



DATE: March 23, 2021

CATEGORY: Consent

DEPT.: Public Works

TITLE: **Sailing Lake Access Road Improvement, Construction, Project 21-53 – Adopt Mitigated Negative Declaration and Authorize Mitigation Bank Credit Agreement**

RECOMMENDATION

1. Adopt the Mitigated Negative Declaration of environmental impact for the Sailing Lake Access Road Improvement, Project 21-53, in accordance with the California Environmental Quality Act (Attachment 1 to the Council report).
2. Authorize the City Manager to execute an Agreement for Sale of Mitigation Credits with San Francisco Bay Wetland Mitigation Bank for 0.1 acre of wetland mitigation credit to meet the San Francisco Bay Regional Water Quality Control Board mitigation requirements for the Sailing Lake Access Road Improvement, Project 21-53, in a not-to-exceed amount of \$190,000.

BACKGROUND

The City's low-lying North Bayshore Area is subject to coastal flooding from the San Francisco Bay and fluvial flooding from Permanente Creek and Stevens Creek. In 2013, the City developed the Shoreline Sea Level Rise Study, which assessed the coastal and fluvial flooding vulnerability of the North Bayshore Area as a result of the projected sea level rise. The Study recommended a program of 12 projects to provide sea level rise flood protection. The list of projects ranges from coastal erosion protection and levee improvements to pump station and interior drainage improvements.

One of the proposed projects is the Sailing Lake Access Road Improvement Project. Sailing Lake Access Road is located between Sailing Lake and Coast-Casey Forebay in Shoreline at Mountain View (see Figure 1). Sailing Lake Access Road was constructed in conjunction with the Sailing Lake in the 1970s to contain the lake water. It has ongoing seepage and stability issues and requires repair. Due to the water volume and depth in the Sailing Lake as compared with the Coast-Casey Forebay, the Sailing Lake Access Road has recently been classified as a dam by the California Department of Water Resources, Division of Safety of Dams (DSOD). It is identified by DSOD as Shoreline

Lake Dam, No. 7000-142, Santa Clara County. Any repair work requires review and approval from DSOD.



Figure 1: Location of Sailing Lake Access Road Improvement Project

The primary objectives for the proposed Sailing Lake Access Road Improvement Project include:

- Strengthen the embankment of the Shoreline Lake Dam and address seepage issues at the downstream toe of the dam to meet DSOD dam safety standards; and
- Improve the roadway over the dam to support the anticipated heavy truckloads during construction of the Coast-Casey levee improvement, the South Bay Salt Pond Restoration Project, and other future projects in the area as well as to provide access for ongoing operations and maintenance and trail access.

The City executed a contract with AECOM, the project design consultant, on June 16, 2017, to prepare an engineering analysis and preliminary design for the project. The City amended the contract on July 23, 2018 to include California Environmental Quality Act (CEQA) documentation, environmental permitting, DSOD compliance, and final engineering design. The project team completed a 50 percent design review process with DSOD in 2020. Based on the 50 percent design, the project team prepared a Preliminary Initial Study/Mitigated Negative Declaration (IS/MND).

The IS/MND was posted on the City website and filed with the California State Clearinghouse and Santa Clara Clerk-Recorder for public comments on December 1, 2020. A Notice of Intent to Adopt a Mitigated Negative Declaration was posted at the project site and mailed to properties contiguous to the project site. In addition, a legal advertisement for the Notice of Intent was published in the *San Jose Mercury News* on December 1, 2020. Agencies and the general public had the opportunity to review and comment on the IS/MND during the 30-day comment period, which ended on December 31, 2020.

ANALYSIS

Initial Study/Mitigated Negative Declaration

The IS/MND utilizes an interdisciplinary approach and integrates the use of natural and social sciences and the consideration of qualitative as well as quantitative factors. The IS/MND identifies environmental effects of the project that may be mitigated to less-than-significant levels or avoided. Potentially significant impacts from the project were identified in the following areas: air quality, biological resources, and hazards and hazardous materials.

