



CITIZENS COMMITTEE TO COMPLETE THE REFUGE

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Via E-mail

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Submitted via connectmenlo@menlopark.org

RE: NOP of the Draft EIR for the Menlo Park General Plan and M-2 Zoning Update

Dear Ms. Chow:

The Citizens Committee to Complete the Refuge (CCCR) appreciates this opportunity to respond to the Notice of Preparation (NOP) for a Draft Environmental Impact Report (DEIR) for the Menlo Park (City) General Plan (GP) and M-2 Zoning Update.

CCCR has its roots in the citizens who led the campaign that founded the Don Edwards San Francisco Bay National Wildlife Refuge (Refuge) in 1972. For the decades since, we have been active pursuing Refuge expansion and the protection of Refuge habitats, wildlife and lands as well as all threatened and dwindling wetlands of the Bay. We have been a stakeholder of the South Bay Salt Pond Restoration Project since its inception. Our interests have prompted us to comment on multiple projects of the City in the last decade and to work directly with developers such as Dave Bohannon and Facebook.

We understand that the DEIR will update the Land Use and Circulation Elements of the General Plan, applicable for the entire City. It will also address land use zoning changes for planning purposes for the M-2 Area, defined in the NOP on pg. 3 and in Figure 2. The proposed M-2 Area provides for “maximum” development of the area, an outcome of a General Plan Update Advisory Committee and various public outreach actions involving City staff and the consultant, PlaceWorks. In fact, this writer participated in some of that public outreach events.

Piece-mealing?

We also understand that, running in parallel, the City has issued a NOP for a Facebook Expansion Project (FB expansion) on lands within the M-2 Area. In these comments, cross-reference will be made as relevant examples.

The DEIR will need to explain how the FB Expansion CEQA process can run in parallel when its final conclusions are dependent on to-be-determined decisions of the final GP Update and zoning DEIR. With a direct dependency, this DEIR needs to demonstrate that it does not, in fact, violate CEQA Guidelines to consider the whole of the project and illegally piece-meal the projects. It is a concern that backroom decisions between the parallel projects will cross-inform the two projects outside public review and inappropriately influence outcomes of each.

Flood Risk is a Major Concern in the M-2 Area

In the era of sea level rise, any impetus to encourage or approve development on Bay shoreline locations sets the stage for extraordinary costs in emergency services in the not so distant future plus very costly damage

and hazards for residents, businesses and area employees. No development in non-shoreline areas of the City carry the same level or variety of types of flood risk.

The broad flood-risk scenarios are evident in State and Bay Conservation and Development Commission data. It is also very informative to visit a website known as "Our Coast, Our Future" (OCOF) provided by a collaborative project of multiple agencies, both government and NGO, investigating local risks. <http://data.prbo.org/apps/ocof/> The website has an interactive map which allows the user to simulate multiple scenarios over time and type of inundation – sea level rise, waves, current, storms and king tides. All of those factors are threats the M-2 Area given its location on the shoreline and as the lowest point in stormwater drainage systems in the City. What happens upstream in major storms, will happen in M-2 and sea level rise (SLR) will make it worse.

While using the map, this writer noticed that even when using the minimum change in conditions, the Haven Avenue area always flooded in some way and became a gateway for flooding southerly into areas lining Bayfront Expressway. We are aware that the City is supporting the Safer Project, a planning process that is hoped to someday place a levee bounding the M-2 Area as a protection from SLR in East Palo Alto and Menlo Park. As the OCOF interactive map demonstrates, a levee that stops at the northern Menlo Park border will not protect the Haven area nor prevent Haven Area and Flood Slough from being a flood gateway for much of the rest of the M-2 Area.

We note also that the Safer Project will not protect the M-2 Area from flooding during extreme storm events. As SLR produces higher water tables near the surface, the ground will absorb less and even a moderate storm will produce more localized flooding from runoff alone.

It is crucial that the DEIR, whether or not rezoning is approved, establish a baseline condition across the entire area and require that, in subsequent development proposals, the hydrologic modeling be analyzed against the baseline with a thorough updated analysis of flood risk from all causes.

On the issue of rezoning, we wonder whether it is necessary to rezone across the entire M-2 Area through this CEQA process or to set such rezoning as an option to consider at the time a new development or redevelopment is proposed. Please discuss that issue in the DEIR.

Other Topics

1. Accurately inform agencies, interested parties and the public about the Refuge by location in the regional landscape and as a Stakeholder/landowner. Doing so more fully informs the reader of the impacts of the M-2 Area.

