



COUNCIL AGENDA: 01/23/18
FILE: 18-038
ITEM: 2.10

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kerrie Romanow

SUBJECT: SEE BELOW

DATE: January 3, 2018

Approved

Date

1/4/18

COUNCIL DISTRICT: 4

**SUBJECT: ADOPTION OF MITIGATED NEGATIVE DECLARATION FOR THE
SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY
POND A18 SOUTH GATE LEVEE REPAIR PROJECT**

RECOMMENDATION

Adopt a resolution adopting the Mitigated Negative Declaration and the corresponding Mitigation Monitoring and Reporting Program prepared for the San José-Santa Clara Regional Wastewater Facility Pond A18 South Gate Levee Repair project (File No. PP17-047) as having been completed in compliance with the California Environmental Quality Act reflecting the City of San José's independent judgment and analysis.

OUTCOME

Adoption of the Mitigated Negative Declaration (MND) and Mitigation Monitoring and Reporting Program (MMRP) will enable staff to obtain applicable permits and advertise the construction contract, and the City Council to ultimately approve funding and construction of the proposed project.

EXECUTIVE SUMMARY

As a part of the project planning activities, the Director of Planning, Building, and Code Enforcement (PBCE) circulated an Initial Study/Draft Mitigated Negative Declaration on August 22, 2017, for a 30-day public review through the State Clearinghouse in conformance with the requirements of California Environmental Quality Act (CEQA).

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The purpose of this Memorandum is to provide the City Council the ability to consider and adopt the MND and MMRP for the San José-Santa Clara Regional Wastewater Facility¹ (RWF) Pond A18 South Gate Levee Repair project in accordance with CEQA in advance of the construction contract advertisement. In addition, the following environmental permits are required before the construction contract can be advertised:

- U.S. Army Corps of Engineers – Clean Water Act Section 404 Nationwide Permit
- San Francisco Bay Regional Water Quality Control Board – Clean Water Act Section 401 Water Quality Certification/Waste Discharge Requirements
- California Department of Fish and Wildlife – Streambed Alteration Agreement under California Fish and Game Code Section 1602
- San Francisco Bay Conservation and Development Commission – Amendment to Permit No. M1983.110.00

Construction will take place within the jurisdictions of the agencies listed above. These agencies require CEQA compliance to be completed prior to issuing environmental permits for project construction.

Once the environmental permits have been issued, staff will incorporate the final required permit conditions from each agency into the construction contract specifications to ensure that interested construction contractors will have all of the project information necessary to prepare accurate bids. After bids are reviewed and a construction contractor is selected, staff will return to City Council to request approval to award the construction contract.

BACKGROUND

Pond A18 is a former salt pond that was purchased by the RWF in 2003. Pond A18 is approximately 856 acres in size and is located in the northwestern section of the RWF property at the southern tip of San Francisco Bay. It is surrounded by levees, only a portion of which are "engineered." Approximately three-quarters of the levee system is dredged bay mud that has compacted on its own over time, is easily eroded, is not accessible to vehicles when moist or wet, and requires ongoing maintenance in order to provide containment of the pond waters and flood protection for the RWF, and the general area south of Pond A18.

The RWF operates Pond A18 under Waste Discharge Requirements described in the San Francisco Bay Regional Water Quality Control Board's (SFRWCB) Order Number R2-2005-0003. The Order requires the City to maintain adequate water levels in the pond to control odors, dissolved oxygen, and erosion of the interior (southern) levee. Exchange of water between Pond A18 and Artesian Slough is accomplished via two hydraulic control structures

¹ The legal, official name of the facility remains San José/Santa Clara Water Pollution Control Plant, but beginning in early 2013, the facility was approved to use a new common name, the San José-Santa Clara Regional Wastewater Facility.

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along the levee bounding the western edge of the pond that were installed in 2004 as part of the purchase agreement with Cargill. These hydraulic control structures, commonly referred to as "gate structures," are constructed of timber products and each structure has two 48-inch plastic pipes (for a total of four pipes) with 1-way slide-gates on either end of the pipes, allowing staff operational flexibility to manage water and water quality within the pond.

