

San Francisco Bay Conservation and Development Commission

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TO: Commissioners and Alternates

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SUBJECT: Supplemental Information to Listing of Pending Administrative Matters on the Issuance of Marsh Development Permit No. M.D.P.2017-001 by the City of Fairfield for the Pacific Flyway Center Project

(For Commission consideration on June 20, 2019)

Supplemental Information

The following supplemental information is provided by Commission staff regarding the issuance of Marsh Development Permit No. M.D.P.2017-001 by the City of Fairfield (“City”), for the portion of the Pacific Flyway Center project within the Suisun Marsh Secondary Management Area. The project is described in the Listing of Pending Administrative Matters.

Primary vs. Secondary Management Area Project Components. The Pacific Flyway Center project includes components in both the Primary and Secondary Management Areas of Suisun Marsh. Pursuant to the Suisun Marsh Preservation Act (SMPA), the project must obtain permits from both the local government, for the work in the Secondary Management Area (SMA), and from BCDC, for the work in the Primary Management Area (PMA). The majority of the areas proposed for development, including the 125,000-square-foot interpretive center, theater, gift shop, food and maintenance facilities, 337 parking spaces and bus drop-off area, and a portion of the boardwalks and wetlands associated with the “Walk in the Marsh” would be located within the SMA, and are the subject of the City’s Marsh Development Permit approval. This approval is final unless appealed to the Commission pursuant to SMPA Section 29522, under which a Marsh Development Permit can be appealed to the Commission by any aggrieved person or by any two members of the Commission. A smaller portion of the proposed development, consisting of a portion of the boardwalks, ponds, and wetlands in the “Walk in the Marsh,” would be located in the PMA, and would be the subject of a future Marsh Development Permit application to BCDC, which has not yet been submitted.

Local Protection Program Consistency. The site of the Pacific Flyway Center project was, until recently, located in unincorporated Solano County, and therefore subject to the policies in the Solano County component of the Suisun Marsh Local Protection Program, as certified by the Commission on November 3, 1982 and amended on February 2, 1999 and March 7, 2019. Approximately 280 acres of Suisun Marsh (80 acres in the SMA and 200 acres in the PMA) were

annexed from Solano County into the City of Fairfield, through a process that included the approval by City residents of Measure T on November 8, 2016, to revise the Urban Limit Line, and approval of the annexation by the Solano County Local Agency Formation Commission (LAFCO) on March 25, 2019. The City's Mitigated Negative Declaration for the project notes that this annexation was "necessary [in] order to obtain the provision of City services, such as sewer and water, to serve the project's utility needs." In addition to these services, the LAFCO review also considered services such as fire protection and law enforcement.

Commission staff have worked with the City and project proponents regarding both the PMA and SMA project components over the past several years. As part of these discussions, Commission staff indicated to the City that an amendment to the City's component of the Suisun Marsh Local Protection Program ("City of Fairfield LPP") would be needed, as the boundaries and policies of the BCDC-certified City of Fairfield LPP would not legally cover newly annexed parcels absent the certification of an amendment by the Commission. The City has indicated that they have found the Pacific Flyway Center project components within the Secondary Management Area to be consistent with the City of Fairfield LPP as it currently stands and have declined to amend the City of Fairfield LPP to reflect the annexation of the project site.

As the City of Fairfield LPP has not been amended to reflect the annexation, Commission staff maintain that the City of Fairfield cannot review the project for consistency with the City's component of the LPP or issue a Marsh Development Permit on those grounds, as the LPP amendment would be necessary before such consistency could be found. Moreover, in changing the City's boundary line, relocating the City's Urban Limit Line, and adopting land use regulations and controls associated with the Pacific Flyway Center project, the City has taken a number of actions that constitute effective, de facto amendments to its LPP for which the City has a legal obligation under relevant provisions of the SMPA to seek and obtain certification from the Commission, but has not yet done so.

However, the City may issue a Marsh Development Permit for the components of the project in the Secondary Management Area, without completing a LPP amendment to reflect the annexation, if the City finds that the proposed development is consistent with the Suisun Marsh Protection Plan (SMPP), as described in SMPA Section 29503(a). On appeal, any review by the Commission of the MDP would be governed by SMPA Section 29504(c), which requires an identical finding. The project described in the Listing of Pending Administrative Matters should therefore be evaluated on the basis of the SMPP, rather than the City of Fairfield LPP.