These effects would be reduced to a less-than-significant level through implementation of the following mitigations:

1. Basic construction mitigation measures recommended by the Bay Area Air Quality Management District to reduce fugitive dust emissions;
2. Measures to minimize or avoid impacts to pickleweed marsh habitat, special-status plants, salt marsh harvest mouse, and special-status bird species; and
3. Due to the project site's proximity to former landfill operations, preparation and implementation of health and safety measures to provide processes and procedures to minimize human health effects and environmental contamination resulting from accidental exposure to refuse, landfill gas, or landfill leachate.

The adoption and implementation of these mitigation measures were assumed in the determination of environmental impact levels in the IS/MND. With these mitigation measures, the IS/MND concludes that all potentially significant environmental effects can be mitigated to less-than-significant levels. The mitigation measures identified in the IS/MND are reasonable and feasible.

The City received one comment to the IS/MND during the public commenting period from the California State Coastal Conservancy to clarify the project objective and to correct a map figure label in the document. Comments received on the IS/MND are addressed in the Final IS/MND (see Attachment 1).

Mitigation Bank Credit Purchase

During the permit application for this project, the project team discussed the project in a preapplication meeting with the State of California San Francisco Bay Regional Water Quality Control Board (Regional Board). The Regional Board indicated the project will be required to provide mitigation for the loss of 0.06 acre of tidal marsh habitat at the Coast-Casey Forebay and for filling 0.02 acre at Sailing Lake, which is defined as a Water of the United States and Waters of the State.

The project team evaluated possible mitigation options, including project design revisions and tidal marsh expansion of the Mountain View tidal marsh along Permanente Creek in Shoreline at Mountain View. These options were not selected due to project constraints, increased construction cost, additional permit coordination, long-term monitoring and management requirements, and project timing. The project team has

determined that purchasing Mitigation Bank credit would be the most efficient option to meet the Regional Board’s mitigation requirement.

The project team conducted an evaluation of potential mitigation banks and determined the only wetland mitigation bank with a service area that overlaps the Sailing Lake Access Road Improvement Project area is the San Francisco Bay Wetland Mitigation Bank (see Figure 2). This bank also provides the type of wetland mitigation credits needed to offset unavoidable loss of Waters of the State. Credits from this mitigation bank are available to purchase in 0.05-acre-unit increments, with each unit costing \$95,000.

