condition of the wall. If improvements are not performed to alleviate these

conditions, it is very likely that the seawall would be overtopped and breached during a 100-year storm or as a result of future sea level rise (Arup 2009).

(*Id.*) Both sea level rise and actions to address the sea wall's frailties are plainly foreseeable.

Dr. Baye has explained the direct cumulative link between the proposed Sharp Park Project and management decisions for the sea wall. As Dr. Baye states, "[t]he DEIR 'fails to address significant potential cumulative impacts between dredging, salinity stratification, seawater intrusion, and sea level rise within the 20 year planning period.'" (Responses to Comments, Attachments, p. B-510 (Baye-1).) Dr. Baye's comments point out the EIR's and previous reports' failure "to identify the significant long-term constraints of 'enhancing' non-tidal seepage lagoon wetlands that are artificially pumped to low water levels relative to sea level behind a permeable sand barrier." (*Id.*, p. B-512.) Dr. Baye also notes that "[n]one of the intended 'enhancement' benefits to wildlife species are physically possible if the long-term effects of pumping, sea level rise, and evaporative concentration of lagoon water interact to convert the wetlands from fresh -brackish to brackish-saline or even hypersaline marsh." (*Id.*, p. B-513.)

Dr. Baye further explains:

All coastal lagoons originate and are maintained by landward migration during sea level rise. The Laguna Salada wetland complex's long-term survival depends on planning for gradual landward migration of the barrier beach and its wetlands with rising sea level which requires geomorphic accommodation space. That space is currently displaced by the golf course, built on filled riparian wetlands of the past - the historic freshwater end of the Laguna Salada wetland complex. Rising level and a static golf course together will inevitably squeeze the existing (reduced area of) fresh-brackish wetlands out of existence, regardless of ephemeral "habitat enhancement' plan actions.

It is not feasible to stabilize the lagoon wetlands in the reduced "footprint" of the 20th century lagoon as sea level rises over three to four feet in coming decades of the 21st century. Oceanic overwash processes during extreme storms must drive the beach and its lagoon wetland complex landward as sea level rises. Any long-term wetland management plan for a backbarrier lagoon must presume upward and landward displacement of existing lagoon wetlands over multiple decades. This lagoon accommodation space location of historic freshwater riparian wetlands is occupied by golf links that will be subject to adverse increases in flooding and coastal storm risks.

(*Id.*, p. B-514.) It is up to the EIR for the Sharp Park Project to explore these obvious interactions and any cumulative impacts. Simply ignoring the inevitable future sea wall

project and inevitable sea level rise does not address the full impacts of the Sharp Park Project and is a recipe for failure.

Last year, the City adopted the Sea Level Rise Action Plan, released in March of 2016. This Action Plan requires San Francisco to consider adaptation and retreat alternatives where lands are at risk from expected sea level rise impacts. This was not applied by the Planning and Recreation and Park Commissions to their consideration of the Sharp Park Restoration Project.

Contrary to the DEIR's avoidance of the Sharp Park's cumulative impacts in light of sea level rise, the 2011 PWA Report proposes and analyzes an alternative that does not rely on extensive dredging and which anticipates expected sea level rise, the ineffectiveness of the existing sea wall and the need to allow the freshwater Laguna wetlands habitat to migrate inland. (2011 PWA Report.) The same is true of the original Sharp Park proposal included in the notice of preparation and initial study. (See *infra.*, pp. 21-23). If the City's goal is to restore the Laguna Salada habitat for the red-legged frog and San Francisco garter snake in the long term, the project's impacts must be considered in light of the expected sea level rise.

