

DATE: December 14, 2021

CATEGORY: Consent

DEPT.: Public Works

TITLE: **South Bay Salt Pond Restoration,
Project 18-53 – Agreements with U.S.
Fish and Wildlife Service**

RECOMMENDATION

Authorize the City Manager or designee to execute a Memorandum of Agreement and a Habitat Easement Deed and Habitat Maintenance Agreement with the U.S. Fish and Wildlife Service to design, construct, and maintain the portions of the project components on City property for the South Bay Salt Pond Restoration Project Phase II Alviso Pond complex at Pond A2W.

BACKGROUND

San Francisco Bay has lost an estimated 85% of its historic wetlands to fill or alteration. This dramatic decline in tidal marsh habitats has caused populations of marsh-dependent fish and wildlife to dwindle. It has also decreased water quality and increased local flood risks. The South Bay Salt Pond Restoration Project (SBSP Project) is the largest tidal wetland restoration project on the West Coast and seeks to restore 15,100 acres of industrial salt ponds to tidal wetlands and other habitats.

The goals of the project are to:

- Restore and enhance a mix of wetland habitats;
- Provide wildlife-oriented public access and recreation; and
- Provide for flood management in the South Bay.

In 2003, 15,100 acres of former salt ponds were acquired by the United States from Cargill Incorporated (Cargill) with funding from Federal and State resource agencies and private foundations. This acquisition is part of a larger campaign by the State and Federal governments to restore 40,000 acres of lost tidal wetlands to San Francisco Bay.

The lands acquired from Cargill are divided into three pond complexes. The Ravenswood Pond complex in San Mateo County and the Alviso Pond complex, with ponds in Santa Clara and Alameda Counties, are managed by the United States Fish and Wildlife Service (USFWS). The Eden Landing Pond Complex in Alameda County is owned and managed by the California Department of Fish and Wildlife (CDFW). Two of the ponds in the Alviso Pond complex, Ponds A1 and A2W, border the City's Shoreline at Mountain View Regional Park (Shoreline Regional Park).

Shortly after the property was acquired, CDFW, USFWS, California State Coastal Conservancy (CSCC), and other partnering agencies formed a Project Management Team for the SBSP Project and launched a four-year public process to develop a restoration plan for the ponds. In 2007, the USFWS and the CDFW published an Environmental Impact Statement/Environmental Impact Report (EIS/EIR) that was both programmatic, covering a 50-year period, and project-level, addressing the specific components and implementation of a Phase 1 project. The final restoration plan was adopted in 2008, with a target to restore 90% of the USFWS' ponds to refuge tidal wetlands and convert 10% to managed ponds. Figure 1 shows the SBSP restoration project area boundary.