A condition assessment completed in 2015 revealed that the northern gate structure was in critical condition and at risk of failure and the southern gate structure was found to need various repairs and recommended yearly follow up for condition assessment. This prompted the City Council to approve emergency action to replace the northern gate structure on March 3, 2015, and construction was completed in September 2015. During the reconstruction of the northern gate structure, the southern gate structure was used to pulse slough water into and out of the pond to maintain pond water elevation and water quality. This pulsing of water caused bank erosion and active scouring/slumping on the levee proximal to the southern gate structure.

Once the northern gate structure's construction was completed, the water control structures were configured to return to the pond's normal continuous circulating regime of intake at the northern gate structure and discharge from the southern gate structure. While operating under this configuration, the erosion around the southern gate structure progressed to the extent that RWF engineering staff recommended an alternate flow regime to reduce risk of levee failure and breach to acceptable levels. As a result, continuous circulation of Pond A18 was subsequently reoriented for inflow at the South Gate Structure and discharge from the North Gate Structure in early 2016.

The recent unforeseen storms during the winter and spring seasons of 2017 brought record rainfall, wind, and tides that exacerbated the southern gate structure's levee stability issues. Subsequent monitoring of the southern gate structure showed continued erosion to sections of the levee on each side of the Pond A18 southern gate structure. As a result, the Environmental Services Department (ESD) plans to implement the RWF Pond A18 South Gate Levee Repair project to replace the eroded material and allow the southern gate structure and its adjoining levee to function as they had prior to the erosive losses.

The repair involves installing sheet piles that extend from a relatively undamaged portion of the levee across the eroded and damaged areas that will connect to each of the four wing walls of the existing southern gate structure. The project would provide scour and erosion protection, improve the structural integrity of the adjoining levee, and reduce the risk of levee failure. There would be no new operations associated with the project and the construction activities are limited to the levee repair. Construction is planned to be completed during the summer of 2018.

The overall project purpose is to extend the lifespan of the southern gate structure and its adjoining levee until Pond A18 is restored as a part of the South San Francisco Bay Shoreline (Shoreline) project. Tidal marsh restoration in Pond A18 is expected to take place in 2022. In preparation for Shoreline project, staff is working with the Santa Clara Valley Water District (SCVWD) on a memorandum of understanding to transfer the City's property interest in Pond

A18. The ESD provided a presentation and memorandum to update the Transportation and Environment and Treatment Plant Advisory Committees on the construction of the Shoreline levee and progress on the transfer of Pond A18 on October 2 and 14, 2017.

The City must complete the proposed repair to the southern gate structure levee to prevent a potential levee breach and remain compliant with the RWF's operational Waste Discharge Requirements for Pond A18. Without this repair, there is a risk that a severe storm could exacerbate levee embankment erosion and slumping, thereby making a levee breach imminent and creating an emergency situation.

Should a levee breach occur, access to the breach to implement emergency repairs would be severely limited. A levee breach would allow uncontrolled tidal flooding into Pond A18 and expose over 9,000 feet of non-engineered levees on the south side of the pond to erosive tidal and wave actions. Pond A18's southern levee is a critical, last layer of protection against tidal flooding to the RWF. The southern levee has several existing erosion-weakened areas that would likely be at serious risk of failure if tidal action occurs in Pond A18.

Staff has completed a geotechnical evaluation of the levee adjoined to the southern gate structure and anticipates that the levee will remain structurally stable through the 2017-2018 wet season. Until project construction starts, staff will conduct regular monitoring per the project's erosion monitoring plan to track erosion and to mobilize if emergency repairs are necessary.

ANALYSIS

The Initial Study and MND for the RWF Pond A18 South Gate Levee Repair project were prepared and processed in compliance with the requirements of CEQA. The Director of PBCE, pursuant to the requirements of Title 21 of the San José Municipal Code, reported that there is no substantial evidence in the public record received to date that the project will have a significant effect on the environment with the identified mitigation measures included in the project. The MND has been prepared and processed in a manner that reflects the City's independent judgment and analysis as the Lead Agency. Adopting the MND and MMRP will not preclude the City Council from taking appropriate action in the future when considering approval to award the construction contract.

