



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Motion 19063

HEARING DATE: January 16, 2014

Hearing Date: January 16, 2014
Case No.: **2012.1427E**
Project Location: **Sharp Park, City of Pacifica, San Mateo County**
Project Sponsor: San Francisco Recreation and Park Department (SFRPD)
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ADOPTING FINDINGS RELATED TO THE APPEAL OF THE PRELIMINARY MITIGATED NEGATIVE DECLARATION, FILE NUMBER 2012.1427E FOR THE PROPOSED DEVELOPMENT ("PROJECT") AT SHARP PARK IN THE CITY OF PACIFICA IN SAN MATEO COUNTY

MOVED, that the San Francisco Planning Commission (hereinafter "Commission") hereby AFFIRMS the decision to issue a Mitigated Negative Declaration, based on the following findings:

1. On November 14, 2012, pursuant to the provisions of the California Environmental Quality Act ("CEQA"), the State CEQA Guidelines, and Chapter 31 of the San Francisco Administrative Code, the Recreation and Parks Department submitted an Environmental Evaluation Application for the Project to the Planning Department ("Department"), in order that the Department might conduct an initial evaluation to determine whether the Project might have a significant impact on the environment.
2. On September 18, 2013, the Department determined that the Project, as proposed, could not have a significant effect on the environment.
3. On September 18, 2013, a notice of determination that a Mitigated Negative Declaration would be issued for the Project was duly published in a newspaper of general circulation in the City, and the Mitigated Negative Declaration posted in the Department offices, and distributed all in accordance with law.
4. On October 17, 2013, a commenter letter concerning the decision to issue a Mitigated Negative Declaration was submitted by Peter Baye.
5. On October 18, 2013, an appeal of the decision to issue a Mitigated Negative Declaration was timely filed by Brent Plater on behalf of Wild Equity Institute.

6. A staff memorandum, dated January 9, 2014, addresses and responds to all points raised by the commenter in the comment letter and the appellant in the appeal letter. That memorandum is attached as Exhibit A and staff's findings as to those points are incorporated by reference herein as the Commission's own findings. Copies of that memorandum have been delivered to the City Planning Commission, and a copy of that memorandum is on file and available for public review at the San Francisco Planning Department, 1650 Mission Street, Suite 400.
7. On January 9, 2014, amendments were made to the Preliminary Mitigated Negative Declaration, to address points raised by the commenter and appellant. Such amendments do not include new, undisclosed environmental impacts and do not change the conclusions reached in the Preliminary Mitigated Negative Declaration. The changes do not require "substantial revision" of the Preliminary Mitigated Negative Declaration, and therefore recirculation of the Preliminary Mitigated Negative Declaration is not required.
8. On January 16, 2014, the Commission held a duly noticed and advertised public hearing on the appeal of the Preliminary Mitigated Negative Declaration, at which testimony on the merits of the appeal, both in favor of and in opposition to, was received.
9. All points raised in the appeal of the Preliminary Mitigated Negative Declaration at the January 16, 2014 City Planning Commission hearing have been responded to either in the memorandum or orally at the public hearing.
10. After consideration of the points raised by appellant, both in writing and at the January 16, 2014 hearing, the San Francisco Planning Department reaffirms its conclusion that the proposed project could not have a significant effect upon the environment.
11. In reviewing the Preliminary Mitigated Negative Declaration issued for the Project, the Planning Commission has had available for its review and consideration all information pertaining to the Project in the Planning Department's case file.
12. The Planning Commission finds that Planning Department's determination on the Mitigated Negative Declaration reflects the Department's independent judgment and analysis.

The San Francisco Planning Commission HEREBY DOES FIND that the proposed Project, could not have a significant effect on the environment, as shown in the analysis of the Mitigated Negative Declaration, and HEREBY DOES AFFIRM the decision to issue a Mitigated Negative Declaration, as prepared by the San Francisco Planning Department.

I hereby certify that the foregoing Motion was ADOPTED by the City Planning Commission on January 16, 2014.

Jonas Ionin
Commission Secretary

Motion No. 19063
Hearing Date: January 16, 2014

Case No. 2012.1427E
**Sharp Park Safety, Infrastructure Improvement,
and Habitat Enhancement Project**

AYES: Wu, Moore, Sugaya, Borden, Fong

NOES:

ABSENT: Antonini, Hillis

ADOPTED: January 16, 2014



SAN FRANCISCO PLANNING DEPARTMENT

MEMO

Exhibit A to Draft Motion Planning Department Response to Appeal of Preliminary Mitigated Negative Declaration

CASE NO. 2012.1427E – SHARP PARK SAFETY, INFRASTRUCTURE IMPROVEMENT,
AND HABITAT ENHANCEMENT PROJECT PUBLISHED ON SEPTEMBER 18, 2013

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BACKGROUND

An environmental evaluation application (Case No. 2012.1427E) for the proposed project at Sharp Park in the City of Pacifica in San Mateo County was filed by the project sponsor, the City and County of San Francisco's (CCSF's) Recreation and Park Department (SFRPD), on November 14, 2012. The proposed project includes elements that are analyzed in, and in some instances required by, a Biological Opinion issued by the U.S. Fish and Wildlife Service (USFWS)¹ and consists of: 1) construction of a perennial pond, approximately 1,600 square feet (sf) in size, located approximately 400 to 500 feet southeast of Horse Stable Pond (HSP); 2) realignment of a portion of an existing golf cart path located west of the fairway for golf course hole number 14 and east of the tee box for golf course hole number 15; 3) removal of sediment and emergent vegetation within HSP and the connecting channel that links HSP with Laguna Salada (LS); 4) construction of steps and a maintenance walkway approximately 4.6 feet in width at the existing HSP pumphouse; and 5) replacement of an existing wooden retaining wall with a concrete retaining wall at the existing HSP pumphouse.

The project would be implemented in two locations, which combined total less than an acre (approximately 35,000 noncontiguous sf), within Sharp Park, which is 417 acres. The majority of work would be located in the southwest corner of the existing golf course, near HSP. One segment of an existing golf cart path is proposed to be realigned as part of this project. This golf cart path segment is located to the northeast of LS and to the southwest of Lakeside Avenue.

The Sharp Park Golf Course is located within an 845-acre watershed. HSP is located south of LS and consists of an open water pond and a fresh-to-brackish water wetland. It is connected to LS via an existing approximately 1,000-foot-long channel with culverts (metal pipes that are located underneath golf cart pathways), which was constructed to drain water from LS to HSP. Together these three features form a managed wetland complex, which SFRPD regularly maintains, and SFRPD adjusts the water level through the operation of mechanical pumps.

Water levels in the LS wetland complex are controlled by existing pumps located in the pumphouse at the southwest corner of HSP. Flood waters in the wetland complex are removed by

¹ U.S. Fish and Wildlife Service (USFWS). *In Reply Refer To: 08ESMF00-2012-F-0082-2, Formal Endangered Species Consultation on the Sharp Park Safety, Infrastructure Improvement, and Habitat Enhancement Project in San Mateo County, California*, October 2, 2012 ("Biological Opinion"). This document is available for review as part of Case File No. 2012.1427E at the San Francisco Planning Department, 1650 Mission Street, Suite 400, San Francisco, California 94103.

the pumps, which pump water into the Pacific Ocean during the winter when water levels in the pond become too high. The pumps control water levels in HSP and may affect water levels in LS when the channel connecting the two water bodies creates a surface water connection between them. The existing pump system consists of a large pump (rated 10,000 gallons per minute) and a small pump (rated 1,500 gallons per minute), located in a pumphouse with pipes built through the seawall to an outfall. Operation of the flood control pump system is necessary to manage floodwaters both on Sharp Park and adjacent properties. During normal rainfall years, floodwaters into LS back up onto the golf course. During heavy rainfall years, extensive flooding can occur in areas of play on the golf course and may also threaten nearby residences.²

The primary purpose of the proposed construction of the new pond, the golf cart path realignment, the pumphouse improvements, and the sediment and vegetation removal is to: 1) restore habitat in several locations within the wetland complex for the California red-legged frog (“Frog”) and the San Francisco garter snake (“Snake”), and 2) facilitate continued operation of pumps and maintenance of the existing infrastructure. Additionally, the sediment and vegetation removal would ensure that SFRPD can continue to manage water levels in the LS wetland complex by removing impediments to water flow within the wetland complex. Sediment removal is typical of maintenance activities that occurred in the past at Sharp Park and is considered typical maintenance for managed wetlands to prevent excessive accumulation of sediment in the wetland complex. Excessive accumulation of sediment in HSP and the connecting channel could cause malfunction of the pumps by allowing sediment to enter the pump system and/or preventing the water from entering the pump intake.³ Another purpose of the proposed improvements to the pumphouse (which, as noted above, include construction of steps and a maintenance walkway and replacement of an existing wooden retaining wall with a new concrete retaining wall) is to improve the safety conditions of workers operating and maintaining the pumps by enhancing access to the pump intake structure.

There are several special-status species⁴ that are known to occur on and near the project site. These species include Frogs and Snakes. The Frog is listed as “threatened” under the Federal Endangered Species Act (FESA) and a California Species of Special Concern (SSC).^{5,6} The Snake is

² USFWS. *Biological Opinion*.

³ Stacy Bradley, SFRPD. *Email to Kei Zushi, San Francisco Planning Department, Project Description Confirmation*, January 07, 2014. This email is available for review as part of Case File No. 2012.1427E at the San Francisco Planning Department, 1650 Mission Street, Suite 400, San Francisco, California 94103.

⁴ See Section E.13, Biological Resources of the PMND, for the definition of “Special-Status Species.”

⁵ The Federal Endangered Species Act (FESA) defines “Threatened Species” as any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

⁶ A Species of Special Concern (SSC) is a species, subspecies, or distinct population of an animal (fish, amphibian, reptile, bird, and mammal) native to California that currently satisfies one or more of the following (not necessarily mutually exclusive) criteria:

- is extirpated from the State or, in the case of birds, in its primary seasonal or breeding role;
- is listed as Federally-, but not State-, threatened or endangered; meets the State definition of threatened or endangered but has not formally been listed;

listed as “endangered” under the FESA and classified as “endangered” and “fully protected” under the California Fish and Game Code^{7,8,9,10,11} (see Section E.13, Biological Resources in the Preliminary Mitigated Negative Declaration (PMND) for more information).

Under the Federal Endangered Species Act (FESA) (16 United States Code [USC], 1531-1543), if a proposed project “may affect” a listed species or designated critical habitat, the project sponsor is required to prepare a Biological Assessment evaluating the nature and severity of the expected effect. In response, the USFWS issues a Biological Opinion with a determination that the proposed action may either jeopardize the continued existence of one or more listed species (jeopardy finding), result in the destruction or adverse modification of critical habitat (adverse modification finding), not jeopardize the continued existence of any listed species (no jeopardy finding), or not result in adverse modification of critical habitat (no adverse modification finding). The Biological Opinion issued by the USFWS may stipulate discretionary “reasonable and prudent” conservation measures, and if the project would not jeopardize a listed species, the USFWS issues an incidental take statement to authorize the proposed activity.

A Biological Assessment¹² was prepared by SFRPD. A Biological Opinion¹³ was issued by the USFWS through FESA Section 7 consultation, which was initiated by the U.S. Army Corps of Engineers (USACE) for fill in HSP (waters of the U.S.¹⁴) resulting from the proposed construction

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- is experiencing, or formerly experienced, serious (noncyclical) population declines or range retractions (not reversed) that, if continued or resumed, could qualify it for State threatened or endangered status;
 - has naturally small populations exhibiting high susceptibility to risk from any factor(s), that if realized, could lead to declines that would qualify it for State threatened or endangered status.

⁷ The FESA defines “Endangered Species” as any species which is in danger of extinction throughout all or a significant portion of its range other than a species of the Class Insecta determined by the Secretary to constitute a pest whose protection under the provisions of the FESA would present an overwhelming and overriding risk to man.

⁸ The California Fish and Game Code defines “Endangered Species” as a native species or subspecies of a bird, mammal, fish, amphibian, reptile, or plant which is in serious danger of becoming extinct throughout all, or a significant portion, of its range due to one or more causes, including loss of habitat, change in habitat, overexploitation, predation, competition, or disease. Any species determined by the Fish and Game Commission as “endangered” on or before January 1, 1985, is an “endangered species.”

⁹ The classification of “Fully Protected” was the State’s initial effort in the 1960’s to identify and provide additional protection to those animals that were rare or faced possible extinction. Lists were created for fish, mammals, amphibians and reptiles, birds and mammals. Most fully protected species have also been listed as threatened or endangered species under the more recent endangered species laws and regulations.

¹⁰ California Department of Fish and Wildlife (CDFW). *Fully Protected Animals*. Available online at: http://www.dfg.ca.gov/wildlife/nongame/t_e_spp/fully_pro.html. Accessed July 19, 2013.

¹¹ CDFW. *State and Federally Listed Endangered & Threatened Animals of California*, January 2013. Available online at: <http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/TEAnimals.pdf>. Accessed July 19, 2013.

¹² SFRPD. *Biological Assessment, Sharp Park Safety, Infrastructure Improvement and Habitat Enhancement Project*, May 2, 2012 (“Biological Assessment”). This Biological Assessment was amended on August 16, 2012. These documents are available for review as part of Case File No. 2012.1427E at the San Francisco Planning Department, 1650 Mission Street, Suite 400, San Francisco, California 94103.

¹³ USFWS. *Biological Opinion*.

¹⁴ Under the Federal Clean Water Act (FCWA) Sections 404 and 401, “jurisdictional wetlands and waters of the U.S.”

of the maintenance walkway and replacement of the existing wooden retaining wall around the existing pumphouse. The proposed project was analyzed in the Biological Opinion, as was the ongoing maintenance and operations activities at Sharp Park and some additional uplands habitat restoration work at Sharp Park. The proposed construction of the perennial pond, which was analyzed in the PMND, is one of the conservation measures set forth in the Biological Opinion.

