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**APPEAL OF FINAL MITIGATED NEGATIVE DECLARATION  
Sharp Park Safety, Infrastructure Improvement,  
and Habitat Enhancement Project**

**DATE:** March 17, 2014

**TO:** Angela Calvillo, Clerk of the Board of Supervisors

**FROM:** Sarah B. Jones, Environmental Review Officer – (415) 575-9034  
Kei Zushi, Case Planner – (415) 575-9036 *K. Z*

**RE:** File No. 140174, Planning Case No. 2012.1427E  
Appeal of Final Mitigated Negative Declaration for Sharp Park Safety,  
Infrastructure Improvement, and Habitat Enhancement Project

**HEARING DATE:** March 25, 2014

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**PROJECT SPONSOR:** San Francisco Recreation and Park Department (SFRPD)

**APPELLANT:** Brent Plater, on behalf of Wild Equity Institute

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**INTRODUCTION:**

This memorandum is a response (“Appeal Response”) to the letter of appeal (“Appeal Letter”) to the Board of Supervisors (the “Board”) regarding the Planning Department’s (the “Department”) issuance of a Final Mitigated Negative Declaration (“FMND”) under the California Environmental Quality Act (“CEQA Determination”) for a project at Sharp Park in the City of Pacifica in San Mateo County (the “project”).

The Preliminary Mitigated Negative Declaration (“PMND”) for the project was published on September 18, 2013. At the appeal hearing, held on January 16, 2014, the Planning Commission (the “Commission”) affirmed the Department’s decision to issue a MND for the project. The FMND has now been appealed to the Board by the same Appellant that appealed the PMND to the Commission.

The decision before the Board is whether to uphold the Department’s decision to issue a MND and deny the appeal, or to overturn the Department’s decision to issue a MND and return the project to the Department staff for further environmental review.

## SITE DESCRIPTION:

The project would be implemented in two locations, which combined total less than an acre, (approximately 35,000 noncontiguous square feet (sf)), within Sharp Park, which is 417 acres. The majority of work would be located in the southwest corner of the existing golf course, near Horse Stable Pond (HSP). One segment of an existing golf cart path is proposed to be realigned as part of this project. This golf cart path segment is located to the northeast of Laguna Salada (LS) and to the southwest of Lakeside Avenue.

The Sharp Park Golf Course is located within an 845-acre watershed. HSP is located south of LS and consists of an open water pond and a fresh-to-brackish water wetland. It is connected to LS via an existing approximately 1,000-foot-long channel with culverts (metal pipes that are located underneath golf cart pathways), which was constructed to drain water from LS to HSP. Together these three features form a managed wetland complex, which the City and County of San Francisco's (CCSF's) Recreation and Park Department (SFRPD) regularly maintains, and SFRPD adjusts the water level through the operation of mechanical pumps.

Water levels in the LS wetland complex are controlled by existing pumps located in the pumphouse at the southwest corner of HSP. Flood waters in the wetland complex are removed by the pumps, which pump water into the Pacific Ocean during the winter when water levels in the pond become too high. The pumps control water levels in HSP and may affect water levels in LS when the channel connecting the two water bodies creates a surface water connection between them. The existing pump system consists of a large pump (rated 10,000 gallons per minute) and a small pump (rated 1,500 gallons per minute), located in a pumphouse with pipes built through the seawall to an outfall. Operation of the flood control pump system is necessary to manage floodwaters both on Sharp Park and adjacent properties. During normal rainfall years, floodwaters into LS back up onto the golf course. During heavy rainfall years, extensive flooding can occur in areas of play on the golf course and may also threaten nearby residences.<sup>1</sup>

There are several special-status species<sup>2</sup> that are known to occur on and near the project site. These species include the California red-legged frog ("Frog") and the San Francisco garter snake ("Snake"). The Frog is listed as "threatened" under the Federal Endangered Species Act (FESA) (16 United States Code [USC], 1531-1543) and a California Species of Special Concern (SSC).<sup>3,4</sup> The Snake is listed as

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<sup>1</sup> U.S. Fish and Wildlife Service (USFWS). *In Reply Refer To: 08ESMF00-2012-F-0082-2, Formal Endangered Species Consultation on the Sharp Park Safety, Infrastructure Improvement, and Habitat Enhancement Project in San Mateo County, California*, October 2, 2012 ("Biological Opinion"). This document is available for review as part of Case File No. 2012.1427E at the San Francisco Planning Department, 1650 Mission Street, Suite 400, San Francisco, California 94103.

<sup>2</sup> See Section E.13, Biological Resources of the FMND, for the definition of "Special-Status Species."

<sup>3</sup> The Federal Endangered Species Act (FESA) defines "Threatened Species" as any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

<sup>4</sup> A Species of Special Concern (SSC) is a species, subspecies, or distinct population of an animal (fish, amphibian, reptile, bird, and mammal) native to California that currently satisfies one or more of the following (not necessarily mutually exclusive) criteria:

- is extirpated from the State or, in the case of birds, in its primary seasonal or breeding role;
- is listed as Federally-, but not State-, threatened or endangered; meets the State definition of threatened or endangered but has not formally been listed;
- is experiencing, or formerly experienced, serious (noncyclical) population declines or range retractions (not reversed) that, if continued or resumed, could qualify it for State threatened or endangered status;
- has naturally small populations exhibiting high susceptibility to risk from any factor(s), that if realized, could lead to declines that would qualify it for State threatened or endangered status.

“endangered” under the FESA and classified as “endangered” and “fully protected” under the California Fish and Game Code<sup>5,6,7,8,9</sup> (see Section E.13, Biological Resources in the FMND for more information).

Under the FESA, if a proposed project “may affect” a listed species or designated critical habitat, the project sponsor is required to prepare a Biological Assessment evaluating the nature and severity of the expected effect. In response, the U.S. Fish and Wildlife Service (USFWS) issues a Biological Opinion with a determination that the proposed action may either jeopardize the continued existence of one or more listed species (jeopardy finding), result in the destruction or adverse modification of critical habitat (adverse modification finding), not jeopardize the continued existence of any listed species (no jeopardy finding), or not result in adverse modification of critical habitat (no adverse modification finding). The Biological Opinion issued by the USFWS may stipulate discretionary “reasonable and prudent” conservation measures, and if the project would not jeopardize a listed species, the USFWS issues an incidental take statement to authorize the proposed activity.

## PROJECT DESCRIPTION:

An environmental evaluation application (Case No. 2012.1427E) for the project at Sharp Park was filed by the project sponsor, SFRPD, on November 14, 2012. The project includes elements that are analyzed in, and in some instances required by, a Biological Opinion issued by the USFWS<sup>10</sup> and consists of: 1) construction of a perennial pond, approximately 1,600 sf in size, located approximately 400 to 500 feet southeast of HSP; 2) realignment of a portion of an existing golf cart path located west of the fairway for golf course hole number 14 and east of the tee box for golf course hole number 15; 3) removal of sediment and emergent vegetation within HSP and the connecting channel that links HSP with LS; 4) construction of steps and a maintenance walkway approximately 4.6 feet in width at the existing HSP pumphouse; and 5) replacement of an existing wooden retaining wall with a concrete retaining wall at the existing HSP pumphouse.

The primary purposes of the proposed construction of the new pond, the golf cart path realignment, the pumphouse improvements, and the sediment and vegetation removal are to: 1) restore habitat in several locations within the wetland complex for the Frog and the Snake, and 2) improve the safety conditions of workers and maintain the pumps by enhancing access to the pump intake structure. Additionally, the

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<sup>5</sup> The FESA defines “Endangered Species” as any species which is in danger of extinction throughout all or a significant portion of its range other than a species of the Class Insecta determined by the Secretary to constitute a pest whose protection under the provisions of the FESA would present an overwhelming and overriding risk to man.