Because the Sharp Park sea wall's management is so intertwined with the form and potential success of any Sharp Park restoration project, the two projects cannot be separated without improperly piecemealing the CEQA analysis. CEQA mandates "that environmental considerations do not become submerged by chopping a large project into many little ones -- each with a minimal potential impact on the environment -- which cumulatively may have disastrous consequences." (*Bozung v. LAFCO* (1975) 13 Cal.3d 263, 283-84; *City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1452.) Before undertaking a project, the lead agency must assess the environmental impacts of all reasonably foreseeable phases of a project and a public agency may not segment a large project into two or more smaller projects in order to mask serious environmental consequences. As the Court of Appeal stated:

The CEQA process is intended to be a careful examination, fully open to the public, of the environmental consequences of a given project, **covering the entire project, from start to finish**. . . the purpose of CEQA is not to generate paper, but to compel government at all levels to make decisions with environmental consequences in mind.

(*Natural Resources Defense Council v. City of Los Angeles* (2002) 103 Cal.App.4th 268 (emphasis added). Although holding off on a decision about the Sharp Park seawall is easily severed from the programmatic and maintenance activities addressed in the DEIR, it cannot legally be severed from the proposed wetlands restoration project at Sharp Park. A separate EIR for the Sharp Park Project will allow the City to conduct a thorough, wholistic analysis of the wetlands complex and how best to restore it in the long-term as well as in compliance with CEQA.

4. The DEIR fails to address the likely impacts to wetlands as defined by the California Coastal Commission located within fairways where dredged materials may be disposed by the proposed project.

The City acknowledges that wetlands within the jurisdiction of the California Coastal Commission may be present on portions of fairways slated to be raised with sediments dredged from the Laguna. (Response to Comments, p. 4-426.) Dr. Baye documented the presence of these wetland areas in his expert comments. (Baye Comment, B-500-501.) Despite those comments six years ago, the City apparently has not yet investigated Dr. Baye's evidence. A simple site visit by a knowledgeable aquatic biologist some time in the last six years would have sufficed to confirm Dr. Baye's observations. Instead, the City claims it does not know where wetlands are being mowed on the fairways and that information would come out during the proceeding before the California Coastal Commission. (See Response to Comments, p. 4-427) As a result, the City makes no effort to identify potential impacts to these wetland areas and evaluate any mitigations or alternatives to avoid such impacts. The City's decision to turn a blind eye to Dr. Baye's expert observations and attempt to sidestep substantial evidence that wetlands within the Coastal Commission's jurisdiction are in harm's way at the project site is an abuse of discretion under CEQA.

Where an EIR fails to address a potential significant impact, that omission is subject to de novo review by court as a matter of law. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1208.) "[U]nder CEQA, the lead agency bears a burden to investigate potential environmental impacts." (*Sundstrom v. County of Mendocino* (1988) 202 Cal. App. 3d 296, 311). "While foreseeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can." (*Berkeley Keep Jets Over the Bay Com. v. Board of Port Cmrs.* (2001) 91 Cal. App. 4th 1344, 1370.)

Relatedly, responses to comments on a draft EIR must state reasons for rejecting suggested mitigation measures and comments on significant environmental issues. "Conclusory statements unsupported by factual information" are not an adequate response. (14 CCR §15088(b, c); *Cleary v. County of Stanislaus* (1981) 118 Cal.App.3rd 348.) The need for substantive, detailed response is particularly appropriate when comments have been raised by experts or other agencies. (*Berkeley Keep Jets*, 91 Cal.App.4th at 1367.) A reasoned analysis of the issue and references to supporting evidence are required for substantive comments raised. (*Calif. Oak Found. v. Santa Clarita* (2005) 133 Cal.App.4th 1219, 1240.)

The agency cannot simply rely on a future regulatory effort by another agency as an excuse not to identify and evaluate a potential impact. (See *Kings Co v. Hanford* (1990) 221 CA3d 692, 712-718 (agency erred by "wrongly assuming that, simply because the smokestack emissions would comply with applicable regulations from other agencies regulating air quality, the overall project would not cause significant effects to air quality."); *Citizens for Non-Toxic Pest Control v. Dept. Food & Agr.* (1986) 187 CA3d