The proposed project would require the following project approvals,¹⁵ with the approval by the San Francisco Recreation and Park Commission (SFRPC) identified as the Approval Action under Chapter 31 of the San Francisco Administrative Code for the whole of the proposed project:

- Approval by SFRPC
- California Endangered Species Act (CESA) consultation with the California Department of Fish and Wildlife (CDFW)¹⁶ concerning fully protected species (i.e., Snakes)
- Federal Clean Water Act (FCWA) Section 404 Approval by the USACE
- FCWA Section 401 Water Quality Certification Approval by the San Francisco Bay Regional Water Quality Control Board (SFBRWQCB)
- Fish and Game Code Section 1602 Lake or Streambed Alteration Agreement Approval by the CDFW
- Coastal Development Permit Approval by the California Coastal Commission (CCC)

In addition, the proposed project may require the following project approval:

- National Pollution Discharge Elimination System (NPDES) Permit by SFBRWQCB

A PMND was published on September 18, 2013. On October 17, 2013, Peter Baye submitted a comment letter concerning the PMND. Mr. Baye's comments are listed and addressed below. On October 18, 2013, Brent Plater with Wild Equity Institute filed a letter appealing the PMND and its concerns are listed below. Copies of both letters are included in this appeal packet as Exhibits B and C, respectively. The concerns set forth in the appeal letter and the comment letter are listed generally in the order presented in the respective letters.

CONCERN 1: The appellant asserts that there is a fair argument that the proposed project may have a significant effect on the environment. The appellant asserts that the proposed project would expand the operations of the existing pumps at HSP by removing the obstructions (sediment and emergent vegetation) to water flow, which would in turn increase the velocity

include one of the following: 1) traditional navigable waters; 2) wetlands next to traditional navigable waters; 3) nonnavigable tributaries of traditional navigable waters that are relatively permanent, where the tributaries typically flow year-round or have continuous flow at least seasonally (e.g., typically three months); or 4) wetlands that directly abut the tributaries described in Item 3), above. See Section E.13, Biological Resources of the PMND, for more information about the definition of "jurisdictional wetlands and waters of the U.S."

¹⁵ As noted above, the USFWS has already issued a Biological Opinion, including an Incidental Take Statement, for the proposed project (among other activities) through FESA Section 7 formal consultation.

¹⁶ Formerly known as the California Department of Fish and Game (CDFG)

and amount of water flow in the LS wetland complex. Based on this, the appellant asserts that the project would result in significant impacts to Frogs, Snakes, and to Sharp Park’s water quality and hydrology.

“Preeminent herpetologists, coastal ecologists, and hydrologists have reviewed the revisions and mitigation measures announced in the PMND. Below you will find the facts, reasonable assumptions predicated upon those facts, and expert opinions that explain how, even as revised and mitigated, the Pumphouse Project will cause significant adverse effects on the threatened California red-legged frog (*Rana draytonii*), the endangered San Francisco gartersnake (*Thamnophis sirtalis tetrataenia*), and Sharp Park’s hydrology and water quality.” (Page 1 of the Appeal Letter)

“This evidence makes clear that there is, at the very least, a fair argument that the Pumphouse Project may have a significant effect on the environment, which in turn requires the Department to prepare an Environmental Impact Report (‘EIR’) before approving the project. Cal. Pub. Res. Code § 21151; *Sierra Club v. County of Sonoma*, 6 Cal. App. 4th 1307, 1316 (1992) (‘Section 21151 creates a low threshold requirement for initial preparation of an EIR and reflects a preference for resolving doubts in favor of environmental review when the question is whether any such review is warranted. [citations] For example, if there is a disagreement among experts over the significance of an effect, the agency is to treat the effect as significant and prepare an EIR.’).” (Page 1 of the Appeal Letter)

“The PMND’s project description, however, has failed to include the Pumphouse Project’s key objective: to operate the pumphouse more extensively than it has ever been operated before. This increase in pumphouse operations is likely to have significant, adverse consequences on Sharp Park’s threatened and endangered species, its water quality, and its hydrology.” (Page 2 of the Appeal Letter)

“THE PUMPHOUSE PROJECT’S PRIMARY PURPOSE IS TO INCREASE PUMPHOUSE OPERATIONS, YET THE EFFECTS OF PUMPHOUSE OPERATIONS HAVE BEEN EXCLUDED FROM ENVIRONMENTAL REVIEW.” (Page 2 of the Appeal Letter)

“Specifically, SFRPD has acknowledged that (1) the wetland complex’s aquatic vegetation moderates the flow of water from Laguna Salada to the pumphouse, and (2) if the aquatic vegetation was removed the pumphouse would drain more of the wetland complex, and at faster rates. For example, in a recent deposition John Ascariz, the Recreation and Park Department’s Station Engineer for the pumphouse, explained that the Laguna Salada wetland complex moderates pumphouse operations at Sharp Park, and that pumphouse operations would increase if aquatic vegetation were removed from the system:” (Page 3 of the Appeal Letter)

“The PMND’s assumption that the Pumphouse Project will have no effect on the rate and extent of baseline pumping operations is unsupported by the record: indeed, the assumption is flatly contradicted by the project sponsor itself.” (Page 5 of the Appeal Letter)

“The Project Sponsor predicts that the Pumphouse Project will increase the rate water flows to the pumphouse, and keep Laguna Salada hydrologically connected to the pumphouse throughout a greater portion of the year. This will expand pumphouse operations at Sharp Park, which will in turn cause significant environmental effects on a variety of resources... ..” (Page 5 of the Appeal Letter)

“EXPANDING PUMPHOUSE OPERATIONS WILL HAVE SIGNIFICANT ADVERSE EFFECTS ON THE CALIFORNIA RED-LEGGED FROG.” (Page 5 of the Appeal Letter)

“The description of the proposed project activities on page 5 of the MND states that the channel would be cleared of vegetation and sediment to remedy obstruction of flows between HSP and the main pond or lagoon, improving ability to drain water from the lagoon by pumping: ‘3) removal of sediment and emergent vegetation within HSP and the connecting channel that links HSP with LS’. The MND, however, completely fails to assess the hydrological and ecological impacts of increasing drainage of the lagoon by increasing hydraulic connectivity between the main lagoon pond and HSP, even though it is clearly the basic purpose of the action. Any significant change in the duration and depth of flooding or soil saturation in lagoon wetlands has important ecological effects. Increased drainage of wetlands, above baseline (pre-project) conditions is a potentially significant impact I cited in my scoping comments on this project (Baye 2013). My scoping comments appear to be entirely ignored about this most basic modification of lagoon wetland hydrology, and their impacts on further spread of cattails and tules.” (Page 2 of Mr. Baye’s Letter)

“The MND completely fails to address potentially significant direct and indirect hydrological impacts of the proposed project’s drainage component on Laguna Salada wetlands, despite my detailed scoping comments on this subject. There is no proposed mitigation for increasing the drainage of the lagoon, and making its bed shallower more often than pre-project conditions. Increasing the drainage of the lagoon will increase the spread of cattails and tules over the remaining open water.” (Page 3 of Peter Baye’s Comment Letter)

RESPONSE TO CONCERN 1: The appellant fails to present a fair argument supported by substantial evidence in the record that continued operation of the existing pumphouse would cause any significant impacts on the environment. The pumps are part of the existing, or baseline, conditions. Moreover, the appellant’s assertion that the proposed project would increase the velocity and amount of water flow in the LS wetland complex is speculative and not based on fact.

The appellant’s assertion that the proposed project will cause significant adverse effects on Frogs, Snakes, and Sharp Park’s hydrology and water quality is speculative and based on a mischaracterization of the proposed project. First, and most significantly, the existing pumphouse operations are part of the baseline conditions at the project site and are not a part of the proposed project. Thus, although the existing pumphouse operations inform the project setting and are part

of the baseline conditions against which the proposed project's impacts are measured, the operation of the pumphouse itself is not properly considered part of the proposed project.

Second, the appellant asserts that the proposed project would expand the operations of the existing pumps at HSP. This is inaccurate. The proposed project would not expand the operations of the existing pumps. The proposed project is intended to prevent excessive accumulation of sediment in HSP and the connecting channel, which could cause malfunction of the pumps by allowing sediment to enter the pump system and/or preventing the water from entering the pump intake.¹⁷

The predominant factors that affect the rate, frequency and duration of pumping are: 1) pump infrastructure and protocols for pump operation; and 2) precipitation and water inflows.¹⁸ The pump infrastructure and protocols would not be adjusted, modified, or altered as part of the proposed project. SFRPD will continue to adjust pump levels throughout the breeding season to protect Frog egg masses and reduce flood potential. The maximum pumping rate (amount/time) is determined by the pumping capacity. Specifically, the small pump can remove water up to a rate of 1,500 gallons per minutes (gpm) and the larger pump up to 10,000 gpm.¹⁹ No changes to the pump infrastructure are proposed as part of the project, therefore the water removal rate would not change with project implementation. Precipitation and inflows are outside the control of SFRPD. The primary factor that drives precipitation and inflows is regional weather conditions. A secondary factor, which is subject to minimal short-term change, is local land use patterns, including the extent of impervious surfaces. The amount of water that is removed over a unit of time via operation of the pumps depends on the amount and timing of precipitation and inflows as well as the amount of time the pumps operate and the level at which the pumps are set, which is determined during the Frog breeding season by the location of egg masses. None of these operational protocols will be changed by this project, including the sediment and vegetation removal. Therefore, the appellant's assertion is factually incorrect.

Third, the appellant asserts that by removing sediment and vegetation from HSP and portions of a channel that connect HSP and LS, the proposed project would increase the velocity and amount of water flowing in the LS wetland complex, resulting in a significant impact on the environment. This assertion appears to be based on the assumption that by removing sediment and emergent vegetation more water would be pumped out of the LS wetlands complex and at a rate that would result in impacts to special-status species. The appellant has not provided any analysis to support this assumption. As discussed above, the velocity and amount of water in the wetland complex is determined by the pump infrastructure and operational protocols, which are not being altered by this project. The proposed sediment and vegetation removal, intended to prevent excessive

¹⁷ Stacy Bradley, SFRPD. *Email to Kei Zushi, San Francisco Planning Department, Project Description Confirmation*, January 07, 2014. This email is available for review as part of Case File No. 2012.1427E at the San Francisco Planning Department, 1650 Mission Street, Suite 400, San Francisco, California 94103.

¹⁸ *Ibid.*

¹⁹ USFWS. *Biological Opinion.*

accumulation of sediment in the wetland complex, would not increase the velocity or amount of water flowing through the pumps.

The appellant asserts, based partly on the deposition of John Ascariz, SFRPD's stationary engineer, that: 1) the wetland complex's aquatic vegetation moderates the flow of water from Laguna Salada to the pumphouse; and (2) if the aquatic vegetation was removed the pumps would drain more of the wetland complex, and at faster rates. This assertion is based on a mischaracterization of what John Ascariz said in the deposition. Mr. Ascariz was speaking generally about park management and operations and responding to broad hypothetical questions regarding pump operations and unspecified amounts of vegetation removal. He was not discussing the proposed project. This project's proposed sediment and vegetation removal would not increase the velocity and amount of water flow in the wetland complex. Rather, this is controlled by pump infrastructure and operational protocols.

The appellant has presented no hydrological or hydraulic modeling analyses prepared by a qualified professional to demonstrate that the project would increase the velocity and amount of water flow in the LS wetland complex. Instead, this argument is based on speculation regarding the effect that removal of sediment and vegetation may have. Because the pump infrastructure and operation will not be adjusted or altered as part of this project, the project itself would not cause the rate or amount of water flow in the LS wetland complex to increase even after the obstructions (sediment and emergent vegetation) are removed from HSP and the connecting channel.

Even if the appellant were correct in its assertion that the project would increase the velocity of water flow in the LS wetland complex, it does not directly follow that any increase in water flow velocity would result in any adverse impacts to Frogs, Snakes, or to Sharp Park's hydrology or water quality. The appellant has not provided any evidence that such an adverse impact would occur. The pump operations would comply with ongoing conservation measures to protect Frog egg masses from potential desiccation in accordance with the Biological Opinion. These conservation measures are already in place and would continue to govern the operation of the pumps and water-level management under the proposed project.²⁰ These conservation measures include, but are not limited to, monitoring of Frog egg masses and water levels, visual surveys on Frog egg masses, and adjustment of the water levels to protect Frog egg masses (see pages 13 and 14 of the Biological Opinion). As a result, the appellant fails to present a fair argument based on substantial evidence that the proposed project would result in a significant impact.

As discussed in the amended PMND, the proposed project's potential impacts would be reduced to a less-than-significant level with implementation of Mitigation Measures M-BIO-2a (Protection of Frog, Snake, and Western Pond Turtle), M-BIO-2b (Protection of Special-Status Species and

²⁰ Stacy Bradley, SFRPD. *Email to Kei Zushi, San Francisco Planning Department, Project Description Confirmation*, January 07, 2014. This email is available for review as part of Case File No. 2012.1427E at the San Francisco Planning Department, 1650 Mission Street, Suite 400, San Francisco, California 94103.

Water Quality from Acid Sulfate Soils and Other Components), M-BIO-2c (Protection of Bird Species), M-BIO-4a (Protection of Wetlands and Natural Habitat), M-BIO-4b (Wetland Mitigation Plan for Temporarily Affected Areas), M-CP-2 (Archeological Testing), M-CP-3 (Paleontological Training Program and Alert Sheet), M-CP-4 (Human Remains, Associated or Unassociated Funerary Objects), and M-AQ-2 (Preparation and Implementation of a Dust Control Plan).