<sup>6</sup> The California Fish and Game Code defines “Endangered Species” as a native species or subspecies of a bird, mammal, fish, amphibian, reptile, or plant which is in serious danger of becoming extinct throughout all, or a significant portion, of its range due to one or more causes, including loss of habitat, change in habitat, overexploitation, predation, competition, or disease. Any species determined by the Fish and Game Commission as “endangered” on or before January 1, 1985, is an “endangered species.”

<sup>7</sup> The classification of “Fully Protected” was the State’s initial effort in the 1960’s to identify and provide additional protection to those animals that were rare or faced possible extinction. Lists were created for fish, mammals, amphibians and reptiles, birds and mammals. Most fully protected species have also been listed as threatened or endangered species under the more recent endangered species laws and regulations.

<sup>8</sup> California Department of Fish and Wildlife (CDFW). *Fully Protected Animals*. Available online at: [http://www.dfg.ca.gov/wildlife/nongame/t\\_e\\_spp/fully\\_pro.html](http://www.dfg.ca.gov/wildlife/nongame/t_e_spp/fully_pro.html). Accessed July 19, 2013.

<sup>9</sup> CDFW. *State and Federally Listed Endangered & Threatened Animals of California*, January 2013. Available online at: <http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/TEAnimals.pdf>. Accessed July 19, 2013.

<sup>10</sup> USFWS. *Biological Opinion*.

sediment and vegetation removal would ensure that SFRPD can continue to manage water levels in the LS wetland complex by removing impediments to water flow within the wetland complex. Sediment removal is typical of maintenance activities that occurred in the past at Sharp Park and is considered typical maintenance for managed wetlands to prevent excessive accumulation of sediment in the wetland complex. Excessive accumulation of sediment in HSP and the connecting channel could cause malfunction of the pumps by allowing sediment to enter the pump system and/or preventing the water from entering the pump intake.<sup>11</sup> Construction of steps and a maintenance walkway and replacement of an existing wooden retaining wall with a new concrete retaining wall serve the project's purpose of improving the safety conditions of workers operating and maintaining the pumps by enhancing access to the pump intake structure.

A Biological Assessment<sup>12</sup> was prepared by SFRPD. A Biological Opinion<sup>13</sup> was issued by the USFWS through FESA Section 7 consultation, which was initiated by the U.S. Army Corps of Engineers (USACE) for fill in HSP (waters of the U.S.<sup>14</sup>) resulting from the proposed construction of the maintenance walkway and replacement of the existing wooden retaining wall around the existing pumphouse. The project was analyzed in the Biological Opinion, as was the ongoing maintenance and operations activities at Sharp Park and some additional uplands habitat restoration work at Sharp Park. The proposed construction of the perennial pond, which was analyzed in the FMND, is one of the conservation measures set forth in the Biological Opinion. As part of the Biological Opinion, the USFWS issued an Incidental Take Statement to authorize the proposed activity with conservation measures, which were incorporated into the project as appropriate.

The project would require the following project approvals,<sup>15</sup> with the approval by the San Francisco Recreation and Park Commission (SFRPC) identified as the Approval Action under Chapter 31 of the San Francisco Administrative Code for the whole of the project:

- Approval by SFRPC (received on January 23, 2014)
- California Endangered Species Act (CESA) consultation with the California Department of Fish and Wildlife (CDFW)<sup>16</sup> concerning fully protected species (i.e., Snakes)
- Federal Clean Water Act (FCWA) Section 404 Approval by the USACE (received February 5, 2014, dependent upon FCWA Section 401 Permit)

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<sup>11</sup> Stacy Bradley, SFRPD. *Email to Kei Zushi, San Francisco Planning Department, Project Description Confirmation*, January 07, 2014. This email is available for review as part of Case File No. 2012.1427E at the San Francisco Planning Department, 1650 Mission Street, Suite 400, San Francisco, California 94103.

<sup>12</sup> SFRPD. *Biological Assessment, Sharp Park Safety, Infrastructure Improvement and Habitat Enhancement Project*, May 2, 2012 ("Biological Assessment"). This Biological Assessment was amended on August 16, 2012. These documents are available for review as part of Case File No. 2012.1427E at the San Francisco Planning Department, 1650 Mission Street, Suite 400, San Francisco, California 94103.

<sup>13</sup> USFWS. *Biological Opinion*.

<sup>14</sup> Under the Federal Clean Water Act (FCWA) Sections 404 and 401, "jurisdictional wetlands and waters of the U.S." include one of the following: 1) traditional navigable waters; 2) wetlands next to traditional navigable waters; 3) nonnavigable tributaries of traditional navigable waters that are relatively permanent, where the tributaries typically flow year-round or have continuous flow at least seasonally (e.g., typically three months); or 4) wetlands that directly abut the tributaries described in Item 3), above. See Section E.13, Biological Resources of the FMND, for more information about the definition of "jurisdictional wetlands and waters of the U.S."

<sup>15</sup> As noted above, the USFWS has already issued a Biological Opinion, including an Incidental Take Statement, for the project (among other activities) through FESA Section 7 formal consultation.

<sup>16</sup> Formerly known as the California Department of Fish and Game (CDFG)

- FCWA Section 401 Water Quality Certification Approval by the San Francisco Bay Regional Water Quality Control Board (SFBRWQCB)
- Fish and Game Code Section 1602 Lake or Streambed Alteration Agreement Approval by the CDFW
- Coastal Development Permit Approval by the California Coastal Commission (CCC)

In addition, the project may require the following project approval:

- National Pollution Discharge Elimination System (NPDES) Permit by SFBRWQCB

## **APPELLANT ISSUES AND PLANNING DEPARTMENT RESPONSES:**

The Appeal Letter includes the Appellant's concerns regarding the project. These concerns are related to: 1) the ongoing pumphouse operations at HSP; 2) the extent of take resulting from the project; 3) alleged increase in the hydrological connection between LS and HSP; 4) the FMND's alleged misunderstanding of the LS's ecological history; 5) alleged piecemealing under CEQA; 6) the project's alleged inconsistency with several existing plans; 7) golf course redevelopment plan; 8) cumulative impacts; 9) alternatives under CEQA; 10) cover habitat; and 11) the possibility for entrainment of species.

### **PUMP OPERATIONS**

**Issue 1: The Appellant asserts that ongoing pumphouse operations at Horse Stable Pond should be considered part of the project. The Appellant further asserts that the primary purpose of the project is to increase pumphouse operations and that expanding pumphouse operations will have significant adverse effects on the endangered species, water quality, and hydrology.**

**Response 1: Pumphouse operations are part of the existing, or "baseline" conditions at the project site, and project. Therefore, analysis of any impacts resulting from pump operations is not required under CEQA. No changes are proposed to the pumps or the pumphouse operations as part of the project. Thus, the project would not increase pumphouse operations. The Appellant's assertion that the project would increase the velocity and amount of water flow in the LS wetland complex is speculative and not based on fact.**

The ongoing operation of the existing pumps at HSP is considered to be a baseline condition for the purpose of environmental review for the project. CEQA requires that a proposed project's effects be measured against the existing, or "baseline," conditions at the project site and in its vicinity, and not that the baseline conditions be considered part of the proposed project's effects. Although a new exterior stair and walkway would be added to the pumphouse and an existing wooden retaining wall would be replaced with a concrete retaining wall at the pumphouse, no other changes would be made to the pumphouse under the project. No changes at all are proposed to the pumps themselves or to the manner in which they are currently operated by SFRPD staff. Therefore, no impact analysis is required concerning the ongoing operations of the existing pumps because that is part of the baseline conditions of the project site.