- a. **Graphic Example:** See Figure 1 of the FB Expansion NOP which is a map that clearly identifies the Refuge. Incorporate the designation in the appropriate maps of this DEIR.
- b. **Accurate and appropriate text:** Project location text descriptions used anywhere in the DEIR need to appropriately identify Refuge lands. It is known to us (personal communication, various occasions with Justin Murphy) that the City has accurate information on the boundaries of the Refuge and also that the information is readily available from the Refuge. (Contact Anne Morkill: anne_morkill@fva.gov)
- c. **Identify the Refuge as City landowner and institution, not a regulator.** Although managed under the parent agency, the U.S. Fish & Wildlife Service (USFWS), the Refuge is not a regulator as is commonly and erroneously assumed. This unfortunately often leads to Lead Agency decisions excluding the Refuge from CEQA analysis.

first mission, related conservation actions and provide for compatible public use. It is analogous in federal operations to the National Park Service, the US Forest Service and the Bureau of Land Management, none of them regulators. In preparing this DEIR, the City should include the Refuge as an M-2 Area stakeholder for all notifications and for potential impact evaluation and discussion.

d. Land Use Designation: In Land Use Policy updates, we recommend adding a policy that establishes formal recognition and a relationship with the Refuge. It is a permanent institutional entity of the City. This Refuge happens to be the largest urban Refuge of the NWRS, was the first urban Refuge in the country and was the first to be established by an Act of Congress (by the people). It is host and partner as well to the majority of the South Bay Salt Pond Restoration Project. Menlo Park has a significant, permanent "resident" that is also a major landowner.

e. Jurisdictional Authority: Use of Refuge lands other than permitted public use and as may be needed for nearby construction or study access requires a permit from Refuge management. As needed during DEIR preparation, contact Anne Morkill (anne_morkill@fws.gov) for permits. The Refuge also has Law Enforcement staff focused primarily on enforcement of Federal laws to protect wildlife, habitats and the lands of the Refuge and who work cooperatively with local enforcement.

2. In the M-2 Area, fully specify wetland locations to inform site-specific planning and to avoid unnecessary delays during permitting.

a. Tidal Marsh Recovery Plan (TMRP) must be used as the standard reference for shoreline endangered species analysis. In 2013, the USFWS Endangered Species office published the TMRP, a formal outline of the multi-decade recovery plan for a set of the Bay's endangered species that are dependent on tidal, saline and associated upland habitats. These species include Ridgeway's rail (formerly known as the California clapper rail) and the salt marsh harvest mouse (SMHM), each with known habitat in Menlo Park. The plan provides maps of the Bay's shorelines outlining current and potential habitats for these species. The TMRP Segment N map that includes Menlo Park is attached. The key criterion of this plan *are findings of suitable habitat*, not the finding of the presence of these species. TMRP makes it inadequate to base conclusions of the Biological Resources impacts on database records of where species have previously been found. http://www.fws.gov/sacramento/es/Recovery-Planning/Tidal-Marsh/es_recovery_tidal-marsh-recovery.htm

About biological resources databases: While limiting research to State sources will make Biological Resource studies for Bay shorelines inadequate, the most current data is available through the Refuge. (Contact Supervisory Biologist Joy Albertson. joy_albertson@fws.gov).

b. The Refuge's Acquisition Boundary can be a planning tool. When a Refuge is established, Congress approves a map of lands with habitat suited to the biological mission of the particular Refuge. These boundaries do not confer any rights of ownership but rather authorize the Refuge to act if lands identified within the boundary become available for acquisition. Because this boundary exists, it is a guide to wetland habitat locations. Such lands exist in the M-2 Area and are concurred as marsh habitat in the TMRP. For instance, M-2 includes the SMHM mitigation owned by CalTrans in the triangle between University and Willow along Bayfront Expressway, a site within the Acquisition Boundary. Knowing where these areas are and aren't can help guide M-2 Area planning and help avoid impacts and the need to mitigate. It is known that City has information about the Refuge's Acquisition Boundary (personal communication, Justin Murphy) and that is also available from the Refuge. (Anne Morkill, anne_morkill@fws.gov)

c. Adequate Biological Resource preparation will improve permit time. Locally and unfortunately, the San Francisquito Creek Bay to 101 Flood Project demonstrated a worst case planning scenario. Its

CEQA process provided highly inadequate evaluation of potential impacts on marsh endangered species and habitat. As a result, the project did not meet the finding of the required "Least Environmentally Damaging Practicable Alternative" and enormous time was spent changing the project, thereby vastly extending the project's timeline. The M-2 Area plan should require that Biological Resource analysis is adequate whenever there is any possibility that impacts on TMRP habitats may occur.