Suisun Marsh Protection Plan Considerations. The SMPP, adopted by the Commission in 1974, contains findings and policies regarding Environment; Water Supply and Quality; Natural Gas Resources; Utilities, Facilities and Transportation; Recreation and Access; Water-Related Industry; and Land Use and Marsh Management. A full staff analysis of consistency with the SMPP for the Pacific Flyway Center project components within the SMA is beyond the scope of this document, and, as noted above, the portions of the project within the PMA will be analyzed at such time as a permit application is submitted to the Commission for this work. However, the following is provided as information that Commissioners can consider in deciding whether or not to exercise their authority to appeal the Pacific Flyway Center project to the Commission:

1. **Environment and Land Use and Marsh Management.** The SMPP policies on the Environment state, in part: “The diversity of habitats in the Suisun Marsh and surrounding upland areas should be preserved and enhanced wherever possible to maintain the unique wildlife resource,”¹ and that “[t]he Marsh waterways, managed wetlands, tidal marshes, seasonal marshes, and lowland grasslands are critical habitats for marsh-related wildlife and are essential to the integrity of the Suisun Marsh. Therefore, these habitats deserve special protection.”² The Environment policies further state that: “Existing uses should continue in the upland grasslands and cultivated areas surrounding the critical habitats of the Suisun Marsh in order to protect the Marsh and preserve valuable marsh-related wildlife habitats. Where feasible, the value of the upland grasslands and cultivated lands as habitat for marsh-related wildlife should be enhanced.”³

The SMPP policies on Land Use and Marsh Management state, in part: “The function of the secondary management area should be to act as a buffer area insulating the habitats within the primary management area from adverse impacts of urban development and other uses and land practices incompatible with preservation of the Marsh.”⁴

In April 2018, the City of Fairfield prepared an analysis of the Pacific Flyway Center’s consistency with the SMPP,⁵ which was incorporated into the City’s CEQA document for the project and is attached as Appendix A for reference. The City’s analysis on the SMPP policies on the Environment notes, in part, that the upland grasslands are biologically unremarkable and that the project will rehabilitate and enhance the value of the grasslands and preserve and enhance diversity of on-site habitats. The City’s analysis considers the 125,000-square-foot interpretive center, 337-space parking lot, and other structures to be part of an “ancillary educational facility and interpretive nature center” on an “open space land preserve.”

The City’s analysis on Marsh and upland resource use management states, in part, that the SMA will continue to act as a buffer to insulate PMA habitats, that site was at one point used for agricultural purposes, and that the use of the site “as an open space land preserve with an ancillary educational facility and interpretive nature center is compatible with protection of the Marsh and less intensive and disruptive to the habitat than agricultural activities.”

The project site is shown in Bay Plan Map No. 3 as the Grizzly Island Wildlife Area, and is designated as a Wildlife Refuge Priority Use Area. The 8.3-acre area to be developed with the interpretive center, parking lot, and related facilities is approximately 10% of the project area within the SMA, 3% of the area annexed into the City of Fairfield, and 1.5% of the total 560 acres. The project also includes a 124-acre “Walk in the Marsh,” which is located both within the PMA and SMA, as well as an open space preserve, most

¹ SMPP Environment Policy No. 1

² SMPP Environment Policy No. 2

³ SMPP Environment Policy No. 3

⁴ SMPP Land Use and Marsh Management Policy No. 9

⁵ City of Fairfield: Suisun Marsh Protection Plan Consistency Analysis: Pacific Flyway Center. Kreimeier, A, Assistant Planner, April 30, 2018.

of which is located within the PMA. The portions within the SMA are the subject of the City's MDP approval. A comparison of the interpretive center with other educational and/or interpretive facilities is provided in Table 1.

Table 1. Comparison of Project Square Footage and Annual Visitors with Other Educational and/or Interpretive Facilities

Educational and/or Interpretive Facility	Square Footage of Facility	Visitors per Year
Lindsay Wildlife Museum (Walnut Creek)	28,000	75,000
CuriOdyssey (San Mateo)	28,000	180,000
Marine Mammal Center (Sausalito)	24,000	100,000
Don Edwards National Wildlife Refuge Environmental Education Center	11,000	400,000 (to the entire refuge)
Tilden Nature Area Environmental Education Center	16,000	Not Available
Consumnes River Preserve	5,000 (plus 46,000 acres of interpretive trails and boardwalks)	93,000
Monterey Bay Aquarium ^a	320,000	1,800,000
<i>Pacific Flyway Center (Proposed Project)</i>	<i>125,000</i>	<i>250,000</i>

Source: Unless otherwise noted, data is from Section 5.2 of: "Transportation Impact Report, Pacific Flyway Center, City of Fairfield," prepared for the City of Fairfield Public Works Department – Engineering by Abrams Associates, dated January 10, 2018.