The Appellant asserts that the project would expand the operations of the existing pumps at HSP. This is inaccurate. The project would not expand the operations of the existing pumps. The project is intended to

prevent excessive accumulation of sediment in HSP and the connecting channel, which could cause malfunction of the pumps by allowing sediment to enter the pump system and/or preventing the water from entering the pump intake.<sup>17</sup>

The predominant factors that affect the rate, frequency and duration of pumping are: 1) pump infrastructure and protocols for pump operation; and 2) precipitation and water inflows.<sup>18</sup> The pump infrastructure and protocols would not be adjusted, modified, or altered as part of the project. SFRPD will continue to adjust pump levels throughout the breeding season to protect Frog egg masses and reduce flood potential. The maximum pumping rate (amount/time) is determined by the pumping capacity. Specifically, the small pump can remove water up to a rate of 1,500 gallons per minutes (gpm) and the larger pump up to 10,000 gpm.<sup>19</sup> No changes to the pump infrastructure are proposed as part of the project, therefore the water removal rate would not change with project implementation. Precipitation and inflows are outside the control of SFRPD. The primary factor that drives precipitation and inflows is regional weather conditions. A secondary factor, which is subject to minimal short-term change, is local land use patterns, including the extent of impervious surfaces. The amount of water that is removed over a unit of time via operation of the pumps depends on the amount and timing of precipitation and inflows as well as the amount of time the pumps operate and the level at which the pumps are set, which is determined during the Frog breeding season by the location of egg masses. None of these operational protocols will be changed by this project, including the sediment and vegetation removal. Therefore, the Appellant's assertion is factually incorrect.

The Appellant asserts, based partly on the deposition of John Ascariz, SFRPD's stationary engineer, that: 1) the wetland complex's aquatic vegetation moderates the flow of water from Laguna Salada to the pumphouse; and (2) if the aquatic vegetation was removed the pumps would drain more of the wetland complex, and at faster rates. This assertion is based on a mischaracterization of what John Ascariz said in the deposition. Mr. Ascariz was speaking generally about park management and operations and responding to broad hypothetical questions regarding pump operations and unspecified amounts of vegetation removal. He was not discussing the project. This project's proposed sediment and vegetation removal would not increase the velocity and amount of water flow in the wetland complex. Rather, this is controlled by pump infrastructure and operational protocols.

The Appellant has presented no hydrological or hydraulic modeling analyses prepared by a qualified professional to demonstrate that the project would increase the velocity and amount of water flow in the LS wetland complex. Instead, this argument is based on speculation regarding the effect that removal of sediment and vegetation may have. Because the pump infrastructure and operation will not be adjusted or altered as part of this project, the project itself would not cause the rate or amount of water flow in the LS wetland complex to increase even after the obstructions (sediment and emergent vegetation) are removed from HSP and the connecting channel.

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<sup>17</sup> Stacy Bradley, SFRPD. *Email to Kei Zushi, San Francisco Planning Department, Project Description Confirmation*, January 07, 2014. This email is available for review as part of Case File No. 2012.1427E at the San Francisco Planning Department, 1650 Mission Street, Suite 400, San Francisco, California 94103.

<sup>18</sup> *Ibid.*

<sup>19</sup> USFWS. *Biological Opinion*.

The Appellant argues that the project would increase the amount of water pumped out of the LS wetland complex for the following three reasons:

First, the Appellant contends that pump operations were greatly expanded in the recent past without CEQA analysis of that expansion. The Appellant asserts that SFRPD installed a new, larger pump with a rated pumping capacity of 10,000 gallons of water per minute in 2008 without conducting any CEQA review to determine whether operating this new, large pump would have significant environment effects on the wetland complex and/or the species found at Sharp Park. This assertion is incorrect and does not support the Appellant's assertion that the project would increase the amount of water pumped out of the LS wetland complex. No new, larger pumps were installed in 2008. SFRPD did an in-kind replacement of an existing pump in 2010 as part of ongoing maintenance activities at Sharp Park. This pump, installed four years ago, is part of the baseline conditions for the project that is the subject of this environmental review. To consider a four-year old pump part of the currently proposed project would run contrary to CEQA's requirement that the potential effects of the proposed project must be compared to the existing, currently-on-the-ground, environmental conditions.

Second, the Appellant asserts that the larger pump does not operate at its rated capacity due to existing obstructions to water flow (sediment and emergent vegetation) and the project will allow the pump to operate closer to its rated capacity, which will in turn allow water to be pumped out at a faster rate or the pump to operate on a more consistent basis. However, the Appellant has not provided any scientific evidence to substantiate its assertion. As discussed above, the velocity and amount of water in the wetland complex is determined by the pump infrastructure and operational protocols, which are not being altered by this project. The proposed sediment and vegetation removal, intended to prevent excessive accumulation of sediment in the wetland complex, would not increase the velocity or amount of water flowing through the pumps. Regardless of whether or not the pump operates at its rated capacity, no changes at all are proposed to the pumps themselves or to the manner in which they are currently operated by SFRPD staff. Therefore, the project would not increase the amount of water being pumped out from the LS wetland complex.

Finally, the Appellant appears to assert that because the existing pumphouse operating protocols only apply during the Frog's breeding season and at other times allow for drainage of the wetland complex to "extremely low levels," it is not true that the operating protocols will prevent the project from altering the amount and rate of water removal from the system. This argument makes no sense. The existing, base conditions for the project include the amount and rate of water flow that are constantly changing in the wetland complex partly due to the ongoing pump operations. As discussed above, no changes at all are proposed to the pumps themselves or to the manner in which they are currently operated by SFRPD staff. Thus, the project would not change the dynamic baseline conditions (i.e., amount and rate of water flow in the wetland complex). The Appellant has failed to demonstrate that the project would substantially change the existing, dynamic, baseline conditions.

The Appellant's assertion that the project will cause significant adverse effects on Frogs, Snakes, and Sharp Park's hydrology and water quality is speculative and based on a mischaracterization of the project. Even if the Appellant were correct in its assertion that the project would increase the velocity of water flow in the LS wetland complex, it does not logically follow that any increase in water flow velocity would result in any adverse impacts to Frogs, Snakes, or to Sharp Park's hydrology or water quality. The Appellant has not provided any evidence that such an adverse impact would occur. The pump

operations would comply with ongoing conservation measures to protect Frog egg masses from potential desiccation in accordance with the Biological Opinion. These conservation measures are already in place and would continue to govern the operation of the pumps and water-level management under the d project.<sup>20</sup> These conservation measures include, but are not limited to, monitoring of Frog egg masses and water levels, visual surveys on Frog egg masses, and adjustment of the water levels to protect Frog egg masses (see pages 13 and 14 of the Biological Opinion). As a result, the Appellant fails to present a fair argument based on substantial evidence that the project would result in a significant impact.

As discussed in the FMND, the project's potential impacts would be reduced to a less-than-significant level with implementation of Mitigation Measures M-BIO-2a (Protection of Frog, Snake, and Western Pond Turtle), M-BIO-2b (Protection of Special-Status Species and Water Quality from Acid Sulfate Soils and Other Components), M-BIO-2c (Protection of Bird Species), M-BIO-4a (Protection of Wetlands and Natural Habitat), M-BIO-4b (Wetland Mitigation Plan for Temporarily Affected Areas), M-CP-2 (Archeological Testing), M-CP-3 (Paleontological Training Program and Alert Sheet), M-CP-4 (Human Remains, Associated or Unassociated Funerary Objects), and M-AQ-2 (Preparation and Implementation of a Dust Control Plan).

There is no substantial evidence in the record that the project as mitigated could result in a significant effect on the environment, and Appellant's arguments should be rejected.