Potentially significant impacts identified in the Initial Study were related to biological, cultural, water quality, and hazards and hazardous materials environmental resource areas. Potential impacts to biological resources are due to the proximity of construction activities to marsh habitat and Artesian Slough. Mitigation measures to avoid take of any of species, including special status species, have been incorporated into the project. Work performed in this sensitive habitat will be conducted in accordance with best practices identified by the environmental permit agencies listed above and included as mitigation measures for this project. The project permits and mitigation measures will reduce impacts to biological resources to a less than significant level.

Cultural resource impacts are related to the potential of construction activities to uncover previously unknown archeological and tribal resources. Mitigation measures have been incorporated into the project that require special procedures and compliance with Section 15064.5 of the CEQA Guidelines if resources are inadvertently uncovered. The mitigation measures would reduce impacts to cultural resources to a less than significant level.

Construction activities may include the use of hazardous materials on site. Potential impacts from hazards and hazardous materials are related to reasonably foreseeable upset and accident conditions involving the release of hazardous materials to the environment. An accidental release of sediment could also violate water quality standards or waste discharge requirements. To address this issue, project mitigation measures require implementation of low impact construction practices. All construction-related hazardous materials must be stored, handled, and used according to federal, state, and local laws, and all imported backfill must be tested and meet minimum quality criteria prior to use in construction activities. The mitigation measures reduce impacts to water quality and the environment from hazards and hazardous materials to a less than significant level.

If City Council adopts the MND and MMRP, the full set of mitigation measures will be incorporated in the project. The Draft Initial Study, MND, and associated documents are available at: <http://www.sanjoseca.gov/index.aspx?nid=5672>.

Two comment letters were received during the public review period from SCVWD and the Santa Clara County Parks and Recreation Department. The SCVWD's comment letter stated that the proposed project's location is not within or adjacent to any SCVWD facility or right-of-way and no SCVWD permit is required. The Santa Clara County Parks and Recreation Department's comments pertained to the project's potential impacts on the Santa Clara County Countywide Trails Master Plan Update. However, there will not be any trails in proximity to the construction area or its access routes during construction. No significant environmental issues were raised that were not already adequately addressed in the Initial Study and Draft MND. On October 27, 2017, the Director of Planning, Building, and Code Enforcement provided responses to all comments received.

EVALUATION AND FOLLOW-UP

Once City staff advertises the construction contract and selects a construction contractor, ESD will return to City Council to request approval to award the construction contract in the spring of 2018. City staff cannot move forward with the required permits and construction contract advertisement if the MND and MMRP are not adopted.

PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the January 23, 2017 City Council meeting.

COORDINATION

This project and memorandum were coordinated with the Planning, Building, and Code Enforcement Department and the City Attorney's Office.

COMMISSION RECOMMENDATION/INPUT

This item is scheduled to be heard at the January 11, 2018 Treatment Plant Advisory Committee meeting. A supplemental memorandum with the committee's recommendation will be included in an amended January 23, 2018 City Council meeting agenda.

CEQA

The environmental impacts of the project were addressed by a MND (File No. PP17-046) circulated on August 22, 2017. The MND is recommended for adoption by City Council.

/s/ Ashwini Kantak for
KERRIE ROMANOW
Director, Environmental Services

For questions, please contact Ken Davies, Sustainability and Compliance Manager, at (408) 975-2587.

Attachment: Project Vicinity Map and Draft CEQA Resolution

ATTACHMENT
Land Uses in the Vicinity of RWF and Pond A18



0 1,000 2,000 4,000 Feet



Created Nov 2017

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE ADOPTING THE SAN JOSE-SANTA CLARA REGIONAL WASTEWATER POND A18 SOUTH GATE LEVEE REPAIR PROJECT MITIGATED NEGATIVE DECLARATION, FOR WHICH AN INITIAL STUDY WAS PREPARED, ALL IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AS AMENDED, AND ADOPTING A RELATED MITIGATION MONITORING AND REPORTING PROGRAM