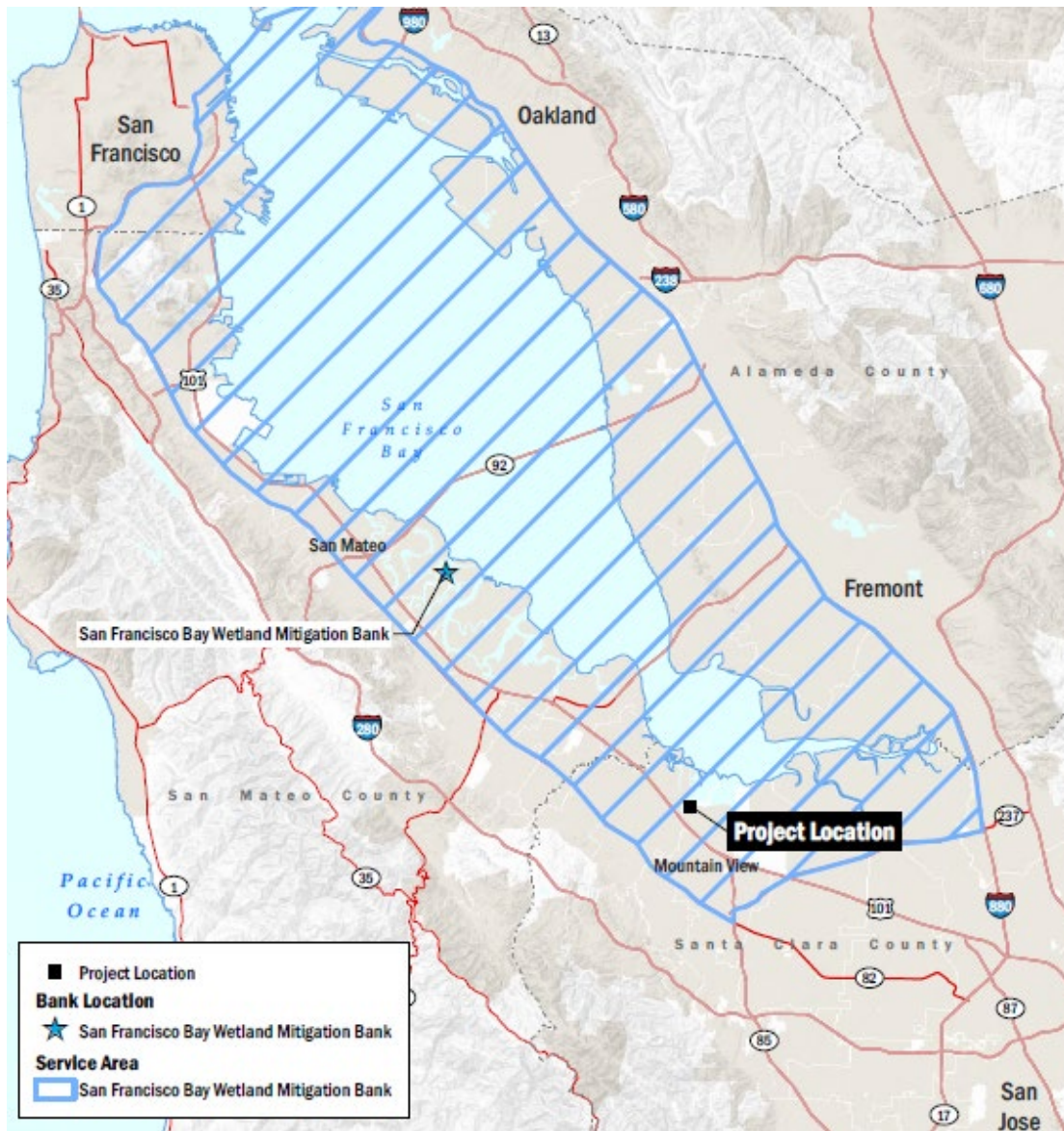


Figure 2. Proposed Mitigation Bank

In order to offset the unavoidable impacts to 0.08 acre of Waters of the State as required by the Regional Board to comply with the State's No Net Loss Policy (Executive Order W-59-93), the City needs to purchase two units or 0.10 acre at a cost of \$190,000. Mitigation credit purchases are part of the Water Quality Certification (Order) permit conditions that must be satisfied prior to construction.

To purchase credits, the City needs to execute an Agreement for Sale of Mitigation Credits. Once the purchase of the mitigation credits is completed, this will satisfy the compensatory mitigation requirements of the Water Quality Certification for impacts to Waters of the State. The City will have no obligation to support, pay for, monitor, report on, sustain, continue in perpetuity, or otherwise be obligated or liable for the success or continued expense or maintenance in perpetuity of the credits or of the bank.

With the adoption of the Mitigated Negative Declaration and the approval to purchase the mitigation credit, the project team anticipates completing the project design in spring 2021. Pending the approval of permit applications, the project could begin construction in fall 2021.

FISCAL IMPACT

Sailing Lake Access Road, Construction, Project 21-53, is funded with \$1,000,000 from the City's Shoreline Regional Park Community Fund. The Mitigation Bank credit purchase amount is \$190,000. The project budget is adequate to fund the recommended agreement. There is no additional fiscal impact to adopt the Mitigated Negative Declaration.

CONCLUSION

The Sailing Lake Access Road Improvement Project is a sea level rise flood protection project that will address ongoing seepage and stability issues for the Shoreline Lake Dam and improve the roadway over the dam. The project's Initial Study/Mitigated Negative Declaration concludes that all potentially significant environmental effects can be mitigated to less-than-significant levels. One of the mitigation measures is the purchase of wetland mitigation credits to offset the unavoidable impacts to 0.08 acre of Waters of the State. Adoption of the Mitigated Negative Declaration and approval to purchase the mitigation credits are necessary for the project to complete design and proceed into construction.

ALTERNATIVES

1. Do not adopt the Mitigated Negative Declaration and provide direction to staff to revise the Mitigated Negative Declaration or pursue other CEQA compliance options.
2. Do not approve the Mitigated Bank credit purchase and direct staff to identify other project mitigation options.
3. Provide other direction.

PUBLIC NOTICING – Agenda posting.

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Attachment: 1. [Final Initial Study/Mitigated Negative Declaration](#)

cc: CSD, APWD – Arango, SMA – Doan, F/c (21-53)