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## EXTENT OF TAKE

**Issue 2: The Appellant asserts that "expanded" pumping operations will result in an increased impact to Frogs and that federal regulators believe the City will take virtually all Frog egg masses laid at Sharp Park each year that it operates.**

**Response 2: The Appellant's claim that regulators believe the City will take virtually all Frog egg masses laid at Sharp Park each year that it operates is inaccurate and misleading.**

The Appellant's assertion that regulators believe the City will take virtually all egg masses laid at Sharp Park each year that it operates when the project is implanted is inaccurate and misleading. Contrary to the Appellant's assertion, the project would not take all egg masses laid at Sharp Park, nor would it take "up to 130 egg masses every winter breeding season." Rather, the Incidental Take Statement issued by the USFWS authorizes incidental take of as many as 130 egg masses per year as a result of ongoing operation and maintenance at Sharp Park – not this project.

"Incidental take" is a term of art under the FESA. "Take" is generally defined as harming or harassing federally listed species and is largely prohibited, but certain "incidental" take may be allowed where it is not the primary purpose of a federal action and is done in compliance with an incidental take statement.

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<sup>20</sup> Stacy Bradley, SFRPD. *Email to Kei Zushi, San Francisco Planning Department, Project Description Confirmation*, January 07, 2014. This email is available for review as part of Case File No. 2012.1427E at the San Francisco Planning Department, 1650 Mission Street, Suite 400, San Francisco, California 94103.



Here, because the project would require approvals under the FCWA, the USFWS issued an Incidental Take Statement as part of its Biological Opinion, which considered the effects on Frogs and Snakes of the project combined with certain uplands restoration work and ongoing maintenance and operations of the golf course.

The Biological Opinion prepared for this project authorized incidental take of up to 130 egg masses per year during a 10-year operation and maintenance period at Sharp Park (see page 40 of the Biological Opinion). Ongoing operation and maintenance is an element of baseline conditions and is not considered part of this project. 130 egg masses is not the number of egg masses anticipated to be subject to incidental take resulting from the project. The USFWS found that the activities described in the Biological Opinion, which included the project as well as other activities, would not jeopardize the continued existence of Frogs or Snakes (see Page 38 of the Biological Opinion)--meaning, in other words, that the project's impacts to those species would be less than significant. The USFWS anticipated the extent of incidental take resulting from the project, including conservation measures, as follows (see pages 39 and 40 of the Biological Opinion):

- 1) All Frogs in the 0.624-acre area within the HSP construction site will be subject to incidental take in the form of harassment and capture;
- 2) In total one Frog adult will be subject to incidental take in the form of death or injury as a result of construction activities;
- 3) All Snakes in the 0.624-acre construction area will potentially be harassed as a result of ground disturbing activities, and take of this species is expected to be in the form of harassment and no Snake is expected to be killed or injured as a result of construction activities; and
- 4) All Snakes and Frogs in the restoration area footprint will be subject to incidental take in the form of harassment as a result of the direct effects of removal of plants, revegetation activities, and other activities associated with pond construction. (*Emphasis added*)

Based on the above findings in the Biological Opinion and the mitigation measures identified in the FMND, the FMND concluded that the project would not result in any significant biological resources impacts related to Frogs or Snakes. The Appellant fails to show that the extent of incidental take anticipated to result from the project would result in any significant biological resources impact related to Frogs or Snakes.

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## HYDROLOGICAL CONNECTION

**Issue 3: The Appellant asserts that the project would remove sediment in the area of the connecting channel that is highest in elevation and that this would hydrologically connect LS and HSP for a greater portion of the year and potentially reverse the flow of water from LS to HSP, resulting in significant impacts to protected species, water quality, and hydrology.**

**Response 3: LS and HSP are already hydrologically connected throughout the Frog breeding season. The project would not substantially alter the baseline hydrologic connection between the two water**

**bodies; even if it did, the Appellant has not provided any evidence that such a change would cause any significant biological resources impacts.**

The Appellant asserts that the proposed sediment removal in the connecting channel would occur in the area that is highest in elevation, which is located near the culvert passing under the 12<sup>th</sup> fairway of the golf course, and that this would result in an increased hydrological connection between HSP and LS. The Appellant asserts that this, in turn, would increase tule and cattail populations and potentially reverse the flow of water between HSP and LS.

First, the Appellant is wrong in its assertion that the project would result in any increased hydrological connection between HSP and LS. These two water bodies are already connected throughout the rainy season. The base elevation of the culvert that connects HSP and LS is 6.54 feet NAVD 88, which translates to 0.57 on the pumphouse gauge.<sup>21</sup> Pumphouse gauge levels noted during winter field surveys for CRLF have not been recorded at or below 0.57,<sup>22</sup> therefore the two water bodies are already connected throughout the breeding season. As a result, the Appellant's assertion that the project would allow LS and HSP to hydrologically connect for a greater portion of the year is based on an inaccurate understanding of the base hydrological conditions of the project site.

Second, the elimination of sediment build-up around the culvert would not increase the hydrological connection between HSP and LS or change the current direction of water flow in the connecting channel. The culvert is a metal pipe at a fixed elevation within the connecting channel, and the sediment removal would not affect the fixed elevation of the culvert.<sup>23</sup> Therefore, the project would not result in increased hydrological connection between HSP and LS even during the dry season.

Third, the Appellant's assertion that the proposed sediment and emergent vegetation removal would result in adverse impacts (increased tule and cattail populations and potentially reverse flow of water between HSP and LS) is based on the assumption that the proposed sediment removal would create greater connectivity between LS and HSP, which has not been demonstrated as a condition resulting from the project. The proposed sediment and emergent vegetation removal in and of itself would not result in a significant impact to special-status species or their habitats because it would be subject to various mitigation measures, including inspection and monitoring by biological monitors, to protect special-status species in accordance with the Biological Opinion. Therefore, the Appellant has failed to demonstrate that the proposed sediment removal would result in such adverse impacts.

Fourth, even if the project were to alter the relative elevation between the two water bodies as the Appellant asserts, this would not change the current direction of water flow in the connecting channel because pump operational protocols are what determine the water levels that would maximize the

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<sup>21</sup> Clearwater Hydrology. *Total Station survey of Horse Stable Pond pump house floor and inlet staff gage- Sharp Park Golf Course, Pacifica, CA*, November 15, 2011. This document is available for review as part of Case File No. 2012.1427E at the San Francisco Planning Department, 1650 Mission Street, Suite 400, San Francisco, California 94103.

<sup>22</sup> SFRPD. *Monitoring Data Sheets, 2007 through 2013*. These documents are available for review as part of Case File No. 2012.1427E at the San Francisco Planning Department, 1650 Mission Street, Suite 400, San Francisco, California 94103.

<sup>23</sup> Stacy Bradley, SFRPD. *Email to Kei Zushi, San Francisco Planning Department, Project Description Confirmation*, January 07, 2014. This email is available for review as part of Case File No. 2012.1427E at the San Francisco Planning Department, 1650 Mission Street, Suite 400, San Francisco, California 94103.

protection of species during the rainy season. These ongoing operational protocols are part of the baseline conditions for the project and are, in part, dictated by the Biological Opinion.<sup>24</sup>

Finally, even if the Appellant were correct in its assertion that the project would result in LS and HSP being hydrologically connected for a greater portion of the year, the Appellant has not drawn a link between that assertion and whether the project would result in a significant impact on protected species, water quality, and hydrology.

Accordingly, the Appellant fails to demonstrate that the proposed sediment removal in the connecting channel would result in LS and HSP being more hydrologically connected than they are already under baseline conditions or that the proposed sediment removal would result in any significant environmental impacts.

The Appellant asserts that the statement that the channel's culvert is set at a depth of 6.54 feet is inconsistent with the findings of Greg Kamman. However, the Appellant does not explain Greg Kamman's findings or provide any evidence regarding how the above statement is inconsistent with these findings. Even if the Appellant provided substantial evidence to support this claim, he does not explain how this would result in any significant impact to the Frog, the Snake, or their habitat. It remains the case that the existing culvert is a metal pipe at a fixed elevation within the connecting channel, and the sediment removal would not affect the fixed elevation of the culvert, which is what connects the two water bodies. The project will not change the existing base elevation of the culvert, and an EIR is not required for a project that would not result in any significant, unmitigated impacts.