WHEREAS, prior to the adoption of this Resolution, the Planning Director of the City of San José prepared an Initial Study and approved for circulation a Mitigated Negative Declaration for the San José-Santa Clara Regional Wastewater Pond A18 South Gate Levee Repair Project under Planning File No. PP17-047 (the "Initial Study/Mitigated Negative Declaration"), all in accordance with the requirements of the California Environmental Quality Act of 1970, together with state and local guidelines implementing said Act, all as amended to date (collectively "CEQA"); and

WHEREAS, the San José-Santa Clara Regional Wastewater Pond A18 South Gate Levee Repair Project (the "Project") analyzed under the Initial Study/Mitigated Negative Declaration consists of a repair of failing sections of the levee on each side of the Pond A18 South Gate Structure. The repair involves placing sheet piles into the levee so as to extend from a relatively undamaged portion of the levee, across the eroded/damaged area, and connect to the walls of the existing South Gate Structure. Construction would occur over a period of approximately 30 days. The Project is located at San José-Santa Clara Regional Wastewater Facility at the south gate of Pond A18, north of 700 Los Esteros Road in the City of San José, California; and

WHEREAS, the Initial Study/Mitigated Negative Declaration concluded that implementation of the Project could result in certain significant effects on the

environment and identified mitigation measures that would reduce each of those significant effects to a less-than-significant level; and

WHEREAS, in connection with the approval of a project involving the preparation of an initial study/mitigated negative declaration that identifies one or more significant environmental effects, CEQA requires the decision-making body of the lead agency to incorporate feasible mitigation measures that would reduce those significant environmental effects to a less-than-significant level; and

WHEREAS, whenever a lead agency approves a project requiring the implementation of measures to mitigate or avoid significant effects on the environment, CEQA also requires a lead agency to adopt a mitigation monitoring and reporting program to ensure compliance with the mitigation measures during project implementation, and such a mitigation monitoring and reporting program has been prepared for the Project for consideration by the decision-maker of the City of San José as lead agency for the Project (the "Mitigation Monitoring and Reporting Program"); and

WHEREAS, the City of San José is the lead agency on the Project, and the City Council is the decision-making body for the proposed approval to undertake the Project; and

WHEREAS, the City Council has reviewed and considered the Initial Study/Mitigated Negative Declaration and related Mitigation Monitoring and Reporting Program for the Project and intends to take actions on the Project in compliance with CEQA and state and local guidelines implementing CEQA; and

WHEREAS, the Initial Study/Mitigated Negative Declaration and related Mitigation Monitoring and Reporting Program for the Project are on file in the Office of the Director of Planning, located at 200 East Santa Clara Street, 3rd Floor Tower, San José,

California, 95113, are available for inspection by any interested person at that location and are, by this reference, incorporated into this Resolution as if fully set forth herein;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE:

THAT THE CITY COUNCIL does hereby make the following findings: (1) it has independently reviewed and analyzed the Initial Study/Mitigated Negative Declaration and other information in the record and has considered the information contained therein, prior to acting upon or approving the Project, (2) the Initial Study/Mitigated Negative Declaration prepared for the Project has been completed in compliance with CEQA and is consistent with state and local guidelines implementing CEQA, and (3) the Initial Study/ Mitigated Negative Declaration represents the independent judgment and analysis of the City of San José, as lead agency for the Project. The City Council designates the Director of Planning at the Director's Office at 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113, as the custodian of documents and records of proceedings on which this decision is based.

THAT THE CITY COUNCIL does hereby find that based upon the entire record of proceedings before it and all information received that there is no substantial evidence that the Project will have a significant effect on the environment and does hereby adopt the Mitigated Negative Declaration and related Mitigation Monitoring and Reporting Program prepared for the Project (Planning File No. PP17-047). The Mitigation Monitoring and Reporting Program for the Project is attached hereto as Exhibit "A" and fully incorporated herein. The Initial Study/ Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program are: (1) on file in the Office of the Director of Planning, located at 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113 and (2) available for inspection by any interested person.

ADOPTED this ____ day of _____, 2018 by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk