APPENDIX B

COMMENTS ON TENTATIVE ORDER

Marin Audubon Society Box 599 Mill Valley, California 94942-0599

June 22, 2005

Regional Water Quality Control Board
1515 Clay Street, 14th Floor
Oakland, CA 95812

Att: Naomi Feger

Re: Hamilton

Post-it® Fax Note 7671	Date	# of pages ▶ 1
To Naomi Feger	From Barbara Salzman
Co./Dept	Co. MAS
Phone #	Phone #
Fax #	Fax #

Dear Board Members:

Marin Audubon has been involved with the Hamilton property for many years, and we are strong supporters of restoring this site to tidal marsh. Many have worked diligently over a period of many years to accomplish this restoration. We look forward to its coming to fruition. We appreciate the opportunity to comment on the design and particularly thank Naomi Feger for her prompt and helpful responses to our concerns.

Ms Feger has already addressed most of our questions and concerns. Our continuing major concerns are about the project design in the southeast section of the site and the public access plan.

#15. Adequacy of Transition Zone - Figure 6 shows a wildlife corridor defined by the City of Novato Levee on one side and a "wildlife berm" with a 2:1 slope. Neither this, nor any other figure we have seen, shows the location of the restored marsh edge in relation to the levee and wildlife corridor.

If the new wetland is located at the base of the low berm, that means there will be no transition zone for high tide refugia for endangered species. An adequate transition zone should be 300 feet wide for endangered species as recommended by the Fish and Wildlife Service and by the Baylands Habitat Goals Report. It should consist of a vegetated area in which endangered and other species can find cover from avian predators during high tides.

We are advised that the berm is for containment of the dredged material and will be removed. That should be stated in the order along with specific timing for its removal. The berm should be removed immediately after the adjacent dredged materials are consolidated to provide a continuous gradual slope. Vegetation that provides cover should be planted.

An additional concern is how runoff would be able to flow out of the wildlife corridor area while the two berms are in place?

#19. Sediment Recommendations - We are interested in having the ability to follow the water quality recommendations but the DMMO agendas are not made available, as far as we are aware, to the interested public. We would appreciate the DMMO making their agenda more public either by mailing or email.

Public Access - Although BCDC is taking the lead on public access, we believe you should be aware that there are major concerns about two access areas: (1) the trail between Pacheco Pond and new seasonal wetlands because bisects these habitats, resulting in fragmenting of the habitats; and (2) access at the southeast end of project site, near the existing tidal marsh. Potential impacts on endangered species is the primary concern in this section. The transition zone and the location of the tidal marsh is not clearly presented on any figure we have seen.

Also we oppose inclusion of trail segment D because it would impede the restoration the restoration of extensive baylands (approximately 500 acres) to tidal marsh. If the St. Vincent's lands are restored in the future, access should be located along Long Point.

Transition zone deficiencies and access impacts may make it impossible for objectives e. and f. to be met.

Thank you for considering our comments.

Sincerely,

Barbara Salzman
Conservation

JUN 22 2005

June 21, 2005

Madeline Swartz
36 Montego Key
Novato, CA 94949

California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street
Oakland, California 94612
Attn: Curtis T. Scott, Chief, Groundwater Protection Division

Subject: Comments on the Tentative Waste Discharge Requirements and Water Quality Certification for the Hamilton Wetlands Restoration Project, Novato, Marin County

Thank you for allowing public comment on the above referenced Tentative Order. Since increased turbidity will be a major concern in this area of the Bay during the project, there is a strong likelihood that there will be some increased silting in Novato Creek, which is adjacent to the Project. It would be appropriate to monitor the depth of the Creek and channel locations, particularly at the Creek delta, to identify any significant changes. Water quality sampling at an appropriate location in the Creek should also be a part of the routine sampling plan for this project.

Sincerely,

Madeline Swartz

cle engineering

Memo to: Bel Marin Keys Community Services District

From: John A. DeRugeris, P.E. / Susan E. Nilson, P.E.