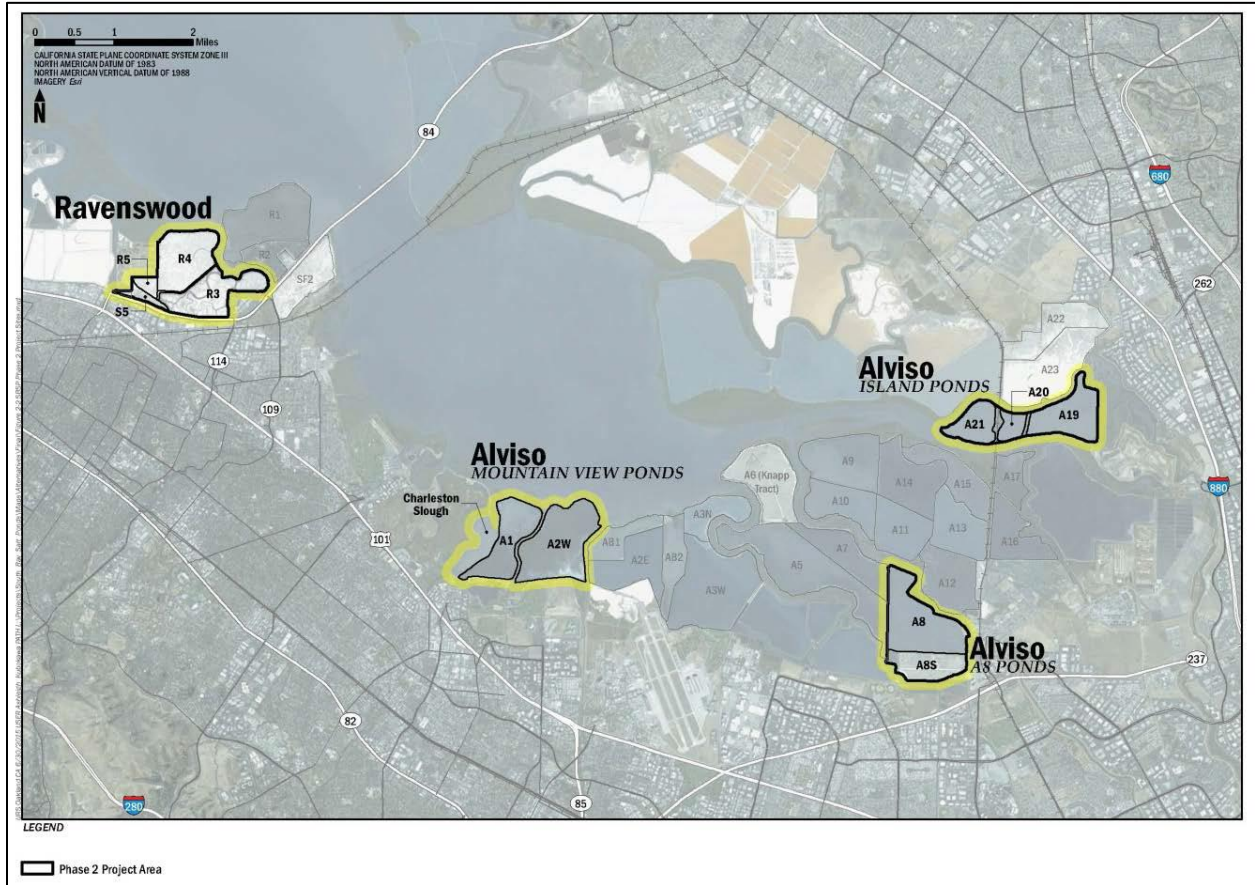


Figure 2: South Bay Salt Pond Restoration Project, Phase 2 Area Boundary
(Source: South Bay Salt Pond Restoration Project – Phase 2, EIS/EIR)