1575, 1587-88 (state agency may not rely on registration status of pesticide to avoid CEQA review). Indeed, the lead agency is required to consult "with all responsible agencies and with any other public agency which has jurisdiction by law over natural resources affected by the project . . ." (§ 21080.3(a); *Berkeley Keep Jets*, 91 Cal.App.4th at 1370.) Where comments identify a possible significant impact to natural resources within the jurisdiction of another agency, the lead agency is supposed to make inquiries of environmental or regulatory agencies having expertise in the matter. (*Id.*)

By failing to address the presence of wetlands within the Coastal Commission's jurisdiction on fairways where dredged materials are proposed to be disposed, the City has run afoul of each of the above CEQA obligations. The City fails to determine the scope of wetlands on the relevant fairways. Although the City did a "CCC wetlands" delineation for the previous smaller pumphouse project, the City did no such evaluation for the current, much larger dredging and fairway supplementing project. (Response to Comments, p. 4-426.) As the City acknowledges, "[t]he wet meadow area is within the SNRAMP area proposed for restoration and management, but the precise area of additional wetlands that may be delineated using the single-parameter approach has not been determined" and "[t]here may be other CCC wetlands that are outside of the Pumphouse project's area of impact, but within the potential SNRAMP area of impact that would classify as CCC wetlands but have not been identified." (Response to Comments, p. 4-426.) The City attempts to downplay this omission, asserting that "[w]hether or not additional areas are subject to CCC wetland delineation, the Draft EIR concluded that raising the fairways and Hole 18 would not cause significant physical environmental impacts, including, but not limited to, impacts to hydrology, biological resources, cultural resources, or aesthetics, as compared to baseline conditions." (*Id.*, pp. 4-426 – 4-427. See *also* Planning Commission Errata, p. 2 (Dec. 15, 2016).) This statement is however unsupported given the City's admission it does not know the extent of CCC wetlands on the adjacent fairways. The statement that the City can evaluate this potential impact without even knowing whether CCC wetlands are present is not an adequate response to Dr. Baye's comments and personal expert observations of the site.

The City also attempts to cover this omission by stating, "[h]owever, to the extent the CCC may determine that these areas qualify as wetlands using the single-parameter approach, SFRPD would seek necessary permits and comply with any conditions required by the CCC." However, the City must evaluate this impact in the EIR and not simply await another agencies' proceeding or assert it will comply with another agencies' standards. (See *Kings Co.*, 221 CA3d at 712-718.)

5. The EIR fails to address an adequate range of alternatives to the Sharp Park Project.

Although the EIR claims to review a total of five alternatives for the Sharp Park Project, only four distinct alternatives are actually identified. (DEIR, p. 463.) The "No

Project” and the “Maintenance Alternative” are the same version. (See DEIR, pp. 463-64; *Compare id.*, p. 465 & p. 512.). Putting aside the “No Project Alternative,” the range of actual alternatives consists of the Proposed Sharp Park Project, a “Maximum Restoration Alternative,” and a “Maximum Recreation Alternative.”

With regard to the Sharp Park Project, the “Maximum Restoration Alternative” purports to restore an additional 5 acres of habitat for the red-legged frog and garter snake, amounting to a total of 24 acres compared with 19 acres under the proposed Project. Essentially, it appears that more dredging would occur in order to generate sediment that would then be used to restore an additional 5 acres of upland habitat. The EIR concludes that this alternative “does not meet the objective related to recreation, as the Maximum Restoration Alternative would provide additional restrictions on public use and access of the Natural Areas,” though there is no indication what restrictions would result. (DEIR, p. 481.) The DEIR also states that any potentially significant impact to recreation at the golf course would be reduced to less than significant “by implementing mitigation measures similar to those developed for the proposed project.” (DEIR, pp. 484-85.) The DEIR does not indicate that this version of an alternative would reduce the proposed Sharp Project’s NOx emissions. Given the additional dredging and habitat work, it would appear likely to make that impact worse. As much or more dredged materials would be deposited on CCC wetlands that currently exist on adjacent fairways. All in all, this Alternative remains a dredging alternative for the Laguna Salada with few differences from the proposed project.