3. Hydrology

a. The Safer Project: We feel certain the City will follow CEQA Guidelines but we include here a cautionary comment that reflects experience with another local Lead Agency. In that instance, the basis used for a finding of less than significant impact (multiple impacts) in the DEIR was based on a levee that did not exist albeit was in preliminary planning discussion. Under CEQA it was not permissible to use the levee to come to that finding on hydrological impacts.

14 CCR § 15125 Environmental Setting.

(a) An EIR must include a description of the physical environmental conditions in the vicinity of the project, *as they exist at the time the notice of preparation is published*, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. *This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant.* The description of the environmental setting shall be no longer than is necessary to an understanding of the significant effects of the proposed project and its alternatives. (emphasis added)

However tempting, the Safer Project cannot be used to determine if an impact is significant until there is a permitted construction plan for such a levee.

b. Hydrology studies: In 2012, we commented on the first Facebook DEIR and had significant concerns about inadequacies of the hydrological studies. We hope this DEIR will provide for more thorough analysis on issues of concern:

b1. Deferred analysis and risk determination: The GP and Zoning Update discussion of the M-2 Area cannot be specific to details of future projects with the exception of the FB Expansion project. It should set standards for the kind and level of analysis required by City policy. We refer to the 2012 DEIR as an example of our concern. In that document, a mitigation measure (HY_2.1) called for the preparation of supporting data regarding flood risk, including relevant hydraulic and hydrologic analyses. That suggested that proper analysis of flood risk had not been carried out for the DEIR and that mitigation measures would be illegally developed outside the CEQA process. The DEIR for the M-2 Area must ensure that the standard for development will be completion of all needed hydraulic and hydrologic analysis within CEQA such that informed decisions occur. Also it should ensure that the parallel FB Expansion project meets such standards.

b2. Wave run-up and amplification: The following is excerpted from our comments in 2012.

"It is also evident the West Campus flood analysis provided in the DEIR is based on 100-year base flood elevations, which are maximum *still water elevations* for San Francisco Bay. This fails to fully address the potential for wave run-up and amplification of tidal surges associated with sea level rise. Given the Project's close proximity to the Bay, potential for subsidence and liquefaction in the event of an earthquake, current analysis of the Project is wholly deficient to fully ascertain risk to human life and the surrounding environment."

This DEIR must ensure that fluvial, stormwater and tidal flood analysis on this shoreline includes varying conditions such as presented on the OCOF website.

b3. Stormwater flooding implications of the Facebook East Campus. Here is another excerpt from our 2012 comments.

“Climate change is producing extreme swings of weather conditions. Perhaps not this year but extraordinary storms with greater water content will occur. When that happens, does the East Campus have capacity to contain storm water without overtopping levees into the Bay or, if storms occur during high tides, to contain some level of inbound overtopping? Will the waters simply pour out along Bayfront Expressway? The DEIR describes the Expressway as 7.5' above FEMA's base flood elevation, a height intended to provide one form of flood barrier for east Menlo Park developed areas. That height is based on a 2007 FEMA standard that has not been revised to more recent BCDC-used projections for SLR. Does that mean that the 7.5' BFE is misleading as to the degree of protection it provides?”

Even if the Expressway provides a barrier protecting east Menlo Park, what impact would water draining from a flooded East Campus *through storm drains* have on the drainage system serving the West Campus and upstream neighborhoods? What controls would be in place for flood waters that traveled through the tunnel to the other side of the Expressway?”

The unique, isolated location of the Facebook East campus singles it out for particularly thorough analysis of hydrologic impacts. We hope conclusions of this DEIR establish that as a requirement. Such a requirement should also be applied to Haven Avenue development.

4. Residential development on the Facebook East campus: The maximum development detail of the M-2 Area include potential for 1500 units in new residential buildings on the Facebook East Campus. The DEIR needs to pay particular attention to the following factors to determine if rezoning is allowable.