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## ECOLOGICAL HISTORY OF LAGUNA SALADA WETLAND COMPLEX

**Issue 4: The Appellant asserts that Sharp Park's ecological history indicates that increased pumping will result in saltwater intrusion. The Appellant asserts that the FMND misunderstands LS's ecological history and thus, overlooks significant environmental effects of the project and considers harmful project activities as mitigation measure.**

**Response 4: The Appellant's statements regarding the natural and ecological history of Sharp Park are not relevant to the analysis of the project's potential environmental impacts.**

The Appellant's discussion related to the ocean storm surges and seawall is irrelevant to potential impacts resulting from the project because storm surges and the existing seawall are also part of the baseline conditions of the site. Moreover, the Appellant fails to present any evidence that the project would increase salinity intrusion into the LS wetland system and/or impact Frog breeding. Finally, as discussed above, the project does not include increased or expanded pumping operations.

Under CEQA, the lead agency is required to compare the existing or baseline conditions at the project site and in its vicinity to the conditions that would occur due to a project's construction and operation. The

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<sup>24</sup> USFWS, *Biological Opinion*.

baseline conditions are appropriately taken as a snapshot in time when an application for a project is first submitted. There is no requirement under CEQA that the prior history of a site—prior to the baseline condition—be identified or analyzed. Thus, it is not relevant whether or not the FMND describes or analyzes the ecological or natural history of the Sharp Park site.

The Appellant implies that there are one or more alternatives superior to the project to protect Frogs at Sharp Park. Under CEQA, a lead agency is required to disclose environmental impacts of a project, but not required to determine whether there are any other alternatives superior to the project when no significant impacts have been identified resulting from the project. There is no substantial evidence in the record of the lead agency that warrants preparation of an EIR concerning the project, thus analysis of alternatives to the project is not required.

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## PIECEMEALING

**Issue 5: The Appellant asserts that the project description should have included the ongoing operation of Sharp Park, including the pumps, certain uplands restoration work, and the fencing replacement and that failure to include those elements as part of this project's project description is "piecemealing."**

**Response 5: The project has independent utility from the ongoing operation of Sharp Park (including operation of the pumps) and from the upland habitat restoration project previously approved by the SFRPC, and thus is properly considered a separate project under CEQA from those activities.**

The Appellant asserts that the project description should have included the ongoing operation of Sharp Park, including the operation of the pumps, and certain upland restoration work and that failure to include those elements as part of this project's project description is "piecemealing." The Appellant is correct that under CEQA, the lead agency is required to consider the whole of the project in one environmental review and not "piecemeal" what should properly be considered one project into smaller projects, thus minimizing the environmental impacts of the project as a whole. Here, piecemealing has not occurred because the three components raised by the Appellant—the project, the ongoing maintenance and operations activities at Sharp Park, and an upland restoration project—are properly considered to be separate projects.

The primary question for understanding whether proposed activities should be considered one project or separate projects under CEQA is whether those activities have "independent utility" from each other—in other words, whether they rely on or trigger the need for each other. Here, each of these three components has independent utility from the others. First, as discussed elsewhere in this response, the ongoing maintenance and operation activities at Sharp Park are not only part of the baseline conditions of the environmental setting of Sharp Park, they are currently ongoing and can continue to be conducted whether or not this project is ever constructed and whether or not the previously approved upland habitat restoration project is undertaken.

Second, the upland habitat restoration project also has independent utility from both the project and the ongoing maintenance and operation of Sharp Park. The Planning Department issued a Categorical Exemption Determination for the upland restoration project<sup>25</sup> and the SFRPC approved the project on August 15, 2013. The upland habitat restoration project consists of restoration of upland habitat within Sharp Park at three locations (totaling 0.5 acres in size): 1) south of HSP in an area with significant radish, mustard and Cape ivy cover; 2) immediately north of HSP in an area dominated by iceplant; and 3) west of LS in an area dominated by iceplant and acacia shrubs. Although the upland restoration project is near the project, the upland project has been conducted outside the waterlines of HSP and LS, and its purpose is to convert portions of Sharp Park to native upland habitat for Frogs and Snakes by removing existing non-native invasive plant species and revegetating the areas with native plant species. The upland restoration work can be conducted whether or not the project goes forward and does not trigger the need for the project. Approval of the upland restoration project did not commit SFRPD or the City to approving the project. Accordingly, the upland habitat restoration project is properly considered a separate project from the project.

The Appellant contends that because the Biological Opinion issued by the USFWS considered the effects of all three components—the ongoing maintenance and operation of Sharp Park, the upland habitat restoration project, and the project—in one document and issued one incidental take statement for all three activities, that the City’s environmental review conducted under CEQA should also consider all three components together. But whether the three separate activities were considered together in one document by the USFWS is not the legal standard for determining whether they should be considered one project under CEQA. As discussed above, the standard under CEQA is whether the activities have independent utility from each other, which they do. For these reasons, the Appellant’s contention that the three activities should be considered one project is not correct under CEQA.

Finally, the Appellant asserts that SFRPD proposed fencing Sharp Park’s berm to address concerns related to off-leash dog activity, which has the potential to adversely affect the LS wetland complex, and included this fencing as a component of the project submitted to the USFWS. The Appellant further asserts that SFRPD improperly segregated the fencing project from the environmental review process for the project. The fence replacement was included in the Biological Opinion by USFWS as a conservation measure applicable to the ongoing operation and maintenance of the golf course and is not related to the project. SFRPD replaced the fence in-kind as part of ongoing maintenance activities and in accordance with all applicable permits.

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## INCONSISTENCY WITH SEVERAL EXISING PLANS

**Issue 6: The Appellant asserts that the project is inconsistent with several existing plans, including the adopted 1995 SNRAMP, 2006 proposed SNRAMP, San Francisco Bay Basin Water Control Plan, Coastal Act, and California Red-Legged Frog Recovery Plan.**

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<sup>25</sup> San Francisco Planning Department. *Sharp Park Upland Habitat Restoration Categorical Exemption*, Case No. 2013.1008E, August 5, 2013. This document is available online at: <http://www.sf-planning.org/index.aspx?page=3447>. Accessed December 17, 2013.

**Response 6: The project is consistent with the adopted 1995 SNRAMP, 2006 proposed SNRAMP, San Francisco Bay Basin Water Control Plan, Coastal Act, and California Red-Legged Frog Recovery Plan.**

Section C of the FMND discusses the project's consistency with adopted and applicable plans and policies, as they relate to physical environmental impacts. As discussed in the FMND, the project is consistent with the adopted 1995 SNRAMP as it conforms with three of the overall Program Objectives: 1) determine management needs for natural resources, particularly those identified by other agencies as rare, threatened or endangered; 2) consult and coordinate with other city departments, agencies and groups with special expertise for implementation strategies; and 3) implement measures designed to address immediate problems. The project was created in consultation with USFWS, USACE and CDFW to protect Frogs and Snakes while also implementing measures to improve the safety of workers around the pumphouse.

The project is also consistent with the following 1995 SNRAMP's General Policies and Management Actions listed under Vegetation, Wildlife, and Water Resources: 1) vegetation, by promoting indigenous plant species around the new pond, enhancing riparian areas in the connecting channel and HSP and preserving habitat which supports wildlife; 2) wildlife, by consulting with agencies such as the USFWS, USACE, and CDFW on habitat enhancement for Frogs and Snakes; and 3) water resources, by maintaining and improving the water quality of the connecting channel and HSP and protecting this riparian zone from sedimentation. As such, this project is consistent with the 1995 SNRAMP.