With regard to the Sharp Park Project, the “Maximum Recreation Alternative” maintains the proposed project’s dredging components but would eliminate any habitat alterations that encroach on the adjacent golf course fairways. (DEIR, p. 463.) This alternative, like the proposed project, includes the same amount of dredging activity in the Laguna Salada. (DEIR, p. 494.) This alternative would reduce the amount of edge and upland habitat for the San Francisco garter snake. (*Id.*) The DEIR does not evaluate whether this alternative would reduce NOx emissions from the Sharp Park wetlands project. Given that the same amount of dredging is proposed, it would appear likely that the significant NOx emissions would be the same as the proposed project.

Likewise, no discussion is included in the EIR evaluating this alternative’s impacts on CCC wetlands. Although the DEIR asserts that the Maximum Recreational Alternative “would not encroach on the Sharp Park Golf Course or modify the golf course in any way,” it provides no information on where the 40,000 cubic yards of dredged material slated for adjacent fairways would be dumped. (DEIR, p. 498.)

With regard to the Sharp Park Project, the Maintenance Alternative would not include the proposed dredging of Laguna Salada. (See DEIR, p. 512.) However, this alternative is doomed from the start and adds nothing to the City’s ability to consider alternatives because, in regard to the Sharp Park wetlands, it is indistinguishable from the No Project Alternative. (See *id.*, pp. 512, 518. *Compare* p. 470)

Where a project is found to have significant adverse impacts, CEQA requires the adoption of a feasible alternative that meets most of the project objectives but results in fewer significant impacts. (*Citizens of Goleta Valley v. Bd. of Supervisors* (1988) 197 Cal.App.3d 1167, 1180-81; see also, *Burger v. County of Mendocino* (1975) 45 Cal.App.3d 322) A “feasible” alternative is one that is capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social and technological factors. (Pub. Res. Code § 21061.1; CEQA Guidelines § 15364.)

CEQA requires that an EIR provide a discussion of project alternatives that allows meaningful analysis. (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 403.) An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. (CEQA Guidelines § 15125.6.) The purpose of the discussion of alternatives is both to support the decision makers and to inform public participation. Thus, “[a]n EIR’s discussion of alternatives must contain analysis sufficient to allow informed decision making.” (*Laurel Heights*, 47 Cal.3d at 404.) An EIR must also include “detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.” (*Id.* at 405.)

The analysis of project alternatives must contain a quantitative assessment of the impacts of the alternatives. In *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 733-73, the court found the EIR’s discussion of a natural gas alternative to a coal-fired power plant project to be inadequate because it lacked necessary “quantitative, comparative analysis” of air emissions and water use. The court concluded that absent such data, the significance of the elimination of this impact was unknown.

In the end, with the exception of a no project alternative, all three proposed projects for the Sharp Park wetlands complex are large-scale dredging projects. No restoration alternatives are evaluated that do not include dredging 60,000 cubic feet of materials from Laguna Salada. No restoration alternatives address or provide any quantitative comparisons of the unavoidable air quality impacts of the proposed project. No alternative explores how the project could avoid smothering CCC wetlands or provides any quantitative assessment of that impact.

The EIR truncates the alternatives discussion despite at least two Sharp Park alternatives, including one proposed by the City itself at the outset of this process and another provided by an expert wetlands restoration firm, having been provided to the City that would avoid these impacts, would achieve most or all of the project’s objectives, and may not result in any unavoidable environmental impacts. The City’s refusal to evaluate these two alternatives in the EIR violates CEQA.

a. It is an abuse of discretion for the City to fail to evaluate the proposed Sharp Park Project included in the notice of preparation and initial study.