- a. As outlined in the TMRP, this site is surrounded by habitat used and needed by endangered species. Any expanded development will introduce new impacts to the surrounding habitat and undermine the recovery of endangered species. Few options of mitigation are available. A USFWS consultation would be needed.
- b. If not for the existing legacy development, this site would be inappropriate for any development due to the combination of natural event threats: seismic, liquefaction, SLR, King Tides and stormwater runoff. As an isolated site, it is less accessible for emergency services such as may be needed during such events. Adding 1500 units for 24/7 presence of occupants on-site puts those individuals at a significantly high level risk of natural event hazards.

5. Pedestrian/Bike Bridge at Chilcot: The M-2 Area Plan includes the proposal of a bridge over Bayfront Expressway at Chilcot to serve pedestrians and bicyclists and connecting to the Bay Trail. That bridge appears to be a component of the FB Expansion Project. Certain comments seem pertinent here as they relate to Circulation planning, another element of the GP Update. We raise the following questions, asking that they be considered in the DEIR.

- a. The Refuge boundary lies just beyond the Bay Trail at the Chilcot intersection. Can the bridge be built such that the eastern landfall will not intrude into the Refuge?
- b. Any structure of height near the Refuge is a likely perch for avian predators. Can the bridge be built in a way to make it unacceptable to avian predators?
- c. The bridge will add a second, protected Bayfront Expressway crossing for mammalian predators (in addition to the tunnel at Willow), allowing raccoons, skunks, opossums, rats and feral cats easy

access to the ground-dwelling species, including threatened snowy plovers, for which the Refuge is habitat. How can the cumulative impact of two access points for these predators be mitigated to less than significant?

d. What is the expected lifetime of this bridge? The preliminary plans for the Safer Project put the Bay Trail on top of a significantly higher levee at this location. Is Facebook willing to commit to rebuilding it then or is it expected that the Safer Project will do so out of taxpayer dollars?

5. **Bird Safe Design:** The entire M-2 Area lies within the Pacific Migration flyway, where many thousands of birds stop along this shoreline to rest and forage until departing again on long journeys. These flocks are evident in Bedwell Bayfront Park and on the Refuge. Facebook's new park-like roof may become another attractive site during migration.

All future development in the M-2 Area should be built to meet standards of bird-safe design inclusive of windows, structural features and lighting. In addition to migration, any development near open space will reduce impacts on locally-resident or nesting species by meeting such guidelines.

We note that a recently published (General Plan Update Advisory Committee) draft Land Use Policy and Programs includes LU5.F which suggests "explore" birdsafe design. We encourage findings of this DEIR be definitive to support an "implement" birdsafe design in development planning. Design guidelines can specify site-specific triggers for various actions or no action. The DEIR can consult guidelines adopted in San Francisco, Sunnyvale and San Jose.

6. **Water:** As drought is a reality, the DEIR should set standards for the M-2 Area that require all developers secure sources of water for consumption in proposed development and do so in a way that does not impact the existing water supply. Additionally it should require developers to incorporate the best level of water conservation throughout each project.

7. **Additional Applicable Plans:** In addition to the TMRP, discussed above, the DEIR must consider the following approved plans:

South Bay Salt Pond Restoration Project: <http://www.southbayrestoration.org/documents/> or contact Executive Manager John Bourgeois, John.Bourgeois@scc.ca.gov

Don Edwards San Francisco Bay National Wildlife Refuge Comprehensive Conservation Plan of 2012 http://www.fws.gov/refuge/Don_Edwards_San_Francisco_Bay/planning.html or contact Anne Morkill, anne_morkill@fws.gov.

Alternatives

It is our hope that the DEIR provides a suitable set of alternatives to provide adequate comparisons among actions available to the City such as:

1. A "moderate" development plan for the M-2 Area, reducing the amount of development to achieve benefits that reduce impacts that "maximum" development would produce.
2. A climate-conscious development that implements guidelines that are adaptable with changing conditions as climate change proceeds, actions to minimize impacts and continuously adapt for SLR, extreme storms and weather fluctuations.

Concluding these comments we ask that we be directly noticed on all subsequent communications regarding the GP and Zoning Update. Please send to wildlifestards@aol.com.

E. McLaughlin, CCCR, 07/20/15, Response to NOP for Menlo Park's General Plan & Zoning Update

CCCR is a 501(c)(3) nonprofit corporation that is fully volunteer-run, acts to ensure that the Refuge fulfills its Congressional acquisition authority to expand its land holdings and to protect special and sensitive habitats and wildlife along the South Bay's shores. Very similarly, it acts on behalf of the continuous protection of the wildlife and habitats the Refuge must provide.