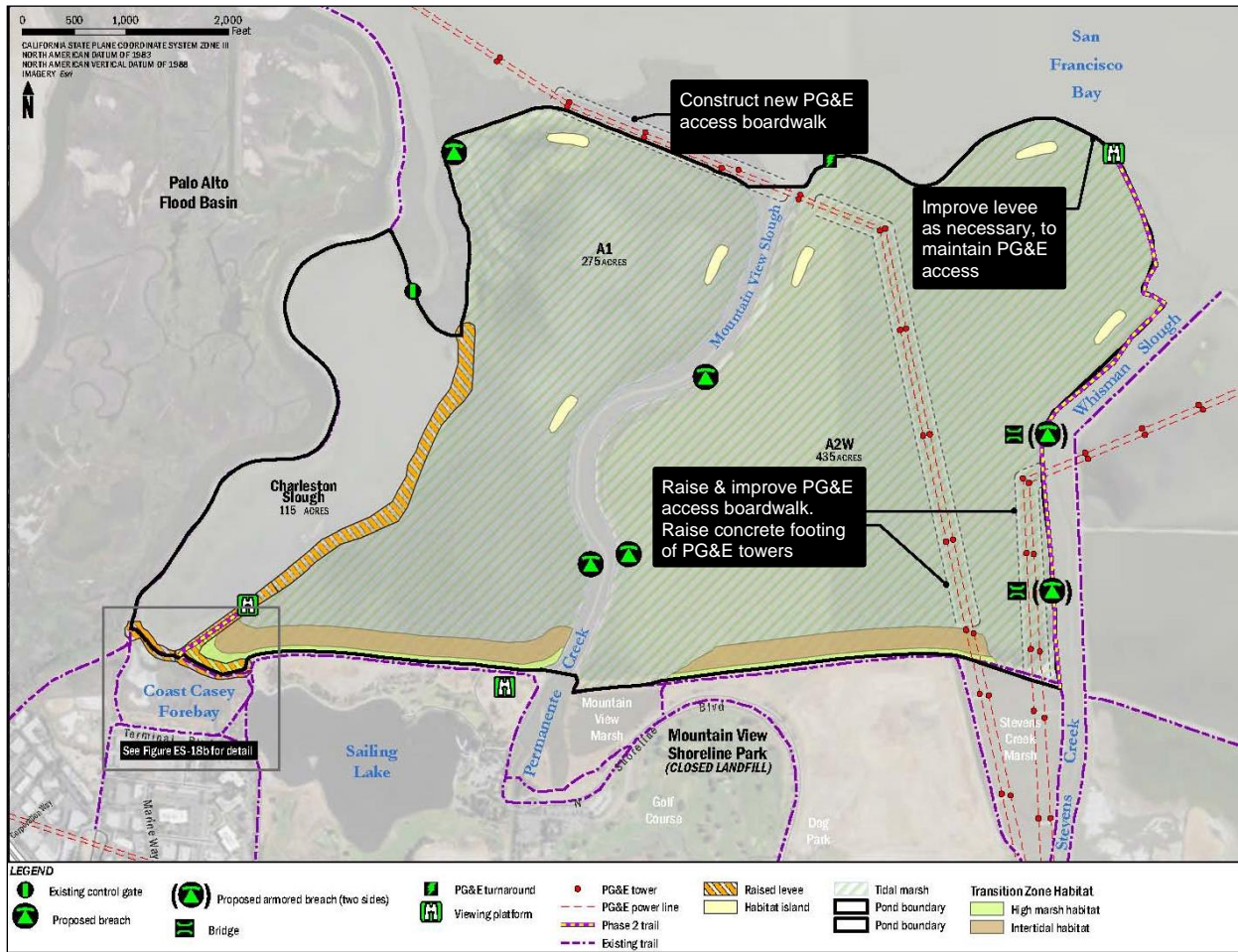


Figure 3: South Bay Salt Pond Restoration Project Phase 2, Mountain View Ponds
 (Source: South Bay Salt Pond Restoration Project –Phase 2, EIS/EIR)

Project Partners

Listed below are the project partners who are directly involved in the SBSP Project Phase 2 for the Mountain View ponds:

- USFWS administers the land on behalf of the United States of America, the land owner of Ponds A1 and A2W. USFWS will be responsible for the long-term monitoring, operation, and maintenance of the restoration project.
- CSCC is the program manager and is responsible for the funding of the project. CSCC leads the management of project planning, permitting, design, and construction, and provides grant funding to the project.

- Ducks Unlimited (DU) is a nonprofit organization receiving grant funding from CSCC and providing design, permitting, bidding, and construction management services for the project. DU has also applied and obtained separate grants on their own to support this project. DU will manage the contractor who will construct this project.
- The City of Mountain View is a local partner to the SBSB Project. As discussed in this report, the project provides many benefits to the City, including preparation for sea level rise along the shoreline and enhancing wildlife environment with the creation of the habitat transition zone. The project construction will have both short-term and long-term impacts to the City, especially to the level of service, habitats, and City infrastructure at Shoreline Regional Park. These issues are being addressed through project agreements and the excavation permit process.