The proposed 2006 SNRAMP is currently undergoing environmental review and has not yet been adopted by the SFRPC. Although it would be premature to make an ultimate determination regarding whether the project is consistent with the as-yet-unadopted policies of the proposed 2006 SNRAMP, no inconsistencies with the current draft were identified. Like the 1995 SNRAMP, the objectives of the proposed 2006 SNRAMP are to inventory the biological resources of the SFRPD's natural areas, to identify issues and impacts concerning habitats, biological diversity, and populations of sensitive species, to identify and prioritize restoration, management and monitoring activities, and provide guidelines for passive recreational use of the natural areas and for educational, research, and stewardship programs.<sup>26</sup> The project is consistent with the objectives of the proposed 2006 SNRAMP because the primary purpose of the project is habitat restoration and enhancement, as well as worker safety.

The Appellant does not specifically explain how the project is inconsistent with the San Francisco Bay Basin Water Control Plan. The project's consistency with the San Francisco Bay Basin (Region 2) Water Quality Control Plan is discussed on pages 18 and 19 of the FMND. The FMND found that Mitigation Measure M-BIO-2a, along with other elements of the project and its mitigation measures, would reduce the project's impacts to biological resources, including Frogs and Snakes, to less-than-significant levels. Mitigation Measure M-BIO-2a not only limits the construction period to June 1 through October 31, which is outside the primary breeding season for Frogs, to minimize the project's impact to Frogs and Snakes in accordance with the Biological Opinion, but also includes a number of measures to protect Frogs and Snakes as outlined on pages 80 through 82 of the FMND. The FMND found that the project's potential impacts to Frogs and Snakes would be reduced to a less-than-significant level with implementation of identified mitigation measures including Mitigation Measure M-BIO-2a.

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<sup>26</sup> SFRPD. *Significant Natural Resources Management Plan, February 2006, Executive Summary*, page 1. This document is available online at: <http://sfrecpark.org/parks-open-spaces/natural-areas-program/significant-natural-resource-areas-management-plan/snramp/>.

The Appellant asserts that acid sulfates may stay in the water column after the proposed sediment and vegetation removal is completed. In the event that acidification is detected to a degree harmful to special-status species, to ensure that residual acid sulfates in the water column would not adversely impact special-status species, Mitigation Measure M-BIO-2b requires monitoring of water quality for a period of six weeks after the proposed sediment and vegetation removal is completed. As such, the project's impact to biological resources and water quality remains less than significant with mitigation.

The FMND found that it would be unlikely for hypoxic conditions to occur during the proposed sediment and emergent vegetation removal because: 1) when sediment was previously removed from the connecting channel approximately 10 years ago, no effects that would normally be associated with acid sulfate soils, including acidification of waters and sediment surfaces, were identified; 2) the sediment to be removed as part of the project has only accumulated since the last removal activity, which would have removed all the sediment that accumulated before the current seawall was constructed, and therefore has accumulated without the saline conditions that allow acid sulfate soils to form; and 3) the Biological Opinion concluded that the project would not jeopardize the continued existence of Frogs or Snakes with the implementation of the Conservation Measures included in the Biological Opinion (see pages 82 through 84 of the FMND).

Nevertheless, in order to mitigate such conditions in the unlikely event that they do occur, Mitigation Measure M-BIO-2b was incorporated into the project. Mitigation Measure M-BIO-2b requires soil sampling tests prior to commencement of the proposed sediment and vegetation removal and review of the results of such soil sampling tests by regulatory agencies including the USFWS, CDFW, and any other applicable responsible agencies. If soil sampling shows that acid sulfate soils could be present and/or that there is the potential for anoxic conditions in the water column, then the mitigation measure requires SFRPD to perform a "toxic pathways analysis" to determine the appropriate remediation measures. As described on page 84 of the FMND, the toxic pathways analysis method for analyzing the potential for bioaccumulation of toxics in the environment is an approach recommended by the USEPA for determining risk to wildlife and plants. Pathways analysis is used to determine environmental conditions that would mobilize toxics and increase exposure that could have chronic or acute effects. If this analysis indicates the potential for reduction of sulfate to form hydrogen sulfate, iron sulfides, and its reduction in buffering capacity relative to acid-neutralizing capacity, or if the toxics pathways analysis indicates that their presence could potentially result in substantial stress to special-status species, the mitigation measure requires SFRPD to implement remediation measures, as approved by the USFWS and CDFW. Finally, this mitigation measure describes specific remediation measures that would be undertaken, depending on the conditions found through pre-construction testing, that would mitigate this impact to a less-than-significant level.

Thus, this mitigation measure--requiring testing, toxic pathways analysis (the methodological approach recommended by the USEPA), review and approval by federal and state regulatory agencies, and implementation of specific remediation measures, which measures are described in the mitigation measure--would ensure that the proposed sediment and vegetation removal would not result in any significant impact to Frogs or Snakes. This is not deferred mitigation within the meaning of CEQA. The mitigation measure requires that testing be conducted before construction occurs, it identifies the required methodology as recommended by the USEPA, and requires implementation of specified remediation measures if certain levels of toxicity are identified--i.e. if the analysis indicates the potential for reduction of sulfate to form hydrogen sulfate, iron sulfides, and its reduction in buffering capacity

relative to acid-neutralizing capacity, or if the analysis indicates that their presence could potentially result in substantial stress to special-status species. The mitigation measure establishes a performance standard that if the results of the sediment core tests conducted as part of the pathways analysis reveal that there has been an appreciable increase in the amount of nitrogen and related compounds in the sediment cores, all necessary measures to remediate such compounds shall be undertaken. The mitigation measure additionally requires approval of all remediation measures by the USFWS and CDFW before any work can be done and describes a list of possible remediation measures that would likely be required. Thus, this mitigation measure complies with CEQA's requirement that "[mitigation] measures may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way." CEQA Guidelines Section 15126.4(a)(1)(B).

The Appellant asserts that some of the mitigation measures derived from the Biological Opinion are not lawful because these mitigation measures cannot be enforced by the USFWS against the City, unless and until the wetland fill permit from the USACE is made effective and incorporates the terms of the Biological Opinion into non-discretionary permit terms. This assertion is not correct. First, this project was approved at a public hearing by the SFRPC on January 23, 2014 and the SFRPC adopted the mitigation monitoring and reporting program (MMRP) for the project as a condition of project approval. The MMRP includes all of the mitigation measures described in the FMND and allocates responsibility for implementing, monitoring, and reporting on compliance with all the mitigation measures amongst the appropriate local, state, and federal entities. SFRPD and the Department, as City Departments, are themselves appropriate regulatory bodies under CEQA to ensure that the MMRP is fully implemented.

Second, if the project is ultimately approved by all federal, state, and local approving entities, the mitigation measures will be adopted as conditions of approval on the project by each of these bodies and will be fully enforceable by the appropriate regulatory entities.<sup>27</sup> As of this date, SFRPD has received a wetland fill permit (Section 404) from the USACE, which was made contingent upon the water quality certification approval (Section 401) from the SFBRWQCB. The SFBRWQCB is not able to approve the water quality certification until this appeal is resolved and, thus, CEQA is complete.

As discussed on page 7 of the FMND, to facilitate the proposed sediment and emergent vegetation removal and to reduce potential impacts to Frogs, suction hydraulic equipment may be used in consultation with the USFWS to minimize the disturbance of sediments in the water. While generally resulting in a higher percentage of water in the excavated materials than a clamshell dredge, the use of suction hydraulic equipment generally results in less turbidity and overall disturbance at the point of use than a clamshell. In sensitive environments, the use of suction hydraulic equipment is often preferred provided that the excavated materials and residual water are properly handled so they do not result in a significant impact on the environment. If suction hydraulic equipment is to be used as part of this project, the slurry that is created by suction hydraulic equipment would go into a settling area until the sediments settle out and the decant water can be tested for its acidity. If the result of such testing indicates that the

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<sup>27</sup> The FMND (on pages 18 and 96) states that discharges from Sharp Park's pumphouse are authorized under an existing NPDES permit. This is incorrect and has been corrected where it occurred. No permit is required for discharges from Sharp Park's pumphouse into the Pacific Ocean because both the LS wetlands complex and the Pacific Ocean are considered "waters of the United States" under the federal Clean Water Act. As such, as long as nothing is added to the water, no permit is required to discharge from one water of the U.S. to another. Should any permit be required by the SFBRWQCB for the proposed project, SFRPD will seek such a permit and comply with any conditions that may be attached to the permit.



water is pH neutral, it would either be released into HSP or pumped into the Pacific Ocean.<sup>28,29</sup> Should any permit be required by the SFBRWQCB for the discharge of the water into the Pacific Ocean as part of this project, SFRPD will seek such a permit and comply with any conditions that may be attached to the permit.