There is no substantial evidence in the record that the project as mitigated could result in a significant effect on the environment, and appellant’s arguments should be rejected.

CONCERN 2: The appellant asserts that ongoing pumphouse operations should be considered part of the proposed project.

“BY EXCLUDING PUMPHOUSE OPERATIONS FROM THE PROJECT DESCRIPTION THE DEPARTMENT HAS FAILED TO CONSIDER AND MITIGATE SIGNIFICANT ENVIRONMENTAL EFFECTS OF THE PUMPHOUSE PROJECT.” (Page 2 of the Appeal Letter)

“An accurate project description is an indispensable element of informed and legally sufficient environmental review processes under CEQA. *Cnty. of Inyo v. City of Los Angeles*, 71 Cal. App. 3d 185, 193, (Ct. App. 1977) (Calling an accurate project description the “*sine qua non*” of CEQA review).” (Page 2 of the Appeal Letter)

RESPONSE TO CONCERN 2: Pumphouse operations are part of the existing, or “baseline” conditions at the project site, and no changes are proposed to the pumps or the pumphouse operations as part of the proposed project. Thus, analysis of any impacts resulting from pump operations is not required under CEQA.

The ongoing operations of the existing pumps at HSP are considered to be a baseline condition for the purpose of environmental review for the proposed project. CEQA requires that a proposed project’s effects be measured against the existing, or “baseline,” conditions at the project site and in its vicinity, and not that the baseline conditions be considered part of the proposed project’s effects. Although a new exterior stair and walkway would be added to the pumphouse and an existing wooden retaining wall would be replaced with a concrete retaining wall at the pumphouse, no other changes would be made to the pumphouse under the proposed project. No changes at all are proposed to the pumps themselves or to the manner in which they are currently operated by SFRPD staff. Therefore, no impact analysis is required concerning the ongoing operations of the existing pumps because that is part of the baseline conditions of the project site. As discussed in Response to Concern 1, the proposed sediment and vegetation removal would not affect pumphouse operations.

CONCERN 3: The appellant asserts that “expanded” pumping operations will result in an increased impact to Frogs and that federal regulators believe the City will take virtually all Frog egg masses laid at Sharp Park each year that it operates.

“Alarming, when the Pumphouse Project is implemented regulators believe the City will take *virtually all egg masses* laid at Sharp Park each year that it operates - up to 130 egg masses every winter breeding season, roughly equivalent to the entire number of egg masses laid in the frog’s most prolific and fecund breeding seasons.”(Page 6 of the Appeal Letter)

RESPONSE TO CONCERN 3: The appellant’s claim that regulators believe the City will take virtually all Frog egg masses laid at Sharp Park each year that it operates is inaccurate and misleading.

Contrary to the appellant’s assertion, the proposed project would not take all egg masses laid at Sharp Park, nor would it take “up to 130 egg masses every winter breeding season.” Rather, the Incidental Take Statement issued by the USFWS found that a total of 130 egg masses per year would be subject to incidental take resulting from ongoing operation and maintenance at Sharp Park.

“Incidental take” is a term of art under the FESA. “Take” is generally defined as harming or harassing federally listed species and is largely prohibited, but certain “incidental” take may be allowed where it is not the primary purpose of a federal action and is done in compliance with an incidental take statement. Here, because the project would require approvals under the FCWA, the USFWS issued an Incidental Take Statement as part of its Biological Opinion, which considered the effects on Frogs and Snakes of the proposed project combined with certain uplands restoration work and ongoing maintenance and operations of the golf course.

The Biological Opinion prepared for this project found that a total of 130 egg masses per year would be subject to incidental take during a 10-year operation and maintenance period at Sharp Park (see page 40 of the Biological Opinion). Ongoing operation and maintenance is not considered part of this project, and 130 egg masses is not the number of egg masses anticipated to be subject to incidental take resulting from the proposed project. The USFWS found that the activities described in the Biological Opinion, which included the proposed project as well as other activities, would not jeopardize the continued existence of Frogs or Snakes (see Page 38 of the Biological Opinion)--meaning, in other words, that the project’s impacts to those species would be less than significant. The USFWS anticipated the extent of incidental take resulting from the proposed project, including conservation measures, as follows (see pages 39 and 40 of the Biological Opinion):

- 1) All Frogs in the 0.624-acre area within the HSP construction site will be subject to incidental take in the form of harassment and capture;
- 2) In total one Frog adult will be subject to incidental take in the form of death or injury as a result of construction activities;
- 3) All Snakes in the 0.624-acre construction area will potentially be harassed as a result of ground disturbing activities, and take of this species is expected to be in the form of harassment and no Snake is expected to be killed or injured as a result of construction activities; and

- 4) All Snakes and Frogs in the restoration area footprint will be subject to incidental take in the form of harassment as a result of the direct effects of removal of plants, revegetation activities, and other activities associated with pond construction. (*Emphasis added*)

Based on the above findings in the Biological Opinion and the mitigation measures identified in the PMND, the PMND concluded that the proposed project would not result in any significant biological resources impacts related to Frogs or Snakes. The appellant fails to show that the extent of incidental take anticipated to result from the proposed project would result in any significant biological resources impact related to Frogs or Snakes.

CONCERN 4: The appellant asserts that the proposed project would remove sediment in the area of the connecting channel that is highest in elevation and that this would hydrologically connect LS and HSP for a greater portion of the year and potentially reverse the flow of water from LS to HSP, resulting in significant impacts to protected species, water quality, and hydrology.

“... the Pumphouse Project proposes to remove 96,948 liquid gallons (480 cubic yards) of sediment from the connecting channel. The portions of the connecting channel to be dredged include the highest point (6.2 feet) along the longitudinal profile of the channel: the area near the culvert passing under the 12th fairway of the golf course. If this area is dredged, Laguna Salada will remain hydrologically connected to the pumphouse for a greater portion of the year: which will in turn result in expanded pumping operations that drain Laguna Salada’s wetland complex. Exhibit F, p. 4.” (Page 7 of the Appeal Letter)

“This increased hydrological connectivity may result in significant adverse environmental effects in one of two ways. First, if the Project Sponsor is correct and the connectivity permits SFRPD to drain the Laguna Salada wetland complex more rapidly and thoroughly, the hydrological resources presently preserved in the Laguna Salada complex will be adversely affected. For example, draining wetlands is known to increase tule and cattail populations, and as these species become more numerous Laguna Salada’s open water habitats would decrease in size. Dr. Peter Baye, *Critical Review of the Biological Assessment for the ‘Sharp Park Safety, Infrastructure Improvement and Habitat Enhancement Project’* May 2012. p. 5 (Exhibit G, p. 9). However, this effect is not considered by the PMND: even though this threat is considered so significant at Horse Stable Pond that SFRPD is proposing to destroy the frog’s cover habitat to create open water breeding habitat.” (Pages 7 and 8 of the Appeal Letter)

“Second, it is also possible that the Project Sponsor is not correct, and that the Pumphouse Project will actually reverse the flow of water from Laguna Salada to Horse Stable Pond. Exhibit F, p. 4. Kamman Hydrology is the author of the Hydrologic Assessment that the Department relies upon to justify the PMND’s hydrology conclusions. But Kamman has explained that SFRPD and the Department are not accurately interpreting his hydrologic study. In his Aug. 3, letter, Kamman explains that storm runoff into Horse Stable Pond is roughly double the amount of storm runoff into Laguna Salada. Because Horse Stable Pond’s margin is much more steeply sloped than

Laguna Salada, the storm runoff causes Horse Stable Pond's surface level to rise much more rapidly than the surface level of Laguna Salada, which tends to spread outward across its shallow margins, rather than upward. Because of this, initial storm surges tend to drive water from the high-elevation Horse Stable Pond through the connecting channel and into the lower-elevation Laguna Salada. *Id.* at 5." (Page 8 of the Appeal Letter)

"The practical consequences of this analyses are two-fold: first, removing vegetation from the connecting channel will increase flooding at Sharp Park Golf Course compared to present conditions as waters from Horse Stable Pond are driven into Laguna Salada and extend outward along Laguna Salada's shallow margin. *Id.* Second, as waters flow from Horse Stable Pond into Laguna Salada (and therefore away from the pumphouse), the pumphouse will not function as waters flow away from its intake pipe." (Page 8 of the Appeal Letter)

RESPONSE TO CONCERN 4: LS and HSP are already hydrologically connected throughout the Frog breeding season. The proposed project would not substantially alter the baseline hydrologic connection between the two water bodies; even if it did, appellant has not provided any evidence that such a change would cause any significant biological resources impacts.

The appellant asserts that the proposed sediment removal in the connecting channel would occur in the area that is highest in elevation, which is located near the culvert passing under the 12th fairway of the golf course, and that this would result in an increased hydrological connection between HSP and LS. Appellant asserts that this, in turn, would increase tule and cattail populations and potentially reverse the flow of water between HSP and LS.

First, the appellant is wrong in its assertion that the proposed project would result in any increased hydrological connection between HSP and LS. These two water bodies are already connected throughout the rainy season. The base elevation of the culvert that connects HSP and LS is 6.54 feet NAVD 88, which translates to 0.57 on the pumphouse gauge.²¹ Pumphouse gauge levels noted during winter field surveys for CRLF have not been recorded at or below 0.57,²² therefore the two water bodies are already connected throughout the breeding season. As a result, the appellant's assertion that the proposed project would allow LS and HSP to hydrologically connect for a greater portion of the year is based on an inaccurate understanding of the base hydrological conditions of the project site.

Second, the elimination of sediment build-up around the culvert would not increase the hydrological connection between HSP and LS or change the current direction of water flow in the connecting channel. The culvert is a metal pipe at a fixed elevation within the connecting channel,

²¹ Clearwater Hydrology. *Total Station survey of Horse Stable Pond pump house floor and inlet staff gage- Sharp Park Golf Course, Pacifica, CA*, November 15, 2011. This document is available for review as part of Case File No. 2012.1427E at the San Francisco Planning Department, 1650 Mission Street, Suite 400, San Francisco, California 94103.

²² SFRPD. *Monitoring Data Sheets, 2007 through 2013*. These documents are available for review as part of Case File No. 2012.1427E at the San Francisco Planning Department, 1650 Mission Street, Suite 400, San Francisco, California 94103.

and the sediment removal would not affect the fixed elevation of the culvert.²³ Therefore, the project would not result in increased hydrological connection between HSP and LS even during the dry season.

Third, the appellant's assertion that the proposed sediment and emergent vegetation removal would result in adverse impacts (increased tule and cattail populations and potentially reverse flow of water between HSP and LS) is based on the assumption that the proposed sediment removal would create greater connectivity between LS and HSP, which has not been demonstrated as a condition resulting from the proposed project. The proposed sediment and emergent vegetation removal in and of itself would not result in a significant impact to special-status species or their habitats because it would be subject to various mitigation measures, including inspection and monitoring by biological monitors, to protect special-status species in accordance with the Biological Opinion. Therefore, the appellant has failed to demonstrate that the proposed sediment removal would result in such adverse impacts.

Fourth, even if the proposed project were to alter the relative elevation between the two water bodies as the appellant asserts, this would not change the current direction of water flow in the connecting channel because pump operational protocols are what determine the water levels that would maximize the protection of species during the rainy season. These ongoing operational protocols are part of the baseline conditions for the project and are, in part, dictated by the Biological Opinion.²⁴

Finally, even if the appellant were correct in his assertion that the project would result in LS and HSP being hydrologically connected for a greater portion of the year, the appellant has not drawn a link between that assertion and whether the proposed project would result in a significant impact on protected species, water quality, and hydrology.

Accordingly, the appellant fails to demonstrate that the proposed sediment removal in the connecting channel would result in LS and HSP being more hydrologically connected than they are already under baseline conditions or that the proposed sediment removal would result in any significant environmental impacts.

CONCERN 5: The appellant asserts that Sharp Park's ecological history indicates that increased pumping will result in saltwater intrusion. The appellant asserts that the PMND misunderstands LS's ecological history and thus, overlooks significant environmental effects of the proposed project and considers harmful project activities as mitigation measure.

²³ Stacy Bradley, SFRPD. *Email to Kei Zushi, San Francisco Planning Department, Project Description Confirmation*, January 07, 2014. This email is available for review as part of Case File No. 2012.1427E at the San Francisco Planning Department, 1650 Mission Street, Suite 400, San Francisco, California 94103.

²⁴ USFWS. *Biological Opinion*.