Current Status

The current status of the City's efforts to support the SBSB Project is as follows:

- Soil Import Permit and License – The City issued an excavation permit and license agreement in July 2021 to DU for soil import to Pond A2W for the habitat transition zone construction. Typically, this permit and license would have been issued after the project itself is fully approved, including completed design plans, agreements, and regulatory permits. However, the City issued the excavation permit and license in advance of these project milestones to assist in keeping the project moving forward.
- Design Plans – CSCC provided the 60% Basis of Design package to the City in 2020 and the 100% draft plan in November 2021. To assist the CSCC in completing the 100% design plans for Pond A2W, City staff proposed, pending City Council approval, to design and construct the erosion protection along the City shoreline levee at Pond A2W to meet sea level rise and improve the Bay Trail segment across the Mitigation Channel to address the immediate project impacts to the City's infrastructure. CSCC plans to cost-share some of these improvement costs and execute a cost-share agreement with the City.
- Project Agreements – Staff has been working collaboratively with CSCC and USFWS to prepare agreements for the full Pond A2W project. The terms of a Memorandum of Agreement (MOA) and a Habitat Easement Deed and Habitat Maintenance Agreement (Habitat Agreement) are presented in this Council report for City Council consideration and approval. The MOA stipulates the individual

project responsibilities for the City and the USFWS. The Habitat Agreement allows the USFWS to construct part of the habitat transition zone on City property.

ANALYSIS

Project Description

The portion of the SBSP Project at Mountain View Ponds adjacent to the City has two major components: restoration of Pond A1 and Pond A2W and City shoreline protection. The project will start with Pond A2W construction, to be followed by Pond A1. This Council report and the terms of the project agreements address Pond A2W. The SBSP Project team and City staff are continuing to finalize the design plans and agreements for Pond A1 and will bring them to Council for review and approval at a future time.

Pond A2W Restoration

The SBSP Project will restore Pond A2W adjacent to Shoreline Regional Park from open-water ponds enclosed by levees to tidal marsh by allowing silt to settle in the pond so marsh plants can establish. To allow tidal flow into the ponds, the levees adjacent to Permanente Creek and Stevens Creek will be breached. The SBSP Project at Pond A2W consists of the following project components:

- Habitat Transition Zone – Habitat complexity will be increased by adding islands and a “habitat transition zone” from the open water to the levee. The habitat transition zone is a gradual slope of soil fill that will be placed along the southern edge of the pond that will accelerate the establishment of vegetated tidal marsh, provide a range of habitats at the fringe of the ponds, and reduce coastal flood risk by dampening the waves against the City’s shoreline. The habitat transition zone will be built along the City shoreline. It will be built above the City’s existing landfill levee starting at or below elevation 0’ up to elevation 9’ based on the North American Vertical Datum (NAVD). The final elevation of the habitat transition zone will be lower than the top of the City levee. The habitat transition zone will not be extended along the frontage of the Mountain View Tidal Marsh and Stevens Creek Tidal Marsh to provide openings for the two tidal marshes to connect to Pond A2W in the future.
- Levee Breach – Several locations along the Pond A2W levees will be breached to provide connections to the external sloughs and create tidal conditions within the pond to support habitat restoration. The breach locations were selected based on the locations of historical sloughs in Pond A2W.

- Nesting Island Habitat – A temporary nesting island habitat will be constructed to provide nesting grounds for the western snowy plover, California least tern, or other bird species of interest to support the habitat restoration. Depending on the availability of fill material, three to five nesting islands are planned within Pond A2W. The nesting islands will be constructed of bay mud or material imported from off-site upland excavation projects. The islands are designed with relatively steep side slopes and are expected to erode or slump over time to become high spots in the restored marsh. They are not designed to be permanent features.
- Recreational Improvements – The project includes improvement to public access areas that provide visitors with opportunities to view habitats, wildlife, and the restoration project. The project area currently contains multiple public trails. Existing trails will be rehabilitated. Approximately 6,400' of new trail will be constructed along the top of the eastern levee at Pond A2W while maintaining setback buffers to sensitive habitat areas, including the bird nesting islands and habitat transition zone. Two new bridges will be built that span the northeast and southeast levee breaches. These bridges will also provide access after breaching to the PG&E facilities located on the Pond A2W north levee.

A new public access area will be constructed at the terminus of the Pond A2W east levee trail. The viewing area would be roughly 1,900 square feet and include two benches and two interpretive signs.