Re: Hamilton Wetland Restoration Project DRAFT Transmittal of Tentative Waste Discharge Requirements and Water Quality Certification for Hamilton Wetland Restoration Project, Novato, Marin County Dated May 23, 2005

At your request, CLE has reviewed the above referenced document and provides the following comments:

Summary:

The Draft Waste Discharge Requirements for the HWRP appear to be quite thorough, and if implemented and reported as they are stated should protect the San Pablo Bay, Novato Creek area from excessive turbidity and shoaling. At the same time, the allowable discharge requirements do not seem to be unduly severe, as to impact the cost of dredging of the North Lagoon, which is proposed to go to the HWRP. There are some specific areas of the document worth noting that are discussed below.

HWRP Dredged Material Acceptance Criteria

The most important issue in the Draft is the HWRP Dredged Material Acceptance Criteria. Based on the 1997 sediment chemistry for the composite sample of cores collected in the North Lagoon, the materials do not meet the acceptance criteria. Specifically, the concentrations of cadmium and silver exceed this criteria. The following table compares the acceptance criteria to the 1997 results.

The Draft Waste Discharge Requirements does state the following:

> *"Modifications to these procedures may be approved on a case-by-case basis. The dredged material acceptance criteria (DMAC) for wetland surface (cover) reuse shown in the following table shall be used to screen prospective dredging projects for placement of material at the HWRP site. If any pollutant chemical concentration in the pre-dredge sediment samples exceeds the screening values, the Discharger may submit a technical report to the Executive Officer, at least 60 days prior to proposed placement of dredged material, demonstrating the Discharger's ability to comply with the requirements of this order."*

This language does not clearly state how the Discharger can demonstrate the ability to comply with the requirements of this order, when the reason for the "case-by-case review" is because the material does not meet the acceptance criteria of the order. We would envision that the technical report required would be prepared to compare the

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lagoon sediment results to those of San Pablo Bay sediments and demonstrate that the levels are consistent with ambient levels throughout the connected waterway. The report would also need to address the levels at which wildlife are affected and demonstrate that the sediments are below these concentrations.

Whether the lagoon materials meet the acceptance criteria will depend on the results of the proposed 2005 sampling results. However, it is of interest to note that with the exception of lead, all other metals concentrations increased from the 1994 testing to the 1997 testing of lagoon sediments. It is therefore critical to determine how the HWRP Dredged Material Acceptance Criteria was developed and why it has lower thresholds than the existing testing data for the lagoon.

HWRP Dredged Material Acceptance Criteria

Constituent	**Wetland Surface (Cover) Material**	**BMK North Lagoon Composite 1997**	**Reported Detection Limit**
Metals:	**mg/kg**	**(Dry mg/kg)**	
Arsenic	15.3	ND	0.25
Cadmium	1.2	1.44	0.25
Chromium	112	100	
Copper	68.1	63	2.5
Lead	43.2	34	12
Mercury	0.43	0.34*[1]	
Nickel	112	110	2.5
Selenium	0.64	ND	0.25
Silver	0.58	0.69	0.25
Zinc	158	140	2.5
Organochlorine Pesticides & PCBs:	**µg/kg**	**µg/kg**	
DDTs, sum	7.0	ND	
Chlordanes, sum	2.3	ND	
Dieldrin	0.72	ND	
PCBs, sum	22.7	ND	
Polycyclic Aromatic Hydrocarbons:	**µg/kg**	**µg/kg**	
PAHs, Total	3,390	360	

[1] MEC Analytical Results from composite of five (5) samples from North Lagoon: Sediment = 0.34 mg/kg

HWRP Construction Overview #17:

Worth noting here is the requirement of the COE to monitor and maintain the site for 13 years after its completion, after which the Coastal Conservancy will continue the process.

> Once sediment placement is complete, the water management system (e.g., weirs, water control structures) will be dismantled and the existing outboard levee will be breached to allow full tidal exchange with San Pablo Bay. The Army Corps of Engineers will monitor the project for 13 years post-breach and conduct any required maintenance after which the State California Coastal Conservancy will continue to monitor the development of the wetlands and maintain the site.