“Laguna Salada was never a tidal lagoon, nor was it daily or regularly influenced by ocean waters. The most extensive natural history investigation ever conducted of Sharp Park concludes that Laguna Salada was, under natural conditions, a fresh-to brackish backbarrier lagoon system surrounded by freshwater wetlands, separated from the ocean by a protective dune-like beach system. Lagoons with these structures and ecological characteristics provide suitable habitat for frogs and snakes throughout the state - as did Sharp Park’s lagoons before the berm was completed in the 1980s.” (Pages 8 and 9 of the Appeal Letter)

“Aerial photos from the 1940s through the 1980s indicate that Sharp Park’s berm was not completed until after the mid-1980s. Nonetheless San Francisco gartersnakes were recovering at Sharp Park until the mid-1980s. The City has previously suggested that an ocean storm surge brought high salinity levels to Laguna Salada in 1986 and alone halted this recovery, but this seems unlikely give (*sic*) the fact that Sharp Park’s California red-legged frog and San Francisco gartersnake populations survived ocean storm surges as large or larger in the 1930s, 1950s (see Figure 1), and 1970s. Exhibit I, p. 18-19.” (Page 9 of the Appeal Letter)

“The persistence of both species at Sharp Park through 1986 despite (a) an incomplete sea wall and (b) several coastal storm surges that inundated Sharp Park indicates that declines in the late 1980s are unlikely to be attributable to coastal processes. For example, ‘when aquatic habitat (ponds and streams) is abundant as a result of adequate rainfall, the California red-legged frog can produce large numbers of dispersing young, resulting in an increase in the number of occupied sites. In contrast, the California red-legged frog may temporarily disappear from an area during periods of extended drought.’ Revised Critical Habitat for *Rana Draytonii*, 75 Fed. Reg. 12816 (Mar. 17, 2010). From 1987-1992 California faced a severe drought, and ‘it is possible that the most severe impacts have been on the environment and the fish and wildlife that depend on the rivers for their sustenance.’ Specifically, the drought severely degraded wetland habitats, and endangered species populations declined significantly.” (Pages 9 and 10 of the Appeal Letter)

“This fundamental misunderstanding of Laguna Salada’s ecological underpinnings has led the Department to overlook significant environmental effects of the Pumphouse Project, and to consider harmful project activities as mitigation measures. For example, retaining the sea wall while pumping Sharp Park’s wetlands will exacerbate, not prevent, saltwater intrusion from the Ocean as marine waters are pulled through the existing groundwater (hydrologic) interface with the Ocean, eventually making the entire lagoon inhospitable to California red-legged frogs (ESA-PWA 2011, p. B-13). Moreover, the project’s dredging proposal, rather than improving breeding habitat for listed species, will put them at risk by encouraging listed species to breed in the areas most vulnerable to pumping-induced saltwater intrusion. *Id.*” (Page 13 of the Appeal Letter)

“Given the substantial evidence that the Department’s basic ecological presumptions are flawed--and the resulting significant environmental effects that were ignored or exacerbated because of this flawed presumption--the Department must consider the best available information about Sharp Park’s natural history and ecology, and ensure that the Project is both biologically and ecologically sound through a complete EIR.” (Page 13 of the Appeal Letter)

RESPONSE TO CONCERN 5: The appellant’s statements regarding the natural and ecological history of Sharp Park are not relevant to the analysis of the project’s potential environmental impacts.

Under CEQA, the lead agency is required to compare the existing (or “baseline”) conditions at the project site and in its vicinity to the conditions that would occur due to a project’s construction and operations. This is how the environmental impacts due to a proposed project are identified and analyzed. The baseline conditions are appropriately taken as a snapshot in time when an application for a project is first submitted. There is no requirement under CEQA that the prior history of a site--prior to the baseline condition--be identified or analyzed. Thus, it is not relevant whether or not the PMND describes or analyzes the ecological or natural history of the Sharp Park site.

Additionally, the appellant’s discussion related to the ocean storm surges and seawall is irrelevant to potential impacts resulting from the proposed project because storm surges and the existing seawall are also part of the baseline conditions of the site. Moreover, the appellant fails to present any evidence that the proposed project would increase salinity intrusion into the LS wetland system and/or impact Frog breeding. Finally, as discussed above, the proposed project does not include increased or expanded pumping operations. (Please see Responses to Concerns Nos. 1 and 2 for more detail.)

The appellant implies that there are one or more alternatives superior to the proposed project to protect Frogs at Sharp Park. Under CEQA, a lead agency is required to disclose environmental impacts of a project, but not required to determine whether there are any other alternatives superior to the project when no significant impacts have been identified resulting from the project. See also Response to Concern 15. There is no substantial evidence in the record of the lead agency that warrants preparation of an EIR concerning the proposed project and thus analysis of alternatives to the proposed project is not required.

CONCERN 6: The appellant asserts that the project description should have included the ongoing operation of Sharp Park, including the pumps, and certain uplands restoration work and that failure to include those elements as part of this project’s project description is “piecemealing.”

“The project description for the Pumphouse Project ‘includes elements that are required under a Biological Opinion issued by the U.S. Fish and Wildlife service.’ PMND, p.5. But the project description also segments several of the Biological Opinion’s required elements from the Pumphouse Project. The Department then declares that these segmented elements of the Pumphouse Project are either categorically exempt from environmental review, or includes the element’s effects in the environmental baseline. In either case, the Department is ‘chopping a large project into many little ones . . . which cumulatively may have disastrous consequences.’ *Bozung v. Local Agency Formation Commission* (1975) 13 Cal.3d 263, 283-284. Specifically, the action subject to the Biological Opinion has now been segmented into at least three projects for purposes of CEQA:

(1) a .5 acre upland habitat restoration project that the Department declared categorically exempt from CEQA on August 5, 2013, thus evading environmental review; (2) pumping operations that the Department deems to be a component of the environmental baseline, thus evading environmental review; and (3) the remainder of the Pumphouse Project: which the Department has refused to review through a complete EIR.” (Pages 13 and 14 of the Appeal Letter)

“CEQA forbids such ‘piecemeal’ review of the significant environmental impacts of a project. This rule derives, in part, from Cal. Pub. Res. Code § 21002.1(d), which requires lead agencies to ‘consider[] (sic) the effects, both individual and collective, of all activities involved in [the] project.’ In the instant case, SFRPD declared to the Fish and Wildlife Service just a few months ago that the upland habitat restoration, pumphouse operations, and the rest of the Pumphouse Project was a single action. In response, the Fish and Wildlife Service imposed mandatory terms and conditions on SFRPD in exchange for authorization to kill threatened and endangered species. Those terms and conditions included (1) completing the upland restoration project, (2) operating the pumphouse pursuant to specific protocols, and (3) implementing other terms and conditions four (sic) the Pumphouse’s construction actions. Thus, each of these three projects have been treated as a ‘crucial functional element of the larger project such that, without it, the larger project could not proceed.’ *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70. Indeed, the Biological Opinion expressly states that each element of the project description, reasonable and prudent measure, and each term and condition are ‘non-discretionary,’ and must become ‘binding conditions ... in order for the [take exemption] to apply.’ Biological Opinion, p. 39. Thus, these segmented activities are ‘conditions of approval’ for the Pumphouse Project as a whole, and as such it is improper for the Department to segment these elements of the project and evade stringent environmental review. See *Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonoma* (2007) 155 Cal App.4th 1214, 1224.” (Page 14 of the Appeal Letter)

“The adverse consequences of this piecemealing is already evident at Sharp Park. Laguna Salada has traditionally been a place for birdwatchers to observe wildlife, and several unique birds have been observed there in recent years. But a few months ago SFRPD removed a fencing project from the Pumphouse Project, and constructed a large fence that eliminated all access to Laguna Salada to watch birds. Similarly, SFRPD attempted to segment a so-called ‘grading’ project for the path along Sharp Park’s berm, but then proceeded to place rip-rap and armoring along the berm, resulting in a stop work order from the Coastal Commission.” (Page 14 of the Appeal Letter)

“If these project had not been piecemealed, informed decisionmaking (sic) with public oversight almost certainly would have prevented these significant environmental effects.” (Page 15 of the Appeal Letter)

RESPONSE TO CONCERN 6: The proposed project has independent utility from the ongoing operation of Sharp Park (including operation of the pumps) and from the upland habitat restoration project previously approved by the SFRPC, and thus is properly considered a separate project under CEQA from those activities.

The appellant asserts that the project description should have included the ongoing operation of Sharp Park, including the operation of the pumps, and certain upland restoration work and that failure to include those elements as part of this project's project description is "piecemealing." Appellant is correct that under CEQA, the lead agency is required to consider the whole of the project in one environmental review and not "piecemeal" what should properly be considered one project into smaller projects, thus minimizing the environmental impacts of the project as a whole. Here, piecemealing has not occurred because the three components raised by appellant—the proposed project, the ongoing maintenance and operations activities at Sharp Park, and an upland restoration project—are properly considered to be separate projects.

The primary question for understanding whether proposed activities should be considered one project or separate projects under CEQA is whether those activities have "independent utility" from each other—in other words, whether they rely on or trigger the need for each other. Here, each of these three components has independent utility from the others. First, as discussed elsewhere in this response, the ongoing maintenance and operation activities at Sharp Park are not only part of the baseline conditions of the environmental setting of Sharp Park, they are currently ongoing and can continue to be conducted whether or not this project is ever constructed and whether or not the previously approved upland habitat restoration project is ever undertaken.

Second, the upland habitat restoration project also has independent utility from both the proposed project and the ongoing maintenance and operation of Sharp Park. The Planning Department issued a Categorical Exemption Determination for the upland restoration project²⁵ and the SFRPC approved the project on August 15, 2013. The upland habitat restoration project consists of restoration of upland habitat within Sharp Park at three locations (totaling 0.5 acres in size): 1) south of HSP in an area with significant radish, mustard and Cape ivy cover; 2) immediately north of HSP in an area dominated by iceplant; and 3) west of LS in an area dominated by iceplant and acacia shrubs. Although the upland restoration project is near the proposed project, the upland project has been conducted outside the waterlines of HSP and LS, and its purpose is to convert portions of Sharp Park to native upland habitat for Frogs and Snakes by removing existing non-native invasive plant species and revegetating the areas with native plant species. The upland restoration work can be conducted whether or not the proposed project goes forward and does not trigger the need for the proposed project. Approval of the upland restoration project did not commit the SFRPD or the City to approving the proposed project. Accordingly, the upland habitat restoration project is properly considered a separate project from the proposed project.

Appellant contends that because the Biological Opinion issued by the USFWS considered the effects of all three components—the ongoing maintenance and operation of Sharp Park, the

²⁵ San Francisco Planning Department. *Sharp Park Upland Habitat Restoration Categorical Exemption*, Case No. 2013.1008E, August 5, 2013. This document is available online at: <http://www.sf-planning.org/index.aspx?page=3447>. Accessed December 17, 2013.

upland habitat restoration project, and the proposed project—in one document and issued one incidental take statement for all three activities, that the City’s environmental review conducted under CEQA should also consider all three components together. But whether the three separate activities were considered together in one document by the USFWS is not the legal standard for determining whether they should be considered one project under CEQA. As discussed above, the standard under CEQA is whether the activities have independent utility from each other, which they do. For these reasons, appellant’s contention that the three activities should be considered one project is not correct under CEQA.

Although the upland restoration work is a separate project from the proposed project, it was inadvertently omitted from the cumulative impacts discussions within the PMND. Accordingly, the PMND has been amended to add discussion of the upland restoration work in its cumulative impacts discussions. Addition of this information and discussion does not otherwise change the analysis or conclusions of the PMND, and all project-level and cumulative impacts remain less-than-significant with mitigation.

CONCERN 7: The appellant asserts that the project is inconsistent with the 1995 and 2006 SNRAMPs.

“From 2005 until 2011, SNRAMPs contained a project-level proposal for Sharp Park’s wetland complex, largely based on PWA’s 1992 Laguna Salada Resource Enhancement Plan. Although public comments suggested RPD should consider restoring habitat over the entire Sharp Park Golf Course area, the City refused to do so, explaining in 2009 that “[s]hould changes to the Sharp Park Golf Course be proposed, they would undergo a separate regulatory review, including CEQA environmental review.” (Page 15 of the Appeal Letter)

“The Pumphouse Project is inconsistent with the 2005 (*sic*) proposed SNRAMPs. The Pumphouse Project will enhance pumping operations at Sharp Park and dredge Sharp Park’s Natural Areas to ease the conveyance of water out of the Laguna Salada wetland complex, into the pumphouse, and ultimately out to sea. None of these activities are proposed in the original SNRAMPs proposal for Sharp Park. The PMND implicitly recognizes that the Pumphouse Project is inconsistent with SNRAMPs, because the Department did not make a consistency finding in the PMND. The Department must therefore be aware that there are significant, unmitigated environmental effects from this inconsistency, and the Department must therefore conduct further environmental review.” (Page 15 of the Appeal Letter)

RESPONSE TO CONCERN 7: The proposed project is consistent with the 1995 SNRAMPs. The 2006 SNRAMPs is currently undergoing environmental review and has not been adopted; however, the proposed project is not inconsistent with the as-yet-unapproved 2006 SNRAMPs.

Section C of the PMND, discusses the proposed project’s consistency with adopted and applicable plans and policies, as they relate to physical environmental impacts. The Pumphouse Project is consistent with the adopted 1995 SNRAMPs as it conforms with three of the overall Program

Objectives: 1) determine management needs for natural resources, particularly those identified by other agencies as rare, threatened or endangered; 2) consult and coordinate with other city departments, agencies and groups with special expertise for implementation strategies; and 3) implement measures designed to address immediate problems. The proposed project was created in consultation with USFWS, USACE and CDFW to protect Frogs and Snakes while also implementing measures to improve the safety of workers around the pumphouse.

The project is also consistent with the following 1995 SNRAMP's General Policies and Management Actions listed under Vegetation, Wildlife, and Water Resources: 1) vegetation, by promoting indigenous plant species around the new pond, enhancing riparian areas in the connecting channel and HSP and preserving habitat which supports wildlife; 2) wildlife, by consulting with agencies such as the USFWS, USACE, and CDFW on habitat enhancement for Frogs and Snakes; and 3) water resources, by maintaining and improving the water quality of the connecting channel and HSP and protecting this riparian zone from sedimentation. As such, this project is consistent with the 1995 SNRAMP.

Appellant is correct that a consistency statement was not included in the PMND's discussion of the 1995 SNRAMP. Accordingly, the PMND has been amended to include a statement that no inconsistencies with the 1995 SNRAMP were identified.

The proposed 2006 SNRAMP is currently undergoing environmental review and has not yet been adopted by the SFRPC. Although it would be premature to make an ultimate determination regarding whether the proposed project is consistent with the as-yet-unadopted policies of the proposed 2006 SNRAMP, no inconsistencies with the current draft were identified. Like the 1995 SNRAMP, the objectives of the proposed 2006 SNRAMP are to inventory the biological resources of the SFRPD's natural areas, to identify issues and impacts concerning habitats, biological diversity, and populations of sensitive species, to identify and prioritize restoration, management and monitoring activities, and provide guidelines for passive recreational use of the natural areas and for educational, research, and stewardship programs.²⁶ The proposed project is consistent with the objectives of the proposed 2006 SNRAMP because the primary purpose of the proposed project is habitat restoration and enhancement, as well as worker safety.