The EIR fails to evaluate the most obvious alternative to the current large-scale dredging project at Sharp Park – the Sharp Park wetlands project initially proposed by the City in the notice of preparation and initial study issued by the City in 2009. The NOP and Initial Study proposed a project that implements the Final Draft Significant Natural Resource Areas Management Plan published by the City in February 2006. (Initial Study, p. 1 (FEIR, App. A) (“The proposed project is the SFRPD’s implementation of the SNRAMP”). See Response to Comments, p. 4-170.) This original proposed project for Sharp Park’s wetlands does not involve the proposed large-scale dredging of 60,000 cubic feet of sensitive habitat. Instead, the proposal is based on the Final Draft Significant Natural Resource Areas Management Plan issued in 2006.

The proposed project at that time included the following recommendations for the Laguna Salada wetlands management areas:

- SP-4a—implement improvements to protect and enhance the California red-legged frog and San Francisco garter snake at Laguna Salada, including the following:
 - Create shallow pools within existing wetlands,
 - Continue monitoring California red-legged frogs and San Francisco garter snakes,
 - Remove tires from Horse Stable Pond,
 - Install signs and barriers to keep dogs out of Horse Stable Pond,
 - Separate the small peninsulas within Laguna Salada from the mainland by small canals, and
 - Restore Sanchez Creek by deepening the channel, expanding the creek corridor upstream, and buffer zones to limit human disturbance....

(Initial Study, p. 43.) This proposed project tracks the recommendations of the Final Draft Significant Natural Resource Areas Management Plan. (2006 SNRAMP, p. 6.4-13.)

The recommendations in the initial study and the 2006 SNRAMP also included various other measures relevant the wetland areas:

- SP-4b—create low mounds, planted with willows, on the western edge of Laguna Salada to serve as a visual barrier, to provide snake and frog basking sites, and to provide nesting habitat for riparian birds;
- SP-4c—reduce draw-down of Horse Stable Pond when California red-legged frog egg masses are present or maintain a stable water level during red-legged frog breeding season;
- SP-4d—remove any bullfrogs that are found in Laguna Salada;

- SP-4e—stop all golf course vehicles from using the service road from Moose Lodge to Horse Stable Pond;
- SP-5a—work with golf course staff to minimize use of chemicals;
- SP-6a—coordinate with the golf course to remove aquatic vegetation within the channel every spring and fall;
- SP-6b—remove and trim vegetation along the edges of the channel between Laguna Salada and Horse Stable Pond to allow forktail damselfly perching within sight of the water;

- SP-8a—make 33.3 acres of Arrowhead Pond, Laguna Salada, and Horse Stable Pond off limits to dogs to prevent access to sensitive habitats; if this is not effective, use fencing to close social trails in these areas;
- SP-9a—educate golf course staff about the importance of identifying California red-legged frogs, San Francisco garter snakes, and forktail damselflies and their habitats;
- SP-9b—establish a vegetation management plan for the canal connecting Laguna Salada and Horse Stable Pond that would allow channel maintenance without affecting the forktail damselfly, California red-legged frog, or San Francisco garter snake;
- SP-9c—create a buffer zone between the Laguna Salada wetlands and the golf course fairways; ...

(Initial Study, pp. 43-44; 2006 SNRAMP, p. 6.4-14 – 6.4-16.) Neither the EIR’s proposed project nor any of the alternatives addressed this original Sharp Park wetlands project.

As acknowledged by its inclusion in the 2006 SNRAMP and 2009 initial study, as well as the 1992 Laguna Salada Enhancement Plan (PWA 1992) on which they rely, this alternative is entirely feasible. Unlike the current proposed wetlands project for Sharp Park, the Initial Study alternative anticipated having no air quality impacts. (Initial Study, p. 79.) The expansion of buffer areas “could be as simple as developing a wider rough, an unmowed strip of native grasses, or installing upper marsh vegetation to narrow the fairways. Any of these options would help protect these sensitive habitats and species from human disturbance and provide greater wildlife value.” (SNRAMP, p. 6.4-16.) By expanding these buffer zones between the lagoon and the fairways, this alternative could be designed to avoid any impacts to CCC wetlands.