HWRP Discharge Water Volumes #30:

This paragraph demonstrates the enormity of the project, and the importance of monitoring the dredge effluent water quality. Over the life of the project between 36,000,000 and 240,000,000 cubic yards (48,470,000,000 gallons) of water from dredging projects will be discharged into San Pablo Bay from this project. Unfortunately, the plan does not indicate the locations of the discharge points in relation to Novato Creek; this would be important to know.

> **Discharge Water Volumes**
>
> 30. For 2005 to 2006, it is expected that 0.75 to 2.5 million cubic yards (MCY) of fine sand and fine-grained dredged material from the Oakland 50-foot deepening project will be placed at the HWRP. Additionally 250,000 to 350,000 cubic yards of fine-grained dredged sediments from the Bel Marin Keys Community Service District may be delivered to the site in fall 2005 and early 2006. It is anticipated that the majority of the fine-grained dredged material from navigation projects will be brought to Hamilton in subsequent years; on average about 1 to 2 million cubic yards of sediments are dredged in San Francisco Bay for navigational purposes each year.
>
> For each 1.0 MCY of dredged material imported into the project, 3 to 20 MCY of process water will also be required to slurry and transport via pipeline based on a solids ratio of
>
> is estimated that the rate of discharge will be about 20 cubic feet per second (cfs) (HWRP EIR 1998 and HWRP 2005 Permit Application) or about 20 million gallons per day, but no more than a maximum discharge rate of 50 cfs or 33 million gallons per day.

HWRP California Environmental Quality Act (CEQA):

The potential for an increase of the background levels of methylmercury is acknowledged in this report as significant and unavoidable, and unfortunately this is the biggest unknown.

> **California Environmental Quality Act (CEQA)**

> associated with the property transfer. The Water Board considered the environmental impacts of the project as shown in the HWRP EIR, BRAC SEIR and HWRP SEIR. The HWRP SEIR identified two significant unavoidable impacts that could not be mitigated for: 1) The potential for increased methylmercury production is identified as a significant unavoidable impact of the project (HWRP SEIR 2002); 2) Construction of the off-loader may result in

The response is cited as implementation of the "Methylmercury Adaptive Management Plan", which they said was being developed. It would be good to know more about the progress of plan development.

Hazardous Substances and Waste			
Potential Exposure of Humans, Plants, or Wildlife to Hazardous Chemicals Contained in Dredged Material Used as Fill Material	Potentially Significant	Mitigation Measures WQ-1: Implement Methylmercury Adaptive Management Plan	Potentially Significant

Section C, Effluent Limitations:

Total suspended solids for discharge are set at 50 mg/L over background, this converts to about 150,000 cubic yards of in situ silt discharged into the bay over the life of the project. There is a potential for a percentage of this silt to find its way into Novato Creek (especially the outer entrance). However, the turbidity requirements of Section D are much more stringent at 50 units over background, so if the NTUs it is unlikely that the suspended solids will ever approach 50 mg/L, thus the net in situ level of silt returned to the bay (and Novato Creek) would in reality be much lower. The effluent limitations are similar to those allowed for the BMK Dredge Materials Management Site.

C. EFFLUENT LIMITATIONS

1. Dredged material effluent (decant water) discharged from any point within the beneficial reuse or restoration site shall not exceed the following limits:

Parameter	Limitation	Source
pH	6.5 – 8.5	Basin Plan
Dissolved Sulfide	0.1 mg/L	Basin Plan
Total Suspended Solids (TSS)	Less than 100 mg/L (90% of the time) Less than 50 mg/L (50% of the time)	Based on Regional Monitoring Program measurements of San Pablo Bay background for TSS collected between 1993 and 2001 at the closest sampling station.