CONCERN 8: The appellant asserts that Mitigation Measure M-BIO-2a proposed to be implemented in the PMND is not sufficient to protect Frogs.

"The primary mitigation measure proposed is M-BIO-2A, which would require SFRPD to disturb sediments outside of the California red-legged frog breeding season. But this is not a sufficient mitigation measure for this threat. First, California red-legged frog tadpoles are known to overwinter before metamorphosing under certain conditions. Exhibit K, p. 2. Thus, it is likely that

²⁶ SFRPD. *Significant Natural Resources Management Plan, February 2006, Executive Summary*, page 1. This document is available online at: <http://sfrecpark.org/parks-open-spaces/natural-areas-program/significant-natural-resource-areas-management-plan/snramp/>.

tadpoles and other sensitive receptors will be present during the dredging activity, even during the frog's non-breeding season. Second, oxidative formation of acid sulfates is a relatively lengthy process: it can take many days or weeks to occur, and therefore there is no indication in the mitigation measure that there is an adequate buffer to ensure acid sulfates disturbed towards the end of the construction period do not affect breeding frogs." (Pages 15 and 16 of the Appeal Letter)

RESPONSE TO CONCERN 8: Mitigation Measure M-BIO-2a would reduce the potential impacts to Frogs and Snakes to a less-than-significant level. Mitigation Measure M-BIO-2a not only limits the construction period to June 1 through October 31 in accordance with the Biological Opinion issued by the USFWS, but also includes a number of measures to protect adult Frogs and tadpoles. These measures include pre-construction avoidance and survey tasks, site monitoring by USFWS/CDFW-approved biologists during construction activities, limitation on vehicle speeds in the project area, erosion control measures, etc.

The PMND found that Mitigation Measure M-BIO-2a, along with other elements of the proposed project and its mitigation measures, would reduce the proposed project's impacts to biological resources, including Frogs and Snakes, to less-than-significant levels. Mitigation Measure M-BIO-2a not only limits the construction period to June 1 through October 31, which is outside the primary breeding season for Frogs, to minimize the proposed project's impact to Frogs and Snakes in accordance with the Biological Opinion, but also includes a number of measures to protect Frogs and Snakes as outlined on pages 74 through 76 of the PMND (pages 80 through 82 of the amended PMND). The PMND found that the proposed project's potential impacts to Frogs and Snakes would be reduced to a less-than-significant level with implementation of identified mitigation measures including Mitigation Measure M-BIO-2a

The appellant asserts that acid sulfates may stay in the water column after the proposed sediment and vegetation removal is completed. *In the event that acidification is detected to a degree harmful to special-status species*, to ensure that residual acid sulfates in the water column would not adversely impact special-status species, Mitigation Measure M-BIO-2b has been revised to require monitoring of water quality for a period of six weeks after the proposed sediment and vegetation removal is completed. These revisions to the mitigation measure do not otherwise change the analysis or conclusions of the PMND and are equally or more effective than the mitigation measure prior to revision and would not themselves cause a significant effect on the environment. As such, the proposed project's impact to biological resources and water quality remains less than significant with mitigation.

CONCERN 9: The appellant asserts that Mitigation Measure M-BIO-2b proposed to be implemented in the PMND is a deferred and unenforceable mitigation measure.

"The Department has also proposed a deferred, byzantine, and ultimately unenforceable mitigation proposal called Mitigation Measure M-BIO-2B to address significant effects of disturbed oligohaline sediments. The measure proceeds through a voluntary, non-binding, multi-

step assessment process. As a preliminary matter, the deferral of mitigation until this process is complete is holy (*sic*) unnecessary, because it is indisputable that oligohaline sediments are present in the Laguna Salada wetland complex. The process eventually concludes with three possible remediation outcomes: addition of lime to the wetland complex, the injection of sodium nitrate into the wetland complex, or the use of suction dredging to reduce the rate of re-suspension of oligohaline sediments.” (Page 16 of the Appeal Letter)

“However, mitigation measure M-BIO-2B is not fully enforceable, and therefore is not adequate to mitigate the significant environmental effects of oligohaline soils. The Department must ensure that ‘measures to mitigate or avoid significant effects on the environment are fully enforceable through permit conditions, agreements, or other measures.’ CEQA Guidelines § 21081.67(b). (*sic*) is not fully enforceable. Public agencies therefore may not defer mitigation measures unless the agency commits itself to mitigation and articulates specific performance criteria or standards that must be met for the project to proceed. *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 793-794. The Department has failed to meet both criteria here. First, there is no commitment to mitigation within the meaning of CEQA. Nowhere does the mitigation measure specify that an authoritative body will mandate the mitigation measures through a permit, agreement, or other measure. Instead, the measure relies upon voluntary reviews and comments throughout the mitigation process. While the fourth (*sic*) and fifth stage of the measure (Toxic Pathways Analysis and Remediation) suggest that either the U.S. Fish and Wildlife Service or the California Department of Fish and Wildlife will ‘approve’ SFRPD’s toxicity standards or its remediation measures, the Department does not identify any permit, agreement, or other measure that could in fact serve as the vehicle for these approvals.” (Page 16 of the Appeal Letter)

“The explanation of sulfur oxidation-reduction sediment biogeochemistry on page 96 of the MND (water quality) is essentially accurate, but it is inconsistent with the utterly confused explanation on pp. 76-77 of the MND, which garbles hypoxia, pH, and inconsistent oxidation-reduction states associated with aerobic and anaerobic sediments. Acid sulfates are the oxidized forms of sulfur compounds, not the reduced forms (sulfides) associated with hypoxia and anoxia. The temporary suspension of anoxic iron sulfide-rich sediment, and free hydrogen sulfide (rotten egg scent) in the water column is the cause of acute hypoxia. Oxidative formation of acid sulfates and iron oxides is a slow process occurring over many days or weeks in aerobic conditions. The MND argues on p. 77 that since no acid sulfate conditions were detected in the last episode of dredging 10 years ago, the impact is unlikely. This is utterly fallacious, since no measurements of soil sulfate levels or pH were sampled. An even more ludicrous fallacy on p. 77 is the exclusion of tidal flows precludes the existence of sulfur sources in sediments. Obviously, if salinity range is up to 2.5 ppt, and the only original salinity source is seawater, sulfates (the second most abundant anion in seawater) is present in the oligohaline sediments. Moreover, I provided direct observation of both iron sulfide and hydrogen sulfide in near-surface anoxic sediments of the exposed bed of Laguna Salada in the ESA-PWA report (ESA-PWA 2010). Strongly sulfidic sediments are ubiquitous and conspicuous throughout the lagoon complex, and readily detectable by any qualified wetland ecologist who looks for them. It is disingenuous of the MND, as well as flatly incorrect, to assert that they are ‘unlikely’.” (Page 4 of Peter Baye’s Comment Letter)

“Proposed mitigation M-Bio-2b fails as a CEQA mitigation measure because it provides no objective chemical standard or biological criteria or threshold for sulfide concentrations, pH, Biological Oxygen Demand (a measure of hypoxia in the suspended sediment plume around dredging sites), or redox thresholds for significant biological impacts. It instead relies on purely subjective voluntary submittal of data (not evidence of actual consultation and reply!) with resource agencies, with no evidence that resource agencies have staff resources or commitments to comply with the mitigation measure. The mitigation measure is vague, programmatic, and unenforceable. Dredge sediments are routinely sampled for aquatic impacts throughout the San Francisco Bay area. It is seldom that dredging occurs in nontidal wetlands with endangered species (for good reason), but the analytic methods for assessing aquatic impacts of hypoxic sediment plumes during dredging are established. They are not cited by the MND. Nor does the MND show any evidence of consultation with the RWQCB – SFB for appropriate dredge sediment and water quality protocols adapted to the distinctive setting of Laguna Salada, including specific criteria for water column hypoxia and sulfide toxicity during dredging. Hypoxia and sulfide toxicity are not the same chemical phenomenon, even though they are physically related by suspension of reduced iron sulfide-rich sediment. The MND is deficient in basic understanding of acid sulfate soils, sulfur oxidation-reduction sediment processes, and ecotoxicity. Below is a limited sample of relevant scientific literature to support improved understanding.” (Page 4 of Peter Baye’s Comment Letter)

“Moreover, the PMND suggests that discharges from Sharp Park’s pumphouse are authorized under an existing San Francisco Bay Region Water Quality Control Board Permit. However, no such permit exists, so it will not be possible to make any provision of this mitigation measure binding through an amendment of any existing permit. Similarly (*sic*), the Army Corps of Engineers--the action agency for the Pumphouse Projects Section 7 Consultation--to date still has not agreed to incorporate the Biological Opinion into a wetland fill permit issued to SFRPD for this project. Unless and until the Army Corps of Engineers agrees to be bound by the Biological Opinion and incorporate the terms of the Biological Opinion into non-discretionary permit terms, the Army Corps cannot provide the fully enforceable permits or measures that would be necessary to make this mitigation measure lawful.” (Page 16 of the Appeal Letter)

“Second, the mitigation measure does not articulate specific performance criteria or standards that must be met for the project to proceed. There are no thresholds of significance identified, and no other specific measure that would alert the agency or any member of the public that a performance criterion had not been met. Instead, the mitigation measure orders study after study to occur, but leaves the actual triggers for remediation and the remediation objectives completely undefined” (Pages 16 and 17 of the Appeal Letter)

RESPONSE TO CONCERN 9: Although it is unlikely that hypoxic conditions would result from the proposed project’s sediment removal, as a conservative approach, Mitigation Measure M-BIO-2b was included and was developed based on the best available science to address such an effect in the event it did occur. Mitigation Measure M-BIO-2b is enforceable and would

reduce the project's potential impacts to listed species and water quality to a less-than-significant level.

The PMND found that it would be unlikely for hypoxic conditions to occur during the proposed sediment and emergent vegetation removal because: 1) when sediment was previously removed from the connecting channel approximately 10 years ago, no effects that would normally be associated with acid sulfate soils, including acidification of waters and sediment surfaces, were identified; 2) the sediment to be removed as part of the proposed project has only accumulated since the last removal activity, which would have removed all the sediment that accumulated before the current seawall was constructed, and therefore has accumulated without the saline conditions that allow acid sulfate soils to form; and 3) the Biological Opinion concluded that the proposed project would not jeopardize the continued existence of Frogs or Snakes with the implementation of the Conservation Measures included in the Biological Opinion (see pages 76 through 78 of the PMND, or pages 82 through 84 of the amended PMND).

Nevertheless, in order to mitigate such conditions in the unlikely event that they do occur, Mitigation Measure M-BIO-2b was incorporated. Mitigation Measure M-BIO-2b requires soil sampling tests prior to commencement of the proposed sediment and vegetation removal and review of the results of such soil sampling tests by regulatory agencies including the USFWS, CDFW, and any other applicable responsible agencies. If soil sampling shows that acid sulfate soils could be present and/or that there is the potential for anoxic conditions in the water column, then the mitigation measure requires SFRPD to perform a “toxic pathways analysis” to determine the appropriate remediation measures. As described on page 78 of the PMND (page 84 of the amended PMND), the toxic pathways analysis method for analyzing the potential for bioaccumulation of toxics in the environment is an approach recommended by the USEPA for determining risk to wildlife and plants. Pathways analysis is used to determine environmental conditions that would mobilize toxics and increase exposure that could have chronic or acute effects. If this analysis indicates the potential for reduction of sulfate to form hydrogen sulfate, iron sulfides, and its reduction in buffering capacity relative to acid-neutralizing capacity, or if the toxics pathways analysis indicates that their presence could potentially result in substantial stress to special-status species, the mitigation measure requires SFRPD to implement remediation measures, as approved by the USFWS and CDFW. Finally, this mitigation measure describes specific remediation measures that would be undertaken, depending on the conditions found through pre-construction testing, that would mitigate this impact to a less-than-significant level.

Thus, this mitigation measure--requiring testing, toxic pathways analysis (the methodological approach recommended by the USEPA), review and approval by federal and state regulatory agencies, and implementation of specific remediation measures, which measures are described in the mitigation measure--would ensure that the proposed sediment and vegetation removal would not result in any significant impact to Frogs or Snakes. This is not deferred mitigation within the meaning of CEQA. The mitigation measure requires that testing be conducted before construction occurs, it identifies the required methodology as recommended by the USEPA, and requires implementation of remediation measures if certain levels of toxicity are identified—i.e. if the

analysis indicates the potential for reduction of sulfate to form hydrogen sulfate, iron sulfides, and its reduction in buffering capacity relative to acid-neutralizing capacity, or if the analysis indicates that their presence could potentially result in substantial stress to special-status species. The mitigation measure establishes a performance standard that if the results of the sediment core tests conducted as part of the pathways analysis reveal that there has been an appreciable increase in the amount of nitrogen and related compounds in the sediment cores, all necessary measures to remediate such compounds shall be undertaken. The mitigation measure additionally requires approval of all remediation measures by the USFWS and CDFW before any work can be done and describes a list of possible remediation measures that would likely be required. Thus, this mitigation measure complies with CEQA's requirement that "[mitigation] measures may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way." CEQA Guidelines Section 15126.4(a)(1)(B).

This project is proposed to be approved and constructed by CCSF, through SFRPD. If approved, the project will be approved at a public hearing by the SFRPC, which would also adopt a mitigation monitoring and reporting program (MMRP) for the project as a condition of project approval. This MMRP will include all of the mitigation measures adopted by the SFRPC and will allocate responsibility for implementing, monitoring, and reporting on compliance with all the mitigation measures amongst the appropriate local, state, and federal entities. If the project is approved, the proposed mitigation measures will be adopted as conditions of approval on the project and will be fully enforceable by the appropriate regulatory entities.²⁷

CONCERN 10: The appellant asserts that one of the potential remediation measures under Mitigation Measure M-BIO-2b, specifically suction dredging, will likely cause new and significant environmental effects.