In light of the above, the use of suction hydraulic equipment as part of the proposed sediment and vegetation removal would not result in any significant impact on the environment.

The project's consistency with the CCA is addressed on pages 19 and 22 of the FMND. The CCC has the authority to designate an Environmentally Sensitive Area under the CCA. The Appellant has not presented any evidence that the CCC has designated any portion of the project site or Sharp Park as an Environmentally Sensitive Area as defined in CCA Section 30107.5. Even if a portion of the project site were designated by the CCC as an environmentally sensitive area, the Appellant has not demonstrated how the project is inconsistent with the CCA.

The FMND acknowledges that a portion of Sharp Park near the LS wetland complex is in the Coastal Zone under CCC jurisdiction (see page 22 of the FMND). The majority of the project activities would take place entirely within the CCC jurisdiction and require a coastal development permit from the CCC. SFRPD is seeking a coastal development permit from the CCC and will comply with any conditions that may be attached to the permit. This will ensure that the project is consistent with the CCA.

The primary objective of the CCA is the protection of wetlands and other environmentally sensitive habitats, water quality, public access and recreation, low cost visitor facilities, and the scenic and visual qualities of coastal areas and the control of coastal erosion and other hazards. The primary purposes of the project are to: 1) restore habitat in several locations within the wetland complex for Frogs and Snakes; and 2) improve the safety conditions of workers and maintaining the pumps by enhancing access to the pump intake structure.

As discussed on page 22 of the FMND, the project would not restrict access to or within Sharp Park and would not affect low cost visitor facilities. As discussed in Section E.2, Aesthetics, none of the project elements would result in a significant impact to the visual quality of the nearby coastal areas. The project would involve improvements to an existing pumphouse and habitat for Frogs and Snakes. The project would be subject to various mitigation measures to protect wetlands and other environmentally sensitive habits and water quality and minimize soil erosion and other hazards that could result from the project (see Sections E.13, Biological Resources, E.14, Geology and Soils, E.15, Hydrology and Water Quality, and E.16, Hazards and Hazardous Materials in the FMND, for more information). In light of the above, the project would be consistent with the CCA.

The Appellant claims that the Sanchez Creek Watershed is a Priority 2 Watershed for Frog recovery. However, the Appellant has presented no documentation prepared by the USFWS or other regulatory

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<sup>28</sup> David Munro, Tetra Tech. *Email to Stacy Bradley, SFRPD, Feedback on MND Appeal*, November 26, 2013. This email is available for review as part of Case File No. 2012.1427E at the San Francisco Planning Department, 1650 Mission Street, Suite 400, San Francisco, California 94103.

<sup>29</sup> David Munro, Tetra Tech. *Email to Stacy Bradley, SFRPD, Revised Text*, November 26, 2013. This email is available for review as part of Case File No. 2012.1427E at the San Francisco Planning Department, 1650 Mission Street, Suite 400, San Francisco, California 94103.

agency supporting the claim. Furthermore, the Appellant has not demonstrated how the project is inconsistent with the Frog recovery plan.

The FMND acknowledges that a recovery plan was published for Frogs on September 12, 2002 (see page 74 of the FMND). The recovery plan approved by the USFWS notes that the objective of the recovery plan is to delist Frogs. The recovery plan further states that the strategy for recovery of Frogs will involve: 1) protecting existing populations by reducing threats; 2) restoring and creating habitat that will be protected and managed in perpetuity; 3) surveying and monitoring populations and conducting research on the biology of and threats to the subspecies; and 4) reestablishing populations of the subspecies within its historic range.

One of the primary purposes of the project is to restore and enhance habitat within the wetland complex for Frogs (see page 6 of the FMND). In addition, the Biological Opinion prepared by the USFWS found that the project would not jeopardize the continued existence of Frogs or Snakes (see page 38 of the Biological Opinion). As such, the project is consistent with the Frog recovery plan.

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## GOLF COURSE REDEVELOPMENT PLAN

**Issue 7: The Appellant asserts that a golf course redevelopment project is interrelated with this project and should be analyzed as part of this project's environmental review.**

**Response 7: The only reasonably foreseeable future project in Sharp Park that would involve modification of the layout of the Sharp Park Golf Course is described in the proposed 2006 SNRAMP, which is a separate project from the project and which is adequately analyzed in the FMND in the cumulative context.**

It is not clear what the Appellant is referring to as the "Golf Course Redevelopment Project," or the "Golf Course Construction Plan." SFRPD and Planning Department staff are not aware of any projects referred to as the "Golf Course Redevelopment Project," or the "Golf Course Construction Plan."

There is a report titled "Sharp Park Conceptual Restoration Alternative Report," dated November 2009, and prepared by Tetra Tech, Swaim Biological, and Nickels Golf Group ("Sharp Park Restoration Report") for SFRPD. This report lays out multiple options for the restoration of the LS wetland complex at Sharp Park, but makes no recommendations or commitment to any one of the options. On December 17, 2009, the SFRPC passed resolution 0912-018, which recommends proceeding with the LS Restoration and maintaining the 18-hole golf course. Therefore, some project elements that originate from the Sharp Park Restoration Report have been incorporated into the proposed 2006 SNRAMP and are being analyzed in the SNRAMP DEIR. These project elements are discussed on pages 97 through 104 of the DEIR and have been considered here in the FMND in the cumulative impacts analysis. The project does not favor or preclude any of the options in the Sharp Park Restoration Report. As of this writing there are no elements in the Sharp Park Restoration Report, except for those that have been incorporated into the proposed 2006 SNRAMP, that are considered to be a reasonably foreseeable future project under CEQA.

The only reasonably foreseeable future project in Sharp Park that would involve modification of the layout of the Sharp Park Golf Course is described in the proposed 2006 SNRAMP (see pages 97 through 104 of the SNRAMP DEIR ). The proposed 2006 SNRAMP, including modifications to the layout of the Sharp Park Golf Course that would occur as a result of implementation of the SNRAMP, is a separate project from the project and is currently undergoing environmental review. The FMND addressed the proposed 2006 SNRAMP and all other project elements analyzed in the DEIR as a reasonably foreseeable future project at Sharp Park in the cumulative impact section under each of the environmental topics addressed in the FMND and found that the project would not make a considerable contribution to any cumulative impacts.

The Appellant has presented no evidence that the project, in combination with the 2006 SNRAMP or any other cumulative project, could result in significant impacts on the environment.

In light of the above, there are no other cumulative projects, than those addressed in the FMND, that are required to be analyzed as part of the environmental review for the project.

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## CUMULATIVE IMPACTS

**Issue 8: The Appellant asserts that the FMND fails to address the cumulative impacts – or any impacts at all - on Snakes.**

**Response 8: The FMND fully addressed the project’s potential impacts to Snakes, both individually and cumulatively.**

The Appellant implies that impacts to Snakes resulting from the ongoing operations of the existing golf course are required to be analyzed as part of the environment review for this project. The ongoing operations of the golf course are considered to be a baseline condition for the purpose of environmental review for this project, similar to the ongoing operations of the existing pumps at HSP (see Response to Concern 2). No changes at all are proposed to the operations of the golf course as part of the project. As such, no impact analysis is required concerning the ongoing operations of the golf course because that is part of the baseline conditions of the project site.