3. Turbidity shall not exceed background of the Waters of the State, as measured in NTU, as follows:

Receiving Water Background	Incremental Increase
< 50 units	5 units, maximum
> 50 units	10% of background, maximum

MONTEZUMA WETLANDS LLC
A joint venture of
Levine-Fricke Restoration Corp
and the Zebra Funds

June 21, 2005

Bruce Wolfe, Executive Officer
California Regional Water Quality Control Board
1515 Clay Street, 14th floor
Oakland, CA 94612
Attn: Curtis Scott, Division Chief

Subject: Hamilton Wetland Restoration Project WDR Tentative Order

Dear Mr. Scott:

As the owners of the Montezuma Wetlands Project in Solano County, we observe that you are proposing discharge criteria for the Hamilton project that are much less stringent than were imposed on the privately-owned Montezuma project. Even though the Montezuma project is located in deeper water (with a greater assimilative capacity for discharge), we have discharge limitations for a variety of organic and inorganic constituents, while the Hamilton project is only regulated according to pH, dissolved sulfide and Total Suspended Solids (TSS). While we are in support of the beneficial reuse of dredge sediment, we are writing to request that the Board restructure its approval of the Hamilton permit so as treat privately-owned sites (such as Montezuma) and government-owned sites (such as Hamilton) alike.

We have reviewed the technical information, and do not believe there is any justified technical reason to allow less stringent discharge standards for Hamilton than for Montezuma. Monitoring results from our project have shown that decant water concentrations of contaminants are no different when we handled cover or non-cover sediment types. Hamilton is in shallower water and the San Pablo Bay environment is no less sensitive than the Sacramento River environment where Montezuma's deep-water outfall is located. As you know, Montezuma recycles most of the water we use to slurry dredge sediment, and so our discharge is infrequent. Since Hamilton's offloader must be positioned miles from any on-site water management facilities, recycling of water at Hamilton has not been studied, and with a reported 20 to 33 million gallons per day of discharge for Hamilton, any impacts from Hamilton's discharge would be many times greater than from ours.

We do understand that the Hamilton permit was structured in a way to deliver a speedy approval to the Hamilton project, even though the project has not undertaken the level of design or testing that a comparable private project is required to undertake. We further understand that the LTMS management committee is determined to get Hamilton "off the ground" in time to receive Port of Oakland 50-foot deepening sediment. Despite those laudable goals, we believe that your permit, as currently structured, deviates from current Bay protection policies and would harm private sector efforts to achieve beneficial reuse goals.

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Treating government projects differently than private projects will create an artificial incentive for dredging projects to preferentially use the Hamilton site over private sites like Montezuma. Preferential treatment of government projects where there is conflict with private initiatives is generally prohibited, as it has historically eliminated competition, and increased both taxes and the costs of services. As you know, the decisions on disposal or reuse of dredge sediment are based on cost-benefit analyses conducted by the dredging project sponsor and on an alternatives analysis that must be approved by a variety of regulatory agencies. Preferential treatment of Hamilton will skew the analysis of alternatives and in the end, will cause projects to be delivered to Hamilton that should go to Montezuma or other sites. This will slow tidal restoration efforts at Montezuma, reduce fees that go to Solano County, and interfere with the normally-objective Corps of Engineers' dredge disposal decision-making process.

We understand that the lack of design and testing work at Hamilton and its shallow water location, led to your approach towards these initial discharge standards for Hamilton, and that you intend to review Hamilton monitoring results after one year to assess needed changes. However, there may be more acceptable approaches available to the Regional Board to deal with this situation. Some options are outlined below:

1) If the Board feels that there is no need to regulate a wide range of inorganic and organic contaminants in the decant water from beneficial reuse projects, than the Board should adopt a region-wide permit or policy to that effect. It is not appropriate to conclude that such regulation is needed for private projects but not from similar government projects.

2) If the Board feels that there is a need to regulate a wide range of inorganic and organic contaminants in the decant water from beneficial reuse projects, than the Board should re-structure Hamilton's permit to require on-site capability to manage water-quality to meet normal discharge limits. If the Board or the applicant is unsure of their ability to meet those standards, they should only be waived after an appropriate amount of design and testing work determines it is infeasible.

3) If the Board wants to permit the Hamilton project without that information or the requirement for Hamilton to robustly design on-site water management facilities, then the permit should be for a one-year time period only, and there should be a revocation of the permit if the proposed high-volume discharge is causing problems in the receiving water.

There may be other more creative ideas to consider that would deal with the environmental and "unfair competition" aspects of this situation, and I look forward to meeting with you to discuss these.

Sincerely,

James D. Levine, P.E.
President
Levine*Fricke Restoration Corp.
Managing Member