"..., at least one of the remediation measures--suction dredging--will likely cause new and significant environmental effects if it is implemented. Suction dredging will remove large amounts of both sediment and water from the wetland complex--much more than the clam shell or bucket type dredging equipment identified in the project description, which typically contain 80-90% solids. Suction dredging will require distinct technologies to dispose of watery dredged materials: it would not be permissible to allow these waters to drain back into the wetland complex given that they are likely acidic or hypoxic to begin with. Yet the PMND does not discuss any proposed mitigation measure for suction dredging: CEQA requires at least some discussion

²⁷ The PMND (on pages 18 and 96) states that discharges from Sharp Park's pumphouse are authorized under an existing NPDES permit. This is incorrect and has been corrected where it occurred. No permit is required for discharges from Sharp Park's pumphouse into the Pacific Ocean because both the LS wetlands complex and the Pacific Ocean are considered "waters of the United States" under the federal Clean Water Act. As such, as long as nothing is added to the water, no permit is required to discharge from one water of the U.S. to another. Should any permit be required by the SFBRWQCB for the proposed project, SFRPD will seek such a permit and comply with any conditions that may be attached to the permit.

in situations such as this. *Stevens v. City of Glendale* (1981) 125 Cal.App.3d 986.” (Page 17 of the Appeal Letter)

RESPONSE TO CONCERN 10: The PMND has been modified to include a discussion and analysis of potential impacts resulting from the use of suction hydraulic equipment as part of the proposed sediment removal work. The use of suction hydraulic equipment, if used as part of the proposed sediment and vegetation removal, would not result in any significant impact on the environment.

As discussed on page 7 of the PMND (page 7 of the amended PMND), to facilitate the proposed sediment and emergent vegetation removal and to reduce potential impacts to Frogs, suction hydraulic equipment may be used in consultation with the USFWS to minimize the disturbance of sediments in the water. While generally resulting in a higher percentage of water in the excavated materials than a clamshell dredge, the use of suction hydraulic equipment generally results in less turbidity and overall disturbance at the point of use than a clamshell. In sensitive environments, the use of suction hydraulic equipment is often preferred provided that the excavated materials and residual water are properly handled so they do not result in a significant impact on the environment. If suction hydraulic equipment is to be used as part of this project, the slurry that is created by suction hydraulic equipment would go into a settling area until the sediments settle out and the decant water can be tested for its acidity. If the result of such testing indicates that the water is pH neutral, it would either be released into HSP or pumped into the Pacific Ocean.^{28,29} Should any permit be required by the SFBRWQCB for the discharge of the water into the Pacific Ocean as part of this project, SFRPD will seek such a permit and comply with any conditions that may be attached to the permit.

In light of the above, the use of suction hydraulic equipment as part of the proposed sediment and vegetation removal would not result in any significant impact on the environment.

CONCERN 11: The appellant asserts that the project is inconsistent with the California Coastal Act (CCA).

“The Coastal Act, as well as Pacifica Zoning Code Section 9-4.4302, defines an ‘environmentally sensitive area’ as ‘any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activity or developments.’ The Act states that ‘[e]nvironmentally sensitive habitat areas shall be protected against any significant disruption of

²⁸ David Munro, Tetra Tech. *Email to Stacy Bradley, SFRPD, Feedback on MND Appeal*, November 26, 2013. This email is available for review as part of Case File No. 2012.1427E at the San Francisco Planning Department, 1650 Mission Street, Suite 400, San Francisco, California 94103.

²⁹ David Munro, Tetra Tech. *Email to Stacy Bradley, SFRPD, Revised Text*, November 26, 2013. This email is available for review as part of Case File No. 2012.1427E at the San Francisco Planning Department, 1650 Mission Street, Suite 400, San Francisco, California 94103.

habitat values, and only uses dependent on those resources shall be allowed within those areas.”
(Page 17 of the Appeal Letter)

“Sharp Park constitutes an ESHA under this definition because both the CRLF and SFGS are rare, and their presence is regularly documented at Sharp Park; because Sharp Park’s habitats are both rare and especially valuable to these species, because they constitute a rare coastal lagoon ecosystem that is the northern-most known habitat for the SFGS; and because the species and their habitats are disturbed and degraded under existing conditions, and the Project will cause additional degradation and disturbance.” (Page 17 of the Appeal Letter)

“However, the PMND does not recognize ESHA at Sharp Park, nor any of the implications this status has on the Pumphouse Project. Therefore fails to ensure that the Pumphouse Project is consistent with the Coastal Act.” (Page 17 of the Appeal Letter)

RESPONSE TO CONCERN 11: The project is consistent with the California Coastal Act (CCA).

The project’s consistency with the CCA is addressed on pages 19, 21, and 22 of the PMND (pages 19 and 22 of the amended PMND). The CCC has the authority to designate an Environmentally Sensitive Area under the CCA. The appellant has not presented any evidence that the CCC has designated any portion of the project site or Sharp Park as an Environmentally Sensitive Area as defined in CCA Section 30107.5. Even if a portion of the project site were designated by the CCC as an environmentally sensitive area, the appellant has not demonstrated how the proposed project is inconsistent with the CCA.

The PMND acknowledges that a portion of Sharp Park near the LS wetland complex is in the Coastal Zone under the CCC jurisdiction (see page 22 of the PMND, or page 22 of the amended PMND). The majority of the project activities would take place entirely within the CCC jurisdiction and require a coastal development permit from the CCC. SFRPD is seeking a coastal development permit from the CCC and will comply with any conditions that may be attached to the permit. This will ensure that the project is consistent with the CCA.

The primary objective of the CCA is the protection of wetlands and other environmentally sensitive habitats, water quality, public access and recreation, low cost visitor facilities, and the scenic and visual qualities of coastal areas and the control of coastal erosion and other hazards. The primary purposes of the proposed project are to: 1) restore habitat in several locations within the wetland complex for Frogs and Snakes; and 2) improve the safety conditions of workers operating and maintaining the pumps by enhancing access to the pump intake structure.

As discussed on page 22 of the PMND (page 22 of the amended PMND), the proposed project would not restrict access to or within Sharp Park and would not affect low cost visitor facilities. As discussed in Section E.2, Aesthetics, none of the project elements would result in a significant impact to the visual quality of the nearby coastal areas. The proposed project would involve improvements to an existing pumphouse and habitat for Frogs and Snakes. The project would be

subject to various mitigation measures to protect wetlands and other environmentally sensitive habits and water quality and minimize soil erosion and other hazards that could result from the proposed project (see Sections E.13, Biological Resources, E.14, Geology and Soils, E.15, Hydrology and Water Quality, and E.16, Hazards and Hazardous Materials in the PMND, for more information).

In light of the above, the proposed project would be consistent with the CCA.

CONCERN 12: The appellant asserts that the project is inconsistent with the Frog recovery plan.

“The Sanchez Creek Watershed is a Priority 2 watershed for CRLF recovery. Priority 2 Watersheds provide the necessary habitat connectivity between core areas and is an important contribution to the recovery of the California red-legged frog throughout its range. These watersheds have Watershed Management and Protection Plans that address, among other things, restoration, controlling water flow, assess suction dredging impacts on water quality and thus the frog (sedimentation increases are cited as a possibility), flood control activities, and recreation activities. Recovery Plan p. 53. The PMND makes no mention of this planning process at all.” (Page 17 of the Appeal Letter)

RESPONSE TO CONCERN 12: The project is consistent with the Frog recovery plan.

The appellant claims that the Sanchez Creek Watershed is a Priority 2 Watershed for Frog recovery. However, the appellant has presented no documentation prepared by the USFWS or other regulatory agency supporting the claim. Furthermore, the appellant has not demonstrated how the proposed project is inconsistent with the Frog recovery plan.

The PMND acknowledges that a recovery plan was published for Frogs on September 12, 2002 (see page 68 of the PMND, or page 74 of the amended PMND). The recovery plan approved by the USFWS notes that the objective of the recovery plan is to delist Frogs. The recovery plan further states that the strategy for recovery of Frogs will involve: 1) protecting existing populations by reducing threats; 2) restoring and creating habitat that will be protected and managed in perpetuity; 3) surveying and monitoring populations and conducting research on the biology of and threats to the subspecies; and 4) reestablishing populations of the subspecies within its historic range.

One of the primary purposes of the proposed project is to restore and enhance habitat within the wetland complex for Frogs (see page 6 of the PMND, or page 6 of the amended PMND). In addition, the Biological Opinion prepared by the USFWS found that the proposed project would not jeopardize the continued existence of Frogs or Snakes (see page 38 of the Biological Opinion). As such, the proposed project is consistent with the Frog recovery plan. The PMND has been amended to include a discussion concerning the Frog recovery plan.

CONCERN 13: The appellant asserts that a golf course redevelopment project is interrelated with this project and should be analyzed as part of this project’s environmental review.

“E. THE GOLF COURSE REDEVELOPMENT PROJECT IS A PROJECT LEVEL CEQA DOCUMENT, AND DOES NOT MERELY GUIDE MANAGEMENT AT SHARP PARK.” (Page 18 of the Appeal Letter)

“The City’s plan to reconstruct Sharp Park Golf Course is reasonably certain to occur, will adversely affect Sharp Park, and is interrelated with this proposal: it’s (*sic*) effects must therefore be assessed as part of this CEQA process. However, throughout the PMND, the Department suggests that this project level review will merely ‘guide’ management at Sharp Park in the future. This is a significant error, and indicates that the Department must reassess the interrelatedness of these projects and consider them as one project.” (Page 18 of the Appeal Letter)

“The City’s Golf Course Construction Plan Has Been Significantly Changed.” (Page 18 of the Appeal Letter)

“In 2009, the San Francisco Board of Supervisors unanimously passed an ordinance ordering RPD to study restoration alternatives at Sharp Park. The report RPD ultimately released contained a radical new golf course construction plan for Sharp Park guised as a ‘recovery’ effort for listed species (TetraTech 2009).” (Page 18 of the Appeal Letter)

“After scientists criticized the plan’s several significant flaws (Davidson et al. 2011, pp. 1-2), the City convened the fact-finding Sharp Park Working Group (Holland 2011, p. 4-5). When the Working Group released findings that adopted many of (ESA-PWA 2011) recommendations, RPD announced it would abandon a core element of its golf course construction plan--armoring Sharp Park’s seawall--but continued to insist that Sharp Park’s 18-hole golf course would remain in its historic footprint, even as it acknowledged that sea level rise will erode the seawall and force it inland, squeezing endangered species habitats in a narrow area between the golf areas and the advancing ocean (Holland 2011, pp. 4-5).” (Page 18 of the Appeal Letter)

“Contemporaneously the City was preparing a Draft Environmental Impact Report (‘DEIR’) for the City’s Significant Natural Resource Areas Management Plan (‘SNRAMP’).” (Page 18 of the Appeal Letter)

“However, when the DEIR was released in 2011 the PWA-based Laguna Salada plan had been replaced with the TetraTech golf course construction plan. Under this plan, 60,000 cubic yards of material would be dredged from the Laguna Salada’s wetland complex, creating 12,100,000 gallons of water storage capacity (PRD 2011, p.99). Four golf links surrounding Laguna Salada would be raised by up to 3.5 feet, creating additional (although unquantified) water storage capacity in the lagoon system (TetraTech 2009, p. 43). Another link would be narrowed, and another removed (RPD 2011, Figure 3). It also calls for filling 1/2 acre of Sharp Park’s wetlands to create an island in Laguna Salada (RPD 2011, p. 99) and landfilling areas where California red-

legged frogs breed to ‘prevent localized ponding’ and ‘to allow more complete drainage to Laguna Salada” (RPD 2011, p. 377).” (Pages 18 and 19 of the Appeal Letter)

“The Golf Course Construction Plan and the Project are Interrelated.” (Page 19 of the Appeal Letter)

“The DEIR’s golf course construction project is interrelated with the proposal here. Both are designed to reduce golf course flooding, and depend upon each other to implement this larger action. The City’s larger plan to reduce golf course flooding is composed of (1) ensuring maximum pump rates are reliably achieved, (2) increasing water flow rates towards the pumps, (3) increasing water storage capacity by deepening lagoons and (4) increasing storage capacity by elevating the rim of the lagoon. If any one of these components fails or is not achieved, pumping rates will decrease and golf course areas will flood.” (Page 19 of the Appeal Letter)

“While there is some overlap, this project is primarily designed to accomplish the first and second elements of this plan (RPD 2012, p.6) while the DEIR is primarily designed to implement the third and fourth elements of the plan (RPD 2011, p. 99). But the elements are expressly interlinked: the DEIR repeatedly states that the golf course construction project is dependent on efficient pump operations (RPD 2011, pp. 146, 361, 374, 377), and further explains that the golf course construction plan is designed to meet flood control objectives while reducing wear-and-tear on the pumps (TetraTech 2009, p. 43).” (Page 19 of the Appeal Letter)

“The City’s statement that the golf course construction plan is wholly separate from the Project (Wayne 2011b, p. 2) is belied by its recent permitting strategy discussion with other agencies (Anonymous 2012, p. 1). The agenda from this discussion indicates the Project and the golf construction project are two temporal phases of a single management strategy. Effects from the later phases are classic indirect effects, because they are caused by the proposed action and are later in time, but still reasonably certain to occur. They also derive, either directly or indirectly from an interrelated element of the City’s larger flood management strategy. In either case, by law the City must review these effects during this CEQA process, regardless of the City’s colloquial assertion that the projects are separate.” (Page 19 of the Appeal Letter)