The FMND addressed the project’s potential impacts to Snakes under Impact BIO-2 (see pages 79 and 80 of the FMND). The FMND also addressed the project’s potential cumulative impacts to special-status species including Snakes under Impact C-BIO (see 97 of the FMND). The FMND found that the project, with identified mitigation would not result in any significant impacts to special-status species including Snakes.

The impact analysis concerning Snakes in the FMND is based on the findings in the Biological Opinion (see pages 30 and 31 of the Biological Opinion) and summarized below. The effects of the construction activities to wetland and upland habitat and to individual Snakes would be throughout the 0.624-acre construction footprint. Injury, exposure disorientation and disruption of normal behaviors would likely result from: 1) excavation of sediments and vegetation as part of the golf cart path realignments; 2) the

removal and/or disturbance of vegetation, sediments, and cover sites including animal burrows, boulders or rocks, organic debris such as downed trees or logs in HSP and the connecting channel; 3) construction of a maintenance walkway around the pumphouse at HSP; and 4) soil disturbance and fill associated with replacement of the wooden retaining wall with a concrete retaining wall at HSP. Construction noise, vibration, and increased human activity during the construction period may interfere with normal behaviors such as feeding, sheltering, movement between refuge and foraging grounds, and other essential behaviors. This can result in avoidance of areas that have suitable habitat and can cause disturbance to the species. Direct effects could include injury or mortality from being crushed by earth moving equipment, construction debris, and worker foot traffic. Work activities, including noise and vibration, may result in adverse effects to Snakes by causing them to leave the work area. This disturbance may increase the potential for predation and desiccation.

The Biological Opinion concluded that the project would not be likely to jeopardize the continued existence of Snakes with implementation of conservation measures included in the Biological Opinion. These conservation measures, along with the applicable Terms and Conditions included in the Incidental Take Statement, would minimize the likelihood of potential for take of individual Snakes and are included in Mitigation Measure M-BIO-2a.

The FMND also addressed potential impacts to Snakes resulting from the potential disturbance of acid sulfate soils in the water during the proposed sediment and vegetation removal in HSP and the connecting channel and culverts that link HSP and LS (see pages 82 through 84 of the FMND). Based on the literature review and empirical evidence concerning similar sediment removal that was conducted more than 10 years ago in the connecting channel between HSP and LS, the FMND found that the proposed sediment and vegetation removal would not likely result in substantial disturbance of acid sulfate soils in the water column, resulting in a significant impact to special-status species. Nevertheless, as a conservative measure, Mitigation Measure M-BIO-2b was included.

The FMND found that implementation of Mitigation Measures M-BIO-2a and M-BIO-2b would reduce the project's impact to Snakes to a less-than-significant level (see page 88 of the FMND).

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## ALTERNATIVES

**Issue 9: The Appellant asserts that the City must consider alternatives to the project and there are other alternatives that would provide greater conservation and public benefits.**

**Response 9: A lead agency is not required by CEQA to consider project alternatives when there are no significant impacts identified resulting from the project.**

A lead agency is not required by CEQA to consider project alternatives when there are no significant impacts identified resulting from the project, regardless of the level of public controversy. As discussed in the FMND prepared for the project, with implementation of the identified mitigation measures, the project would not result in any significant impacts. Based on this, consideration of alternatives to the project is not required under CEQA.

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## COVER HABITAT

**Issue 10: The Appellant asserts that the project will destroy cover habitat for special-status species.**

**Response 10: The project would not result in a significant loss of habitat for special-status species.**

The Biological Opinion issued by the USFWS found that the project would not jeopardize the continued existence of Frogs or Snakes (see page 38 of the Biological Opinion). The FMND addressed both temporary and cumulative impacts to special-status species including Frogs and Snakes resulting from the project under Impact BIO-2 and found that the project would not result in any significant impacts to special-special species, including Frogs and Snakes.

As discussed on page 79 of the FMND, injury, exposure disorientation and disruption of normal behaviors would likely result from the removal and/or disturbance of vegetation, sediments, and cover sites including animal burrows, boulders or rocks, organic debris such as downed trees or logs in HSP and the connecting channel. To maintain breeding habitat for CRLF, cover habitat in the freshwater marsh would be reduced as part of this project. However, the amount of cover habitat affected by the project is not substantial compared to the total wetland and upland cover habitat present in the LS wetland complex. Ample undisturbed cover habitat for CRLF would remain within the freshwater wetlands and the uplands adjacent to the wetlands. This level of conversion of the cover habit for Frogs and Snakes would not result in a significant impact to Frogs or Snakes. The Appellant appears to assert that even this insubstantial level of conversion of freshwater marsh present in the LS wetland complex to open water would result in a significant impact to frogs or snakes, without presenting any evidence supporting the assertion. Thus, the Appellant fails to make a fair argument based on substantial evidence that the project would result in a significant impact.

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## ENTRAINMENT OF SPECIES

**Issue 11: The Appellant asserts that special-status species could become entrained by the screens proposed to be installed at the pump intake.**

**Response 11: No changes are proposed to the ongoing pumping protocols as part of the project. The existing or proposed screen at the pump intake would not result in a significant impact to special-status species.**

The Appellant assumes that the project involves new or modified pumping protocols by the “proposed pumping protocols.” This assumption is incorrect. No changes are proposed to the ongoing pumping protocols as part of the project.

It is not clear whether the Appellant's concerns are related to the existing screen at the pump intake or to the proposed secondary metal debris screen. If the Appellant's concerns are related to the existing screen at the pump intake, the existing screen's potential impacts to special-status species are not required to be analyzed as part of the environmental review for this project because the existing screen is considered to be a baseline condition for the purpose of the environmental review of the project. No changes are proposed to the existing screen, therefore, no impact analysis is required concerning the existing screen because a lead agency is not required to analyze the baseline conditions of a project.

If the Appellant's concerns are related to the proposed metal debris screen, the Appellant has failed to present substantial evidence that the proposed installation of the metal debris screen would result in a significant impact to special-status species. As discussed on page 7 of the FMND, a secondary metal debris screen would be installed at the pump intake structure in consultation with the USFWS. This screen would be metal mesh with holes measuring approximately one inch by one half inch (see the Construction Action section on page 6 of the Biological Opinion).

The Biological Opinion discusses the possibility of Frog mortality through entrainment (individuals being pulled along with water and trapped against screening or pulled into the pumps) of egg masses and individual larvae at the pumps (see pages 33 and 34 in the Biological Opinion). The Biological Opinion further discusses the restoration actions and conservation measures that SFRPD is committing to in order to reduce these effects and protect the species. The Biological Opinion concludes that this project, including the conservation measures, the uplands restoration work, and the continued operations and maintenance of the golf course, is not likely to jeopardize the continued existence of Frogs or Snakes. The conservation measures set forth in the Biological Opinion and incorporated into the project description and mitigation measures would reduce the adverse effects of the proposed construction and operations and maintenance activities on the survival and recovery of Frogs and Snakes.

The FMND includes a description of the proposed metal debris screen (see page 7 of the FMND) and an impact analysis concerning the proposed metal debris screen (see page 88 of the FMND). The project's impact to biological resources would be less than significant with mitigation.

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## **CONCLUSION**

The Department conducted an in-depth and thorough analysis of the project at Sharp Park in the City of Pacifica in San Mateo County, pursuant to CEQA Guidelines. The Appellant has not submitted any evidence that the project would result in any significant impacts under CEQA that cannot be reduced to a less-than-significant level. For the reasons stated in this Appeal Response and the FMND, the Department finds that the FMND fully complies with the requirements of CEQA and that the FMND was appropriately prepared.