- PG&E Tower Adjustments – PG&E currently owns and operates high-voltage electrical transmission lines that cross over Pond A2W and run just north of the Pond A1 north levee. The lines are supported by steel towers on concrete foundations. There are 16 towers in Pond A2W. Currently, the concrete foundations are high enough for the ponded water level in Pond A2W; however, with the introduction of tidal flows, water will rise higher than the footings. The concrete foundations will be raised by PG&E to protect the steel towers from saltwater.

City Shoreline Protection at Pond A2W (City Property)

The SBSP Project provides significant tidal marsh restoration and coastal protection benefits. However, the project also introduces immediate impacts to the City shoreline due to the increased tidal range and water level in Pond A2W. In order to support the SBSP project and move forward with Pond A2W construction, staff recommends that the City design and construct the following project components on City property and has

included this in the recommended terms for the MOA. Figure 4 shows the locations of the following project components:

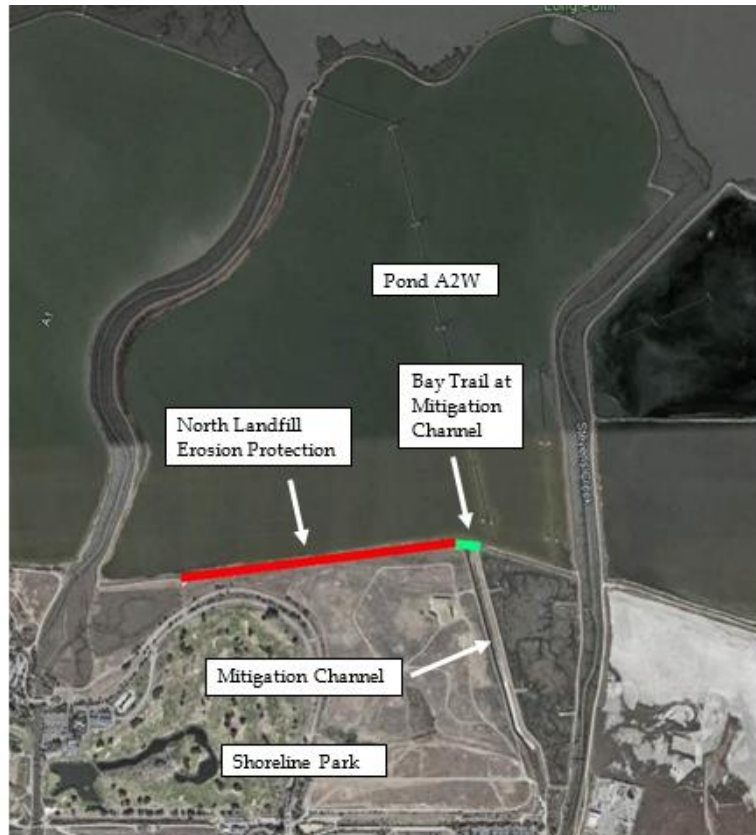


Figure 4: City Shoreline Protection at Pond A2W

- North Landfill Erosion Protection— The City’s sea level rise Capital Improvement Program (CIP) identified a future adaptation project to improve the erosion protection along the City’s landfill levees at the shoreline. The SBSP Project will restore natural tidal flow in Pond A2W. While it provides a much-needed hydrologic connection between the pond and the Bay, it will also increase tidal range and water level in Pond A2W.

This has the potential to increase the City’s landfill levee exposure to coastal erosion, especially under high tide and storm events above the habitat transition zone. To support the SBSP Project and to manage the potential risk exposure to coastal erosion at the City levee, City staff recommends that the City evaluate, design, and construct the coastal erosion protection along the shoreline levee above the habitat transition zone to meet the projected sea level rise elevation. Figure 5 shows a

potential design concept of either placing rock revetment or articulated concrete blocks to provide the erosion protection to the landfill levee.