“The Golf Course Construction Plan is Reasonably Certain to Occur.” (Page 19 of the Appeal Letter)

“The City’s proposal has already been approved by several oversight bodies, and in each case the City made clear that it would not review or consider restoration alternatives at Sharp Park. The City’s single-minded approach to Sharp Park and its completion of many steps in its approval process show that the golf course construction project is reasonably certain to occur.” (Page 19 of the Appeal Letter)

“The City’s proposal to rebuild Sharp Park Golf Course’s original layout was endorsed by San Francisco’s Recreation and Parks Commission in December of 2009, to the exclusion of all other

options for Sharp Park’s future (RPD 2011, p. 2). In the SNRAMP DEIR, the City concluded that only an 18-hole Golf Course at Sharp Park was a feasible alternative for the property, and refused to consider other restoration options that would provide additional benefits to listed species (RPD 2011, p. 3). Moreover, the DEIR contains a mitigation requirement that will force the City to rebuild a golf link in one of two places in subsequent environmental review (RPD 2011, p.28). Thus, the City’s existing approvals and contemporaneous permitting procedures create a binding requirement to implement the golf course construction plan.” (Page 20 of the Appeal Letter)

“Furthermore, when the San Francisco Board of Supervisors passed an ordinance requiring the City to negotiate with the National Park Service to implement a restoration plan for the property, the Mayor vetoed the ordinance (Lee 2011, p. 1) again indicating the City’s intent to ensure the golf course construction project occurs. And with the City’s encouragement, San Mateo County passed a resolution calling for San Francisco to ‘maximize recreation opportunities’ at Sharp Park by implementing the golf course construction plan (San Mateo Co. 2011, p.2).” (Page 20 of the Appeal Letter)

“These actions by the City are all that is necessary to show that the golf course construction plan is reasonably certain to occur. While there may be some ambiguity about what the ultimate Golf Course design may be the City’s CEQA documents must give consideration of the effects of interrelated and interdependent activities whether or not all of the activities’ impact is known.” (Page 20 of the Appeal Letter)

RESPONSE TO CONCERN 13: The only reasonably foreseeable future project in Sharp Park that would involve modification of the layout of the Sharp Park Golf Course is described in the proposed 2006 SNRAMP, which is a separate project from the proposed project and which is adequately analyzed in the PMND in the cumulative context.

It is not clear what the appellant is referring to as the “Golf Course Redevelopment Project,” or the “Golf Course Construction Plan.” SFRPD and Planning Department staff are not aware of any projects referred to as the “Golf Course Redevelopment Project,” or the “Golf Course Construction Plan.”

There is a report titled “Sharp Park Conceptual Restoration Alternative Report,” dated November 2009, and prepared by Tetra Tech, Swaim Biological, and Nickels Golf Group (“Sharp Park Restoration Report”) for SFRPD. This report lays out multiple options for the restoration of the LS wetland complex at Sharp Park, but makes no recommendations or commitment to any one of the options. On December 17, 2009, the SFRPC passed resolution 0912-018, which recommends proceeding with the LS Restoration and maintaining the 18-hole golf course. Therefore, some project elements that originate from the Sharp Park Restoration Report have been incorporated into the proposed 2006 SNRAMP and are being analyzed in the SNRAMP DEIR. These project elements are discussed on pages 97 through 104 of the DEIR and have been considered here in the PMND in the cumulative impacts analysis. The proposed project does not favor or preclude any of the options in the Sharp Park Restoration Report. As of this writing there are no elements in the

Sharp Park Restoration Report, except for those that have been incorporated into the proposed 2006 SNRAMP, that are considered to be a reasonably foreseeable future project under CEQA.

The only reasonably foreseeable future project in Sharp Park that would involve modification of the layout of the Sharp Park Golf Course is described in the proposed 2006 SNRAMP (see pages 97 through 104 of the SNRAMP DEIR). The proposed 2006 SNRAMP, including modifications to the layout of the Sharp Park Golf Course that would occur as a result of implementation of the SNRAMP, is a separate project from the proposed project and is currently undergoing environmental review. The PMND addressed the proposed 2006 SNRAMP and all other project elements analyzed in the DEIR as a reasonably foreseeable future project at Sharp Park in the cumulative impact section under each of the environmental topics addressed in the PMND and found that the proposed project would not make a considerable contribution to any cumulative impacts.

The appellant has presented no evidence that the proposed project, in combination with the 2006 SNRAMP or any other cumulative project, could result in significant impacts on the environment.

In light of the above, there are no other cumulative projects, than those addressed in the PMND, that are required to be analyzed as part of the environmental review for the proposed project.

CONCERN 14: The appellant asserts that the PMND fails to address the cumulative impacts – or any impacts at all - on Snakes.

“The Pumphouse Project PMND fails to address the cumulative impacts--or any impacts at all--on the San Francisco garter snake, which has been greatly impacted by the golf course for many decades. This is particularly troubling given Sharp Park’s role in the recovery of the species, and SFRPD’s failure to aid in that recovery.” (Page 20 of the Appeal Letter)

RESPONSE TO CONCERN 14: The PMND fully addressed the proposed project’s potential impacts to Snakes, both individually and cumulatively.

The appellant implies that impacts to Snakes resulting from the ongoing operations of the existing golf course are required to be analyzed as part of the environment review for this project. The ongoing operations of the golf course are considered to be a baseline condition for the purpose of environmental review for this project, similar to the ongoing operations of the existing pumps at HSP (see Response to Concern 2). No changes at all are proposed to the operations of the golf course. As such, no impact analysis is required concerning the ongoing operations of the golf course because that is part of the baseline conditions of the project site.

The PMND addressed the proposed project’s potential impacts to Snakes under Impact BIO-2 (see pages 73 and 74 of the PMND, or pages 79 and 80 of the amended PMND). The PMND also addressed the project’s potential cumulative impacts to special-status species including Snakes under Impact C-BIO (see page 90 of the PMND, or page 97 of the amended PMND). The PMND

found that the proposed project with identified mitigation would not result in any significant impacts to special-status species including Snakes.

The impact analysis concerning Snakes in the PMND is based on the findings in the Biological Opinion (see pages 30 and 31 of the Biological Opinion) and summarized below. The effects of the construction activities to wetland and upland habitat and to individual Snakes would be throughout the 0.624-acre construction footprint. Injury, exposure disorientation and disruption of normal behaviors would likely result from: 1) excavation of sediments and vegetation as part of the golf cart path realignments; 2) the removal and/or disturbance of vegetation, sediments, and cover sites including animal burrows, boulders or rocks, organic debris such as downed trees or logs in HSP and the connecting channel; 3) construction of a maintenance walkway around the pump house at HSP; and 4) soil disturbance and fill associated with replacement of the wooden retaining wall with a concrete retaining wall at HSP. Construction noise, vibration, and increased human activity during the construction period may interfere with normal behaviors such as feeding, sheltering, movement between refuge and foraging grounds, and other essential behaviors. This can result in avoidance of areas that have suitable habitat and can cause disturbance to the species. Direct effects could include injury or mortality from being crushed by earth moving equipment, construction debris, and worker foot traffic. Work activities, including noise and vibration, may result in adverse effects to Snakes by causing them to leave the work area. This disturbance may increase the potential for predation and desiccation.

The Biological Opinion concluded that the proposed project would not be likely to jeopardize the continued existence of Snakes with implementation of conservation measures included in the Biological Opinion. These conservation measures, along with the applicable Terms and Conditions included in the Incidental Take Statement, would minimize the likelihood of potential for take of individual Snakes and are included in Mitigation Measure M-BIO-2a.

The PMND also addressed potential impacts to Snakes resulting from the potential disturbance of acid sulfate soils in the water during the proposed sediment and vegetation removal in HSP and the connecting channel and culverts that link HSP and LS (see pages 76 through 78 of the PMND, or pages 82 through 84 of the amended PMND). Based on the literature review and empirical evidence concerning similar sediment removal that was conducted more than 10 years ago in the connecting channel between HSP and LS, the PMND found that the proposed sediment and vegetation removal would not likely result in substantial disturbance of acid sulfate soils in the water column, resulting in a significant impact to special-status species. Nevertheless, as a conservative measure, Mitigation Measure M-BIO-2b was included. See also Response to Concern 9.

The PMND found that implementation of Mitigation Measures M-BIO-2a and M-BIO-2b would reduce the proposed project's impact to Snakes to a less-than-significant level (see page 81 of the PMND, or page 88 of the amended PMND).

CONCERN 15: The appellant asserts that the City must consider alternatives to the project and there are other alternatives that would provide greater conservation and public benefits.

“The project description does not indicate the City will consider alternatives. In a case like this where public concern and controversy is high, evidence of alternatives is widespread, and when massive take has occurred under existing protocols, the City cannot ensure that there will be no significant adverse environmental impacts without at least considering alternatives to the project proposal.” (Page 20 of the Appeal Letter)

“In particular, (ESA-PWA 2011) contributor Dawn Reiss has contributed a restoration model for Sharp Park that is based on the best scientific data available at Sharp Park and addresses all of the above deficiencies in the project. For example, where the projects suggests that both species are ‘conservation reliant’ due to their isolation, Ms. Reiss’ proposal emphasizes connective habitat corridors across Sharp Park.” (Page 20 of the Appeal Letter)

“Where the project suggests it will continue to drain and fertilize Sharp Park’s wetlands on the one hand, and then dredge excessive tule and cattail growth on the other, Ms. Reiss’ mitigation model constrains pumping so that water levels will rise high enough to drown excessive vegetation growth, and ensures that water levels rise and fall slowly so that Sharp Park’s entire wetland feature remains hydrologically connected and contains sufficient water for egg masses to develop into adult frogs.” (Pages 20 and 21 of the Appeal Letter)

“Where the project ignores the fundamental changes climate change will bring to this landscape, Ms. Reiss’ plan provides mitigation and recovery areas upland and inland from areas that will be immediately impacted by catastrophic flooding events, and then creates natural defenses around these areas by restoring wetlands and vegetative features between the rising sea and the restored habitats. These features will absorb and slow the rate of water if intrusion ever does occur.” (Page 21 of the Appeal Letter)

“Where the project blames the frog for an apparently indiscriminant breeding behavior and for laying eggs in ‘unsustainable’ habitats, Ms. Reiss’ mitigation and restoration plan recognizes that the California red-legged frog can successfully breed under natural conditions at Sharp Park, so long as the velocity, rapidity, and scope of the wetland draining project implemented by San Francisco is curtailed.” (Page 21 of the Appeal Letter)

“All of these outcomes would provide greater conservation and public benefits than the project disclosed in the notification, yet the City does not seem prepared to consider alternatives to the project proposal. Such reluctance is inconsistent with sound environmental review and the strictures of CEQA.” (Page 21 of the Appeal Letter)

RESPONSE TO CONCERN 15: A lead agency is not required by CEQA to consider project alternatives when there are no significant impacts identified resulting from the project.

A lead agency is not required by CEQA to consider project alternatives when there are no significant impacts identified resulting from the project, regardless of the level of public controversy. As discussed in the PMND prepared for the proposed project, with implementation of the identified mitigation measures, the project would not result in any significant impacts. Based on this, consideration of alternatives to the proposed project is not required under CEQA.

CONCERN 16: The appellant asserts that the project will destroy cover habitat for special-status species.

“The California red-legged frog and the San Francisco garter snake require multiple habitat conditions to survive. For example, ‘essential habitat for a breeding [San Francisco gartersnake] population includes open grassy uplands and shallow marshlands with adequate emergent vegetation, and the presence of both Pacific tree frog (*Pseudacris regilla*) and California red-legged frog breeding populations.’ ‘Emergent and bankside vegetation such as cattails (*Typha spp.*), bulrushes (*Scirpus spp.*), and spike rushes (*Juncus spp.* and *Eleocharis spp.*) apparently are preferred and used for cover.” (Page 21 of the Appeal Letter)

“Similarly, the ‘California red-legged frog requires a variety of habitat elements with aquatic breeding areas embedded within a matrix of riparian and upland dispersal habitats.’ The frog ‘spend[s] considerable time resting and feeding in riparian vegetation when it is present’ and can be ‘found up to 30 meters (100 feet) from water in adjacent dense riparian vegetation for up to 77 days.’ ‘Overall, [California red-legged frog] populations are most likely to persist where multiple breeding areas are embedded within a matrix of habitats used for dispersal.’ Recent studies demonstrate that in both breeding and non-breeding periods, California red-legged frogs predate almost exclusively on terrestrial species, Vredenburg Decl., p. 7 (Exhibit E), indicating uplands are also essential habitat for California red-legged frog prey.” (Pages 21 and 22 of the Appeal Letter)

“Sharp Park currently provides the habitat mixture both species require. However, the project proposal would transform one essential habitat type--emergent vegetation--into open water habitat ‘to improve water flow to the pumps’ so Sharp Park’s wetlands can be rapidly drained during the California red-legged frog’s breeding season. The City suggests this transformation is justified because ‘areas along the connecting channel and [Horse Stable Pond] that contain dense cattail growth are considered to be very low quality breeding habitat for the [California red-legged frog]’ and presumes the transformation will therefore cause frog populations to increase, ultimately providing more prey for the San Francisco gartersnake.” (Page 22 of the Appeal Letter)

“The City’s position is not supported by available evidence. If, as the City hypothesizes, emergent vegetation limits growth of California red-legged frog and San Francisco gartersnake populations at Sharp Park, the City’s records should show a decline in egg masses as the extent of emergent vegetation has increased. But the evidence indicates California red-legged frog egg mass counts have been generally increasing at Sharp Park/Mori Point since 2004; indeed, during the 2010-11 breeding season the City ‘recorded more than 3 times the eggmasses [SIC] than any other year.’

