San Diego Regional Water Quality Control Board

May 3, 2023

Attn: Heidi Vonblum
Planning Director
City of San Diego Planning Department
9485 Aero Dr, M.S. 413
San Diego, CA 92123

Subject: De Anza Natural (Project), Draft Program Environmental Impact Report (DPEIR), SCH #2018061024

Dear Planning Commission Staff:

The California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) received a Notice of Availability of a DPEIR from the City of San Diego (City) for the subject Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines and submits the following comments. The San Diego Water Board would like to thank the City for granting a two week extension to provide comments on the DPEIR. The San Diego Water Board previously submitted comments in response to the Notice of Preparation (NOP) of the DPEIR in 2022.

The San Diego Water Board appreciates the opportunity to comment on the DPEIR, and fully supports the City's planning efforts to develop a De Anza Natural alternative for the DPEIR that goes above and beyond the requirements of CEQA. By studying the expanded wetlands alternative to the same level of detail as the City's proposed project, the City Council and community will better understand the long-term benefits of maximizing the wetland acreage created in this unique area of Mission Bay.

In this letter we provide comments on the DPEIR, and first bring to your attention shortcomings in the DPEIR analysis that could trigger a substantial breach of a stipulated settlement order of the Water Board. As described below in Section 1, failure to meet the Settlement Order's terms could require the City to repay the State Water Resources Control Board a substantial amount of the deferred liability.

SAN DIEGO WATER BOARD ROLE

The San Diego Water Board is charged with the protection of the Waters of the State of California in the San Diego Region. Our Mission is to preserve, enhance, and restore the quality of California's water resources for the protection of the environment, public health, and all beneficial uses. The San Diego Water Board is a responsible agency under CEQA, and administers regulations established by the Federal Clean Water Act and the California Water Code (Porter-Cologne Water Quality Control Act). The San Diego Water Board also administers regulations, plans, and policies established by the Water Quality Control Plan for the San Diego Region (Basin Plan) and the State Water Resources Control Board to protect watersheds and their resources. The San Diego Water Board administers these regulations, in part, through issuance of water quality certifications under Clean Water Act (CWA) section 401. Implementation of the Project would result in the discharge of dredged or fill materials within Waters of the United States and Waters of the State and would require CWA section 401 water quality certification.

San Diego Water Board staff are also charged with conducting review and oversight of Settlement Order No R9-2020-0150 and the *Northeast Mission Bay Wetland Restoration* Supplemental Environmental Project (SEP).

On September 8, 2021, the San Diego Water Board adopted Resolution No. R9-2021-0007 supporting the implementation of the 2021 Practical Vision. One focus of the San Diego Water Board's 2021 Practical Vision[1] is to "Increase wetland area in the Region and regulate projects that alter wetland, stream, and riparian areas considering the affects to Tribal and underserved communities as well as Climate Change mitigation and adaptation." The restoration of Mission Bay wetlands is specifically identified in Chapter 3 of the Practical Vision: *Recover Stream, Wetland and Riparian Areas*, which seeks to support and encourage wetland restoration to achieve a meaningful net gain of wetlands in the San Diego region. The Practical Vision efforts followed the Board's stated support for the restoration of Mission Bay wetlands in Resolution R9-2015-0041, *Resolution to Support Restoration of Aquatic Ecosystems in the San Diego Region.*[2]

The comments listed below support the San Diego Water Board's mission, vision, regulatory functions, and enforcement oversight obligations:

1. **DPEIR Compliance with Settlement Order No. R9-2020-0150**

   On October 21, 2020, the San Diego Water Board and the City entered into a Settlement Agreement and Stipulated Administrative Civil Liability (ACL) Order No. R9-2020-0150 (Order) in response to a 6,750,734 gallon sanitary sewer overflow to Tecolote Creek and Mission Bay. The Order stipulated the City pay a fine totaling $2,541,874, with $1,250,000 in deferred liability if the City successfully completed a Supplemental Environmental Project (SEP).

[1] The San Diego Water Board's 2021 Practical Vision can be found here San Diego Water Board Practical Vision 2021
[2] Resolution R9-2015-0041 can be found here R9-2015-0041.pdf (ca.gov)

Attachment B of the Order detailed the City's *Northeast Mission Bay Wetland Restoration SEP.* The City proposed a three-pronged approach, including assessments, environmental restoration, and protection to further the goals of native habitat restoration in northeast Mission Bay in order to improve water quality and beneficial uses by funding:

a. Additional analysis and study of an expanded restoration alternative for the Programmatic Environmental Impact Report (PEIR) of the De Anza Cove Amendment to the Mission Bay Park Master Plan;

b. Technical studies to supplement the Mission Bay Park Improvement Plan PEIR and Rose Creek Preliminary Engineering Report; and

c. Planning and implementation of native habitat enhancement and restoration in the Kendall Frost Reserve.

On page 6 of the SEP proposal, the City described the expanded restoration alternative stating:

"This alternative **would result in the establishment of 80 acres of additional functional wetlands** (low-mid-high wetland/salt marsh and mudflats), in addition to the Kendall-Frost Marsh/Northern Wildlife Preserve, **at the Year 2100 based on current models utilized by the City for sea level rise projections**."

The current DPEIR fails to demonstrate whether and/or how the expanded restoration alternative results in the establishment of 80 acres of additional functional wetlands at the year 2100. Additionally, the DPEIR does not address the issue of sea level rise over time and the resulting impacts to restored wetlands, as required by the Order. Failure to provide a detailed sea level rise analysis is a serious omission and breach of the settlement terms and conditions, which could result in the San Diego Water Board seeking repayment of the deferred liability in accordance with Paragraph 18.n of the Order.

2. <u>Climate Resiliency Analysis</u>

The DPEIR states, "the low-risk aversion projections for San Diego are 3.6 feet by the year 2100, and the medium-high risk projections are 7 feet by the year 2100… The project is a habitat restoration project with recreational amenities. Future planning efforts can consider phasing of adaptation strategies to account for uncertainty around timing and extent of sea level rise. With implementation of the project, De Anza Cove is expected to experience lowered levels of inundation and velocities by 2100 compared to if the area is left in its current state as a result of proposed wetland restoration activities, which would increase resilience to sea level rise and coastal flooding. Restored wetlands increase resilience by providing an increased opportunity for flood flows to be diverted into the new enhancement areas compared with existing impervious conditions" (DPEIR, Page 5.7-2).

The DPEIR must analyze both the City's Preferred Alternative and the Wetland Optimized Alternative utilizing the City's current sea level rise models over time. The analysis must contain a comparison of the two alternatives, mapping the extent of wetlands through time at the intervals of the years 2030, 2050 and 2100. The analysis must provide assurances that the Wetlands Optimized Alternative would result in an additional 80 acres of additional wetland as required by the SEP.

The DPEIR should also describe the types of "adaptation strategies" that will be considered in future planning efforts associated with sea level rise uncertainty.

3. Definition of a Wetland

The DPEIR should clearly define what constitutes a wetland. The DPEIR should utilize Section 113.0103 of the San Diego Municipal Code which defines wetlands as indicated below:

"Wetlands are defined as areas which are characterized by any of the following conditions:

1. All areas persistently or periodically containing naturally occurring wetland vegetation communities characteristically dominated by hydrophytic vegetation, including but not limited to salt marsh, brackish marsh, freshwater marsh, riparian forest, oak riparian forest, riparian woodlands, riparian scrub, and vernal pools;

2. Areas that have hydric soils or wetland hydrology and lack naturally occurring wetland vegetation communities because human activities have removed the historic wetland vegetation or catastrophic or recurring natural events or processes have acted to preclude the establishment of wetland vegetation as in the case of salt pannes and mudflats;

3. Areas lacking wetland vegetation communities, hydric soils and wetland hydrology due to non-permitted filling of previously existing wetlands;

4. Areas mapped as wetlands on Map No. C-713 as shown in Chapter 13, Article 2, Division 6 (Sensitive Coastal Overlay Zone)."

The DPEIR lacks sufficient detail to determine the amount of the various wetland types (low-mid-high wetland/salt marsh and mudflats) and their associated acreage. The DPEIR should:

a. Clearly map the location and extent of upland transition zones for both the Preferred Alternative and the Wetland Optimized Alternative.

b. Clearly map the various wetland types and their associated acreages and demonstrate how the Wetland Optimized Alternative would maximize implementable wetland restoration with the establishment of a minimum of 80 acres of additional functional wetlands at the Year 2100, based on current models utilized by the City for sea level rise projections.

c. Identify any areas of wetland type conversion.

4. Eelgrass Designation as a Wetland

The DPEIR incorrectly lists eelgrass beds habitat as wetland habitat (Table 2-3). Eelgrass should be characterized as jurisdictional aquatic resources (Table 2-5) but they are not identified as wetland habitats by any regulatory agency and need to be identified, mitigated, and restored separately from wetlands.

It is not clear in the DPEIR if the eelgrass mitigation sites are included in the acreage calculations for expanded marshland and wetland creation. The DPEIR should include a table that summarizes acreages of each habitat type to be included in the created wetlands and expanded marshland habitat at implementation of the project. Eelgrass mitigation and new open water areas should be calculated separately from wetland creation acreages.

5. Water Quality and Hydrology

The Clean Water Act Section 303(d) list of impaired water bodies identifies Mission Bay at the mouth of Rose Creek as being impaired for eutrophication and lead from upstream sources, and Mission Bay at De Anza Cove is listed as impaired for *Enterococcus*, fecal coliform, and total coliform.

The DPEIR states that “Water quality design features are proposed along the edges of active recreational areas. Proposed water quality detention basins would be of differing sizes and would capture and treat stormwater before flowing into Mission Bay. New water quality detention basins would be located to treat the entire project area in accordance with local and state requirements.”

The Draft PEIR should:

a. Discuss how the project will address 303(d) listed pollutants.

b. Discuss how the various water quality design features will ensure protection of the existing and created beneficial uses within the project area.

The diagram for the Wetland Optimized alternative proposes a cut channel through the boot to De Anza Cove creating a southern island.

The Draft PEIR should:

a. Provide a detailed hydrologic analysis to show whether the proposed channel will provide added flushing and water circulation benefits and will not negatively affect the Kendall Frost reserve or impact its beneficial uses.

b. Provide a detailed discussion of the maintenance requirements this channel will require, as regular dredging and other activities could cause recurring and detrimental impacts to natural resources and water quality in the cove and potentially require additional permitting from the San Diego Water Board.

c. Provide an analysis of potential sedimentation to the cove from upstream sources and the potential need to dredge the cove.

d. Provide a hydrologic evaluation of whether a reduction and/or relocation of the island could help improve circulation and access to water for all the areas.

e. Provide an evaluation of whether the southern island can be used in the future for managed retreat to provide additional wetlands.

6. <u>Balancing Recreation and Maximized Wetland Creation</u>

The San Diego Water Board understands that the City seeks to find a balance in providing public recreation and the sustainable management of environmental resources. Mission Bay Park is the largest aquatic park of its kind in the country. It consists of over 4,235 acres in roughly equal parts land and water. Mission Bay boasts 27 miles of shoreline, 19 of which are sandy beaches with eight locations designated as official swimming areas. There are almost 14 miles of bike/walking paths along Mission Bay.

Mission Bay Park provides free public access and free parking year-round for many uses including picnicking, lawn and water sports, on-water activities like sailing, paddle boarding and kayaking, running, walking, cycling on paths and trails and bird watching. Uses are supported with maintained landscaping and lawns, trash removal, boat docks and launching facilities, restrooms, showers, developed play areas, natural areas, ranger services, and lifeguards.

In balancing the recreational needs, the San Diego Water Board supports maximizing wetland creation opportunities on a scale that includes the entirety of Mission Bay Park. Opportunities for public recreation of all types are abundant throughout Mission Bay Park and the City as a whole, whereas viable opportunities for substantial wetland creation are limited, with the vast majority occurring within the project area.

Thank you for the opportunity to comment on the DPEIR. The San Diego Water Board looks forward to working alongside the City of San Diego to restore vital wetlands to Mission Bay. If you need clarification or wish to discuss these comments, please contact Christopher Means at christopher.means@waterboards.ca.gov.

Respectfully,

Kelly Dorsey

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