Any possible impacts from this reduced scope alternative to recreation or any cultural resource value associated with the adjacent fairways would appear to be capable of mitigation or, in the case of impacts to golfing, not an environmental impact. As for cultural resource impacts, the City’s proposed project will have significant and unavoidable impacts on Fairway 12 of the golf course. Nevertheless, that project alternative was not eliminated, indeed it is the City’s preferred project. Under that alternative, the fairway will be documented consistent with the National Park Service guidelines prior to the project’s implementation. Other alternatives should be treated in a like manner. The Initial Study alternative’s inclusion of expanded buffer zones may

actually have less impact on the fairways than the preferred project. Indeed, the map included in the Initial Study does not indicate any impact on the general layout of the course fairways. (See 2006 SNRAMP, 6.4-25 (Fig. 6.4-5).) As for impacts to recreational golf, as discussed below, that is not an environmental impact, and cannot be used as a proper rationale to eliminate consideration of a feasible alternative. Because the City's Initial Study alternative is feasible, would meet all of the Sharp Park project's objectives, and would have fewer, if any, significant impacts than the City's currently preferred proposed project, the City abused its discretion in failing to address this alternative.

b. The City abuses its discretion by refusing to analyze in the EIR the restoration alternative proposed by ESA/PWA and Peter Baye, Ph.D.

The City has not articulated a legal basis for rejecting consideration of an additional non-dredging alternative prepared in 2011 by ESA/PWA and Dr. Peter Baye and presented in a detailed report entitled, "Conceptual Ecosystem Restoration Plan And Feasibility Assessment: Laguna Salada, Pacifica, California" (hereinafter the "PWA 2011 Report".) We will refer to this alternative as the "PWA Alternative." The first three phases of the PWA 2011 Report outline in extensive detail a feasible restoration alternative for the Laguna Salada and adjacent habitats that does not involve the massive dredging proposed by the current preferred project. (PWA 2011 Report, pp. 26-38.) Dr. Baye also outlined a version of this same alternative in his comments on the DEIR. (Response to Comments, Attachments, p. B-507.) Rather than primarily relying on dredging, the PWA Alternative relies on reducing artificial pumping of the lagoon and allowing higher lagoon levels to achieve increases in open water marsh and other habitat beneficial for the garter snake and red-legged frog. (PWA Report, p. 29.) This proposal would result in a much larger area of habitat for the listed species. The PWA Alternative also includes extensive upland habitat restoration for the garter snake (*Id.*, p. 30.) Although the PWA 2011 Report extends to a long-term proposal to allow the existing seawall between the Laguna Salada and Ocean Beach to erode over time to a natural barrier beach and includes some new berms to protect nearby neighborhoods, the future of the seawall would not need to be part of this alternative, in the same way it is not included in the City's preferred project. Dr. Baye's comments on the DEIR also provide a more modest version of the PWA alternative:

The most obvious environmentally superior feasible alternative that was ignored was modification of water level management of the lagoon, which is controlled by artificial drainage of the lagoon by pumps operated by the City. Increased water surface elevations and seasonal fluctuation of lagoon levels combined with peripheral flood control berms that double as buffers upland refuge and basking habitat is a wetland habitat management/enhancement alternative that would eliminate the need for high-cost, high-impact risk engineered dredging alternatives, and would have superior environmental benefits for salinity intrusion and endangered species habitat enhancement. Artificially managing water level fluctuations

in the lagoon emulating natural lagoon hydrology would maintain a favorable seasonal dynamic balance of shallow open water habitat (submerged aquatic vegetation, principally sago pondweed) and emergent marsh (tule, bulrush, cattail, spikerush) that is evident in the constructed GGNRA ponds at the toe of Mori Point slopes, where California red-legged frogs and tree frogs are now breeding.

(Response to Comments, p. B-507.)

The PWA Alternative would significantly reduce the current proposed Sharp Park project's significant NOx emissions. Although the PWA Alternative may still result in significant NOx emissions itself, by eliminating the substantial dredging component those emissions would be significantly reduced compared to the current proposed Sharp Park project.