Similar numbers were observed during the 2011-12 breeding season. Exhibit D, p. 4.” (Page 22 of the Appeal Letter)

“Nor does available evidence indicate that Sharp Park’s San Francisco gartersnake population is limited by prey availability. If Sharp Park’s California red-legged frog population were too small to support its predator, City records should show a decline in adult frogs at Sharp Park. But while testifying against endangered species conservation measures at Sharp Park on behalf of golf advocacy groups, Dr. Mark Jennings stated ‘it has been common for the past couple of years at Sharp Park to find dozens and dozens of juvenile and adult [California red-legged frogs],’ and concluded that ‘there are relatively few sites within the current geographic range of the species that have such large populations of adult [California red-legged frogs]’. Furthermore, ‘trapping studies at Mori Point and Sharp Park since 2004 suggest that the [San Francisco gartersnake population again may be increasing, at least at Mori Point.’ ‘[C]apture rates for 2006 and 2008 reflected an increase over the 2004 rate of 104% and 5%, respectively... we observed an overall increase in the number of [San Francisco gartersnakes] trapped per unit effort within the project area.’” (Pages 22 and 23 of the Appeal Letter)

“While neither the availability of open water habitat nor frog population sizes limits productivity at Sharp Park, the best available science does indicate that egg mass and juvenile *survivorship* limits the California red-legged frog’s population growth ‘pumping expose[s] California red-legged frog eggs to desiccation,’ and that destruction of upland habitats limit the San Francisco gartersnake’s population growth.” (Page 23 of the Appeal Letter)

“Nearly all of the areas surrounding Laguna Salada and Horse Stable Pond are mowed regularly by the Golf Course, very near or immediately adjacent to the wetland edge. This leaves a very narrow band of emergent wetland habitat between the open water areas of the lagoon and the Golf Course links, and no protected upland in which SFGS can bask, breed, or seek refuge in a burrow. Beyond the narrow band of emergent vegetation, SFGS would face a very high likelihood of being taken directly by mowing operations. Dexter Decl., p. 10 (Exhibit K).” (Page 23 of the Appeal Letter)

“These effects are significant by any measure, and cause adverse environmental impacts that require thorough environmental review and mitigation.” (Page 23 of the Appeal Letter)

RESPONSE TO CONCERN 16: The proposed project would not result in a significant loss of habitat for special-status species.

The Biological Opinion issued by the USFWS found that the proposed project would not jeopardize the continued existence of Frogs or Snakes (see page 38 of the Biological Opinion). The PMND addressed both temporary and cumulative impacts to special-status species including Frogs and Snakes resulting from the proposed project under Impact BIO-2 and found that the proposed project would not result in any significant impacts to special-special species, including Frogs and Snakes.

As discussed on page 73 of the PMND (page 79 of the amended PMND), injury, exposure disorientation and disruption of normal behaviors would likely result from the removal and/or disturbance of vegetation, sediments, and cover sites including animal burrows, boulders or rocks, organic debris such as downed trees or logs in HSP and the connecting channel. To maintain breeding habitat for CRLF, cover habitat in the freshwater marsh would be reduced as part of this project. However, the amount of cover habitat impacted by the proposed project is not substantial compared to the total wetland and upland cover habitat present in the LS wetland complex. Ample undisturbed cover habitat for CRLF would remain within the freshwater wetlands and the uplands adjacent to the wetlands. This level of conversion of the cover habitat for Frogs and Snakes would not result in a significant impact to Frogs or Snakes. The appellant appears to assert that even this insubstantial level of conversion of freshwater marsh present in the LS wetland complex to open water would result in a significant impact to frogs or snakes, without presenting any evidence supporting the assertion. Thus, the appellant fails to make a fair argument based on substantial evidence that the project would result in a significant impact.

CONCERN 17: The appellant asserts that special-status species could become entrained by the proposed screens proposed to be installed at the pump intake.

“The following comments are specific to particular elements of the project proposal. Each indicates that there is, at least, a fair argument that the project will cause significant adverse environmental impacts at Sharp Park: The proposed pumping protocols do not describe the biological screens to prevent listed species from being entrained. Biological monitors at Sharp Park have observed crayfish entrained by Sharp Park’s pumping operations, and stated that “[I]f crayfish can become entrained in pump than frogs might also” [Swaim 2008b, p. 1]. (Hayes 2012) makes recommendations on screening at Sharp Park.” (Pages 23 and 24 of the Appeal Letter)

RESPONSE TO CONCERN 17: No changes are proposed to the ongoing pumping protocols as part of the proposed project. The existing or proposed screen at the pump intake would not result in a significant impact to special-status species.

The appellant assumes that the proposed project involves new or modified pumping protocols by the “proposed pumping protocols.” This assumption is incorrect. No changes are proposed to the ongoing pumping protocols as part of the proposed project.

It is not clear whether the appellant’s concerns are related to the existing screen at the pump intake or to the proposed secondary metal debris screen. If the appellant’s concerns are related to the existing screen at the pump intake, the existing screen’s potential impacts to special-status species are not required to be analyzed as part of the environmental review for this project because the existing screen is considered to be a baseline condition for the purpose of the environmental review of the proposed project. No changes are proposed to the existing screen, therefore, no impact analysis is required concerning the existing screen because a lead agency is not required to analyze the baseline conditions of a project.

If the appellant's concerns are related to the proposed metal debris screen, the appellant has failed to present substantial evidence that the proposed installation of the metal debris screen would result in a significant impact to special-status species. As discussed on page 7 of the PMND (page 7 of the amended PMND), a secondary metal debris screen would be installed at the pump intake structure in consultation with the USFWS. This screen would be metal mesh with holes measuring approximately one inch by one half inch (see the Construction Action section on page 6 of the Biological Opinion).

The Biological Opinion discusses the possibility of Frog mortality through entrainment (individuals being pulled along with water and trapped against screening or pulled into the pumps) of egg masses and individual larvae at the pumps (see pages 33 and 34 in the Biological Opinion). The Biological Opinion further discusses the restoration actions and conservation measures that SFRPD is committing to in order to reduce these effects and protect the species. The Biological Opinion concludes that this project, including the conservation measures, the uplands restoration work, and the continued operations and maintenance of the golf course, is not likely to jeopardize the continued existence of Frogs or Snakes. The conservation measures set forth in the Biological Opinion and incorporated into the project description and mitigation measures would reduce the adverse effects of the proposed construction and operations and maintenance activities on the survival and recovery of Frogs and Snakes.

The PMND has been revised to include an additional description of the proposed metal debris screen (see page 7 of the amended PMND) and an impact analysis concerning the proposed metal debris screen (see page 88 of the amended PMND). These revisions to the PMND do not otherwise change the analysis or conclusions of the PMND and would not themselves cause a significant effect on the environment. As such, the proposed project's impact to biological resources would remain less than significant with mitigation.

CONCERN 18: The commenter asserts that oligohaline (fresh-brackish) lagoon salinity is incorrectly reported as "freshwater."

"Oligohaline (fresh-brackish) lagoon salinity is incorrectly reported as 'freshwater', inconsistent with Tetra Tech 2009 and Kamman 2009. The project description in the MND on page 3, and subsequently, describes the lagoon as a 'freshwater' pond and wetlands. This is incorrect, and is inconsistent with the hydrological assessment of Laguna Salada prepared for SFRPD by Tetra Tech (2009), based on the hydrologic report on Laguna Salada by Kamman (2009; Appendix A in Tetra Tech 2009). The SFRPD's own hydrological studies report salinity range between 0.7 and 2.5 parts per thousand (ppt). This salinity range is also correctly stated on p. 94 of the MND. This salinity range is oligohaline, not 'freshwater', and is physiologically and ecological significant. It indicates a persistent dilution of salts from seawater either seeping through the Salada Beach, residual salinity in the bed sediments. Seawater sources of salinity include sulfates, a source of sulfur affecting bed sediments and coastal wetland soils. The MND is inconsistent in its statement

of lagoon salinity, and incorrect in characterizing it as ‘freshwater’.” (Page 3 of Peter Baye’s Comment Letter)

“Kamman (2009) described ‘freshwater’ as salinity < 1.0 ppt. He reported that the earthen ‘seawall’ eliminates characteristic (natural) episodic tidal exchange between the ocean and lagoon, but it did not state that all hydrologic connectivity is lacking between the lagoon and ocean. On the contrary, Kamman reported evidence of probable groundwater connectivity between lagoon and ocean through beach seepage, and recorded relatively saline groundwater with a salinity of 15 ppt (nearly half seawater salinity concentration) was observed in the sandy flat between Laguna Salada and the earthen seawall. This is also not consistent with the MND’s claim of ‘freshwater’ pond and wetlands. Note that cattail and tule marsh vegetation dominance occurs in both freshwater and oligohaline wetlands, and is not diagnostic of freshwater salinity range.” (Page 3 of Peter Baye’s Comment Letter)

“The incorrect statement of lagoon salinity is important because the MND invalidly relies on the assumption that exclusion seawater salts from the lagoon precludes the occurrence of sulfur from seawater to fuel significant sulfide reduction in organic, anoxic sediments. Obviously, the consistent low salinity in the lagoon indicates seawater salts are always present – including sulfate, the next most abundant anion in seawater after chloride.” (Page 4 of Peter Baye’s Comment Letter)

RESPONSE TO CONCERN 18: The PMND has been revised to characterize the LS wetland system as a fresh-to-brackish wetland system. This revision does not otherwise change the analysis or conclusions of the PMND.

The PMND has been revised to characterize the LS wetland system as a fresh-to-brackish wetland system. These revisions to the PMND do not otherwise change the analysis or conclusions of the PMND, including the discussion and Mitigation Measure M-BIO-2b in the PMND concerning acid sulfate soils. The fact that low levels of salinity are present does not necessarily mean that such salinity originates from the ocean or is a residual in the soils. It is possible that such salinity may originate from upstream sources or any of these sources. Regardless, water quality conditions in the Laguna Salada wetland complex support a vegetation community that is indicative of a freshwater marsh, which in turn allows Frogs and Snakes to flourish. This supports the conclusion that conditions in the wetland complex are not adversely affected by the low-level salinity.³⁰

CONCERN 19: The commenter asserts that the proposed Mitigation Measure M-CP-2 concerning archeological resources is not a credible or feasible mitigation measure.

³⁰ David Munro, Tetra Tech. *Email to Stacy Bradley, SFRPD, Revised Text*, November 26, 2013. This email is available for review as part of Case File No. 2012.1427E at the San Francisco Planning Department, 1650 Mission Street, Suite 400, San Francisco, California 94103.

“The MND on page 30 states that the project could have significant impacts on buried archaeological resources, given the location of known midden sites, and the depth of proposed excavation. The proposed mitigation to reduce this significant impact to less than significant levels relies entirely on excavation equipment operators with no expertise in detection of archeological artifacts (such as shells, bones, heat-altered rocks, bone or stone tools, or flaked stone) to detect ‘accidental discovery’ in excavated jet-black iron sulfide-stained organic much during excavation, and in time to cease excavation and disturbance upon detection. This is not a credible or feasible mitigation measure. I have ample experience over two decades observing excavation and dredging of coastal wetland and aquatic sediments, including strongly organic and sulfidic muds like those that occur in Horse Stable Pond. Organic and iron-sulfide staining of bulk sediment removal would render any small midden artifacts utterly undetectable in the absence of sorting (sieving) and washing. The mitigation measure proposed is infeasible. Advance assessment of archeological resources (a sampling plan prepared by a qualified archeologist) at proposed dredging sites would be required to detect buried archeological resources in organic, iron sulfide-stained fine sediments.” (Page 6 of Peter Baye’s Comment Letter)

RESPONSE TO CONCERN 19: Because proposed excavation activities are expected to be quite shallow, the project has a low-to-moderate likelihood of affecting archeological resources. Nevertheless, as a conservative measure, Mitigation Measure M-CP-2 has been revised to require archeological testing at the project site prior to commencement of any on-site work related to the proposed project.

As discussed on pages 29 and 30 of the PMND (page 30 of the amended PMND), both the immediate coastal and inland areas around the project site are well-documented for prehistoric and historical period Native American sites. Because project activities are expected to be quite shallow, especially within current wetland habitats (three feet below ground surface), the potential for the project to affect prehistoric deposits is considered low--or at its greatest, moderate--in likelihood. Given this, the Planning Department believed that the original Mitigation Measure M-CP-2, addressing accidental discovery, would be adequate to avoid significant impacts to archeological resources that may be present within the project site. The appellant asserts that if prehistoric deposits were encountered during project excavation they would not be detectable as such by an untrained professional as a result of organic and iron-sulfide staining raises the possibility that Mitigation Measure M-CP-2 requires some revision. This claim also implies that monitoring of such excavations by a qualified archeological consultant would be inadequate for the same reason and that only the implementation of an archeological sampling plan for the project by a qualified archeological consultant can adequately address the potential for such deposits being adversely affected by the project. Archeological testing for the presence of prehistoric deposits within not previously disturbed soils is a more conservative approach to ensure that if prehistoric deposits are present within soils potentially disturbed by the project, such deposits are identified and appropriately treated prior to such disturbance occurring and would further ensure that impacts are avoided. Accordingly, Mitigation Measure M-CP-2 has been revised to require archeological testing at the project site. These revisions to the mitigation measure do not otherwise change the analysis or conclusions of the PMND and are equally or

more effective than the mitigation measure prior to revision and would not themselves cause a significant effect on the environment. As such, the proposed project's impact to archeological resources would remain less than significant with mitigation.

CONCLUSION

Staff recommends that the Planning Commission adopt the motion to uphold the Preliminary Mitigated Negative Declaration. No substantial evidence supporting a fair argument that a significant environmental effect may occur as a result of the project has been presented that would warrant preparation of an Environmental Impact Report.