Landfill levee slope protection concept rock revetment or articulated concrete blocks

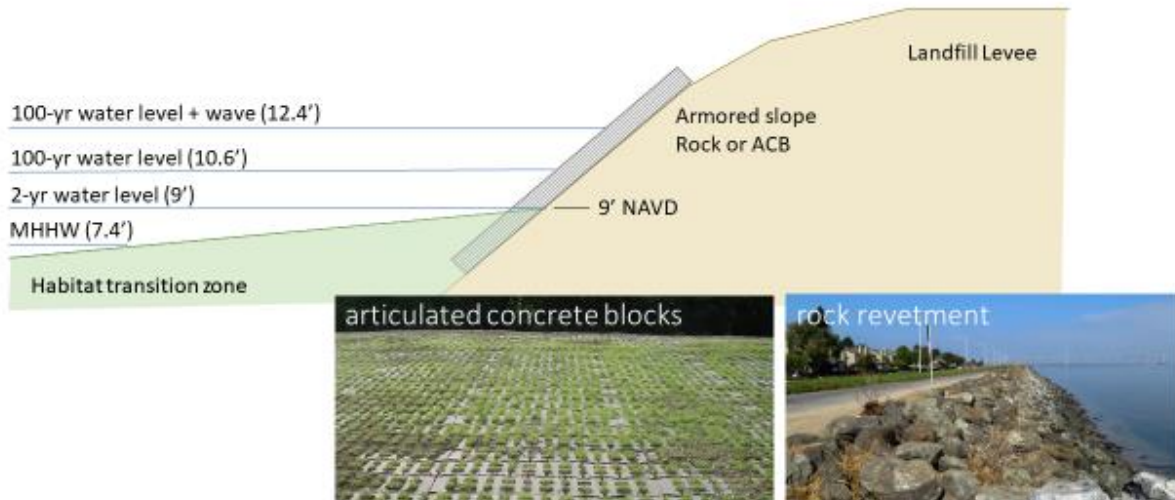


Figure 5: North Landfill Erosion Protection Design Concept

- Bay Trail at Mitigation Channel – The City owns the Mitigation Channel along the eastern limit of Shoreline Regional Park and the Bay Trail along the northern limit of Shoreline Regional Park. This Mitigation Channel and a segment of the Bay Trail along the northern limit of the Mitigation Channel will be inundated from full tidal flow as a result of the SBSP Project. To mitigate the SBSP Project impacts, the City will need to raise the Bay Trail and replace the Mitigation Channel Overflow located on City property. In addition, regrading a portion of Pond A2W located on USFWS property north of the Mitigation Channel Overflow may be required to prevent flow blockage. Replacing the Mitigation Channel Overflow will prevent backwater from Pond A2W flowing into the City’s Mitigation Channel and maintain the City’s current ability to occasionally discharge water from the Mitigation Channel Overflow to Pond A2W. Figure 6 shows a potential design concept developed by the project team.