Dr. Baye's expert comments also confirm that the PWA Alternative would not adversely affect any wetlands, including CCC wetlands. Instead, it would expand those habitats to the benefit of listed and other species.

The City rejects consideration of Dr. Baye's and the PWA Alternative based on its conclusion that the alternative would have additional impacts on historic resources and recreation:

The creation of a berm and the maintenance of higher water levels at the lagoon would eliminate more areas of the golf course, which would create additional impacts related to historic resources and recreation. Further, the maximum restoration alternative was designed to maximize restoration activities while allowing the golf course to operate, which would not be achieved with the commenters proposed changes to this alternative.

(*Id.*, p. 4-601.) As for historic resources, assuming the City's analysis of the historic significance of the golf course is correct, the PWA Alternative would have additional impacts on the existing fairways. However, that conclusion, by itself, does not mean the City can avoid evaluating this feasible alternative. The historic resource impacts are but one category of impacts related to the Sharp Park project. Two other impacts – CCC wetlands and NOx emissions – would be either eliminated or dramatically reduced by the PWA Alternative. And any historic impacts to the golf course could be mitigated at least in part by their documentation consistent with the National Park Service guidance documents. (See DEIR, p. 13.)

As for impacts to golfing, that impact is not an environmental impact within the purview of CEQA and not an impact justifying a refusal to evaluate a feasible alternative. The Appendix G checklist included in the CEQA Guidelines only identifies two impacts under the heading "Recreation." Neither impact involves an impact to the recreational activity itself. Section XV of Appendix G has a lead agency respond to two questions pertaining to recreation. First, "Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial

physical deterioration of the facility would occur or be accelerated?" (CEQA Guidelines, App. G, § XV(a).) Of course, eliminating golfing from some or even all areas of Sharp Park would do the opposite and would not have any impact based on this question. Fewer fairways would decrease the use and any accompanying physical deterioration. And although golfing recreation would be reduced, other forms of passive recreation, one of the purported objectives of the Natural Areas program, would be enhanced by the PWA Alternative.

The second question posed by Section XV of Appendix G is "Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?" (CEQA Guidelines, App. G, § XV(b).) The City's response would flip this question on its head. An alternative reducing the size of the golf course is the opposite of expanding the course. A reduction would have a positive effect on the environment, certainly in regard to expanded habitat for listed and other species.

In its version of the Initial Study form, the City has taken the liberty of adding an additional question to the checklist. Section E.9 of the Initial Study adds in, "Physically degrade existing recreational resources?" to the Guideline's form. This additional question was added in order "[t]o address degradation of trails" and the expectation that "[i]n the short-term, recreational resources, including trails, DPAs, and scenic viewing areas, could be temporarily closed for restoration efforts if necessary." (Initial Study, p. 93.) This additional checklist question does not transform reduction in golfing or the size of the golfing facilities at Sharp Park into environmental impacts. Just because an activity involves recreation does not mean that degrading that activity is an environmental impact. For example, when the City closed the Sharp Park rifle range, there was no environmental impact from precluding recreational gun enthusiasts from shooting rifles at that location. Less golf in Sharp Park does not amount to an environmental impact of the Sharp Park project. Accordingly, the City's reliance on impact to golfing as a rationale for avoiding consideration of the PWA Alternative is an abuse of discretion.

CONCLUSION

Wild Equity requests that the Board of Supervisors reject the SNRAMP EIR and certification and make findings that ensure that the Planning Commission proceeds with the portions of the EIR addressing the programmatic and maintenance level activities. As the Planning Department and Recreation and Park Department indicated many years ago, a Sharp Park Project addressing changes to the golf course should be conducted in a separate project-level EIR. Separating the Sharp Park Project into a

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separate project-level EIR is now an imperative given the many flaws in the current analysis.

Respectfully submitted,

A handwritten signature in blue ink that reads "Michael R. Lozeau". The signature is written in a cursive style with a large, stylized initial "M".

Michael R. Lozeau
Lozeau Drury LLP
On behalf of Appellant Wild Equity Institute