Truly yours,



Eileen McLaughlin
Board Member, CCCR

CC: Florence LaRiviere, Chair, CCCR
Carin High, Vice-Chair, CCCR
Anne Morkill, San Francisco Bay NWR Complex
Joy Albertson, San Francisco Bay NWR Complex
John Bourgeois, California Coastal Conservancy
Justin Murphy, City of Menlo Park

Attach: Map, Segment N of the Tidal Marsh Recovery Plan

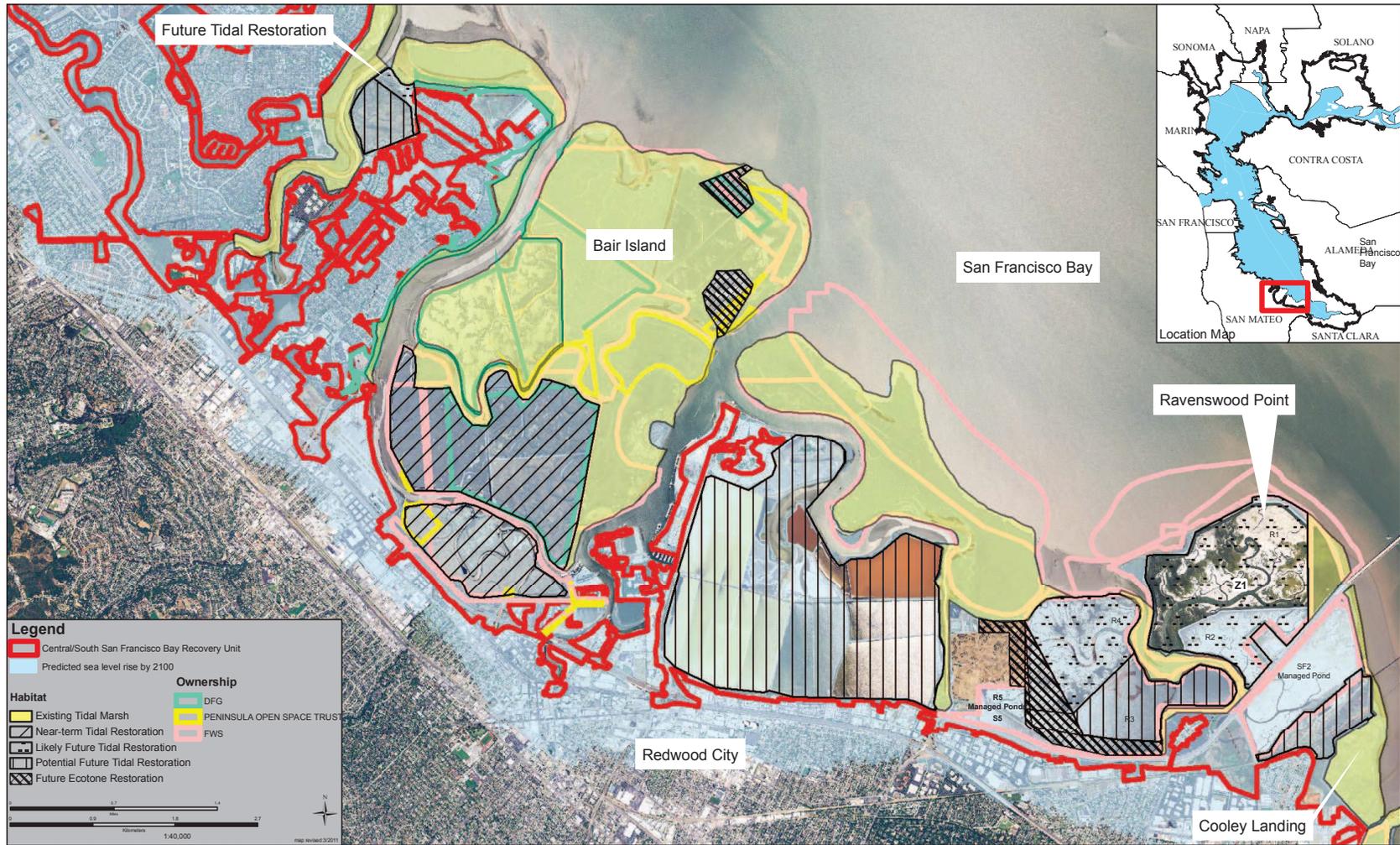


Figure III-20. Segment N