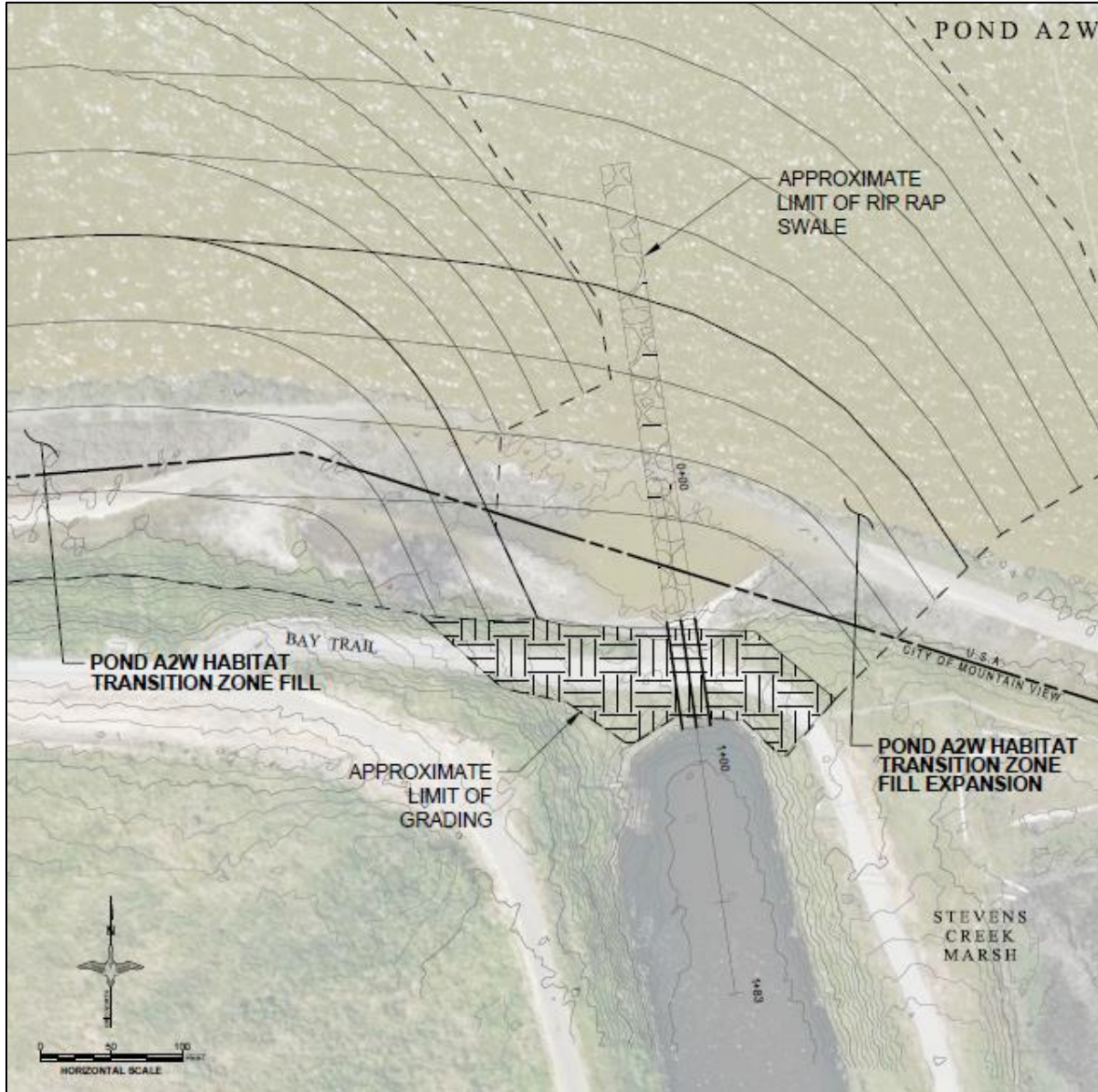


Figure 6: Bay Trail at Mitigation Channel Design Concept (Ducks Unlimited 2021)

Project Agreements

To coordinate the construction of the South Bay Salt Pond Restoration Project Phase II Alviso Pond complex at Pond A2W and a portion of the habitat transition zone on City property, staff has been working with the SBSP Project team to establish an MOA and Habitat Agreement.

Memorandum of Agreement

The MOA will be an agreement between the City and the USFWS with USFWS representing all USFWS partners involved with this project, including USFWS contractors or agents acting on behalf of USFWS, including CSCC and DU. The MOA elaborates on the roles and responsibilities between the two parties. The key MOA terms are presented below.

USFWS will:

- Submit the bid design package to the City for review. USFWS will request City approval for any substantial changes that may be needed during construction on City property or may have impacts to the City.
- Solicit construction bids from qualified bidders, execute construction contractor contracts, and provide construction management. The construction schedule will consider the burrowing owls' nesting seasons and activities, Shoreline Regional Park and Shoreline Amphitheatre usage, and efficient construction and soil hauling sequence.
- Comply with all permit conditions for the Pond A2W construction, including habitat protection within and around the vicinity of Shoreline Regional Park.
- Provide a construction schedule and import material testing results for approval by the City.
- Be responsible for the construction of the Pond A2W public access and recreational facilities on City property and maintain them until the construction is completed.
- Work collaboratively with the City to address stormwater management needs at the Mitigation Channel. The City will obtain environmental permits from the relevant regulatory agencies with support from USFWS.
- Agree, provided the City has obtained environmental permits from the relevant regulatory agencies, to receive, review, and process Special Use Permit, Right-of-Way Permit, and/or other USFWS permit applications from the City for construction of a future Mitigation Channel outfall or water management feature and occasional stormwater discharges of stormwater overflow onto National Wildlife Refuge property. USFWS agrees these permits will not be unreasonably denied or delayed.

- Not construct the habitat transition zone in such a way that results in a blockage or impairment of operation of a future Mitigation Channel outflow or other City-led project to address stormwater management needs at the northeast limit of Shoreline Regional Park.
- Not intentionally breach Pond A2W's outboard levees to restore full tidal flows into Pond A2W until the landfill levee erosion protection and Bay Trail improvements are constructed and the earlier of either: (1) December 1, 2025; or (2) the City has completed the construction of a new Mitigation Channel outflow or other project to address stormwater management needs of the Mitigation Channel.
- Restore any damages to City property, including roadways, trails, and infrastructure due to Pond A2W construction activities.

The City will:

- Review, approve, and execute an excavation permit and license agreement for the Pond A2W construction.
- Provide engineering study, design, and construction of Bay Trail reconstruction, mitigation channel overflow, and erosion protection along the City Landfill Levee for the portions of work on City property as a single project to support the SBSP Project.
- Retain ownership and management responsibilities of the public access and recreational facilities that are constructed on City property by USFWS.
- Provide field habitat maintenance activities in Shoreline Regional Park to minimize burrowing owl activities and habitat nesting at the vicinity of the construction and access areas.

Habitat Easement Deed and Habitat Maintenance Agreement

Under the terms of the Habitat Agreement, the City will grant a permanent easement to the United States. The purposes of the Habitat Agreement are to preserve, protect, identify, monitor, enhance, and restore in perpetuity the habitat values and to allow USFWS to access and manage the habitat transition zone. USFWS will own the habitat

transition zone constructed on City property as a part of the project. The terms of the Habitat Agreement are as follows:

- USFWS will manage and maintain, inspect, and monitor the habitat transition zone and will require a City excavation permit to modify and perform maintenance activities for the habitat transition zone. USFWS will provide services for repair of damages to City infrastructure caused by the habitat transition zone and USFWS actions when maintaining the habitat transition zone.
- The City will cooperate in the maintenance and protection of the Habitat Easement for the protection and management of fish and wildlife resources. The City will not engage in any activity or use of the Easement Lands that is inconsistent with the habitat purposes.
- The City retains the right to enter onto and perform minor earthwork or related actions on the easement lands to maintain and protect City infrastructure.

Next Steps

With Council approval to execute the MOA and Habitat Agreement based on the terms described above, staff will proceed to finalize and execute the agreements. Full project construction at Pond A2W is anticipated to start in 2022.

FISCAL IMPACT

Per the terms of the MOA, the City will be taking responsibility for the engineering study, design and construction of Bay Trail reconstruction, mitigation channel overflow, and erosion protection along the City's landfill levee. The planning level estimated cost of these projects is \$3 million. The CSCC will consider cost-sharing a portion of these costs, pending funding availability. If Council approves the recommended action, staff will work with CSCC to develop cost estimates and negotiate a cost sharing agreement, which would be brought to Council for approval when it is ready. The City's share of the costs would be funded from South Bay Salt Pond Restoration Project, Project 18-53, which has a \$4,957,000 budget from the Shoreline Regional Park Community Fund.

CONCLUSION

The SBSP project is a major tidal marsh restoration project that includes Pond A1 and Pond A2W along the City's shoreline. The work will provide significant ecological benefits to the region and coastal flood protection for the City under the existing and the

projected future sea level rise conditions. Staff seeks Council’s approval to authorize the City Manager or designee to execute an MOA and Habitat Agreement with the USFWS to design, construct, and maintain the portions of the project components on City property for the SBSP Project at Pond A2W.

ALTERNATIVES

1. Modify agreement terms.
2. Provide other direction.

PUBLIC NOTICING – Agenda posting.

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