^a [Monterey Bay Aquarium Newsroom: https://newsroom.montereybayaquarium.org/press/facts-figures](https://newsroom.montereybayaquarium.org/press/facts-figures) [Accessed 6/3/19]

- 2. Utilities, Facilities and Transportation.** The SMPP policies on Utilities, Facilities and Transportation state, in part: "Urban utilities and public services (e.g., natural gas lines, electric lines for local power distribution, domestic water mains, and sewers) should be allowed to extend into the Suisun Marsh and the adjacent upland area necessary to protect the Marsh, only to serve existing uses and other uses consistent with protection of the Marsh, such as agriculture..."⁶

⁶ SMPP Utilities, Facilities, and Transportation Policy No. 1(b)

The City's analysis on the SMPP policies on Utilities, Facilities and Transportation states, in part, that "[t]his project will not move forward without the construction of the ancillary educational facility and interpretive nature center and these educational facilities will promote the long-term goals and objectives of the Plan. Operation of these facilities will require the extension of urban utilities and public services onto the portion of the site that is proposed for their development. Therefore, the extension of urban utilities to serve the ancillary educational facility and interpretive nature center is consistent with protection of the Marsh." The City's analysis further notes that the extension of utilities will only extend a short distance onto the site, that electrical lines already exist although lines for local distribution and for phones will be needed, and that utilities will be located within existing road rights-of-way whenever possible.

The Pacific Flyway Center represents a new, rather than existing, use of the Marsh. Therefore, the evaluation of the project would focus on whether the extension of utilities for the project is for a use consistent with protection of the Marsh.

3. **Recreation and Access.** The SMPP policies on Recreation and Access state, in part: "Land should also be purchased for public recreation and access to the Marsh for such uses as fishing boat launching and nature study. These areas should be located on the outer portions of the Marsh near the population centers and easily accessible from existing roads. Improvements for public use should be consistent with protection of wildlife resources."⁷ These policies also state that: "Recreational activities that could result in adverse impacts to the environment or aesthetic qualities of the Suisun Marsh should not be permitted. Levels of use should also be monitored to ensure that their intensity is compatible with other recreation activities and with protection of the Marsh environment...."⁸

The City's analysis on the SMPP policies on Recreation and Access notes, in part, that the project "will give the public access to the Marsh for passive recreation, nature study and the opportunity to learn more about the Suisun Marsh and the birds on the Pacific Flyway" and will "grant the public access to an area of the Marsh that was previously inaccessible." The City's analysis further notes, in part, that the project is located near a population center and is easily accessible from existing roads, that the land exchange with CDFW required a deed restriction on the property for "an open land preserve with an ancillary educational facility and interpretive nature center," that signage will indicate public access to the Marsh during operating hours, and that use of the site will be monitored "to ensure that the intensity of use continues to be compatible with protection of the Marsh environment."

The project is anticipated to bring 250,000 visitors to the Marsh annually, and provide educational opportunities related to the Pacific Flyway and Suisun Marsh, increasing the ability of the public to access the Marsh during operating hours. The operations of the project and extent to which portions of the site and interpretive center facilities will be open to the general public without a fee have not yet been outlined in detail.

⁷ SMPP Recreation and Access Policy No. 2

⁸ SMPP Recreation and Access Policy No. 5

Local Protection Program Considerations. The City also prepared an analysis of the Pacific Flyway Center project's consistency with the City of Fairfield LPP. As discussed above, Commission staff maintains that the appropriate standard of review for the project is the SMPP rather than the City of Fairfield LPP. The City's analysis of the project's consistency with the City of Fairfield LPP addresses similar topics to those analyzed for SMPP consistency for the Pacific Flyway Center interpretive center, parking lot, and other facilities, and also includes information related, in part, to zoning, marsh management, and flood control. Please contact Commission staff to receive a copy of this document. Similar considerations to those discussed under "Suisun Marsh Protection Plan Considerations," above, would be raised under the LPP regarding the development, use, and access associated with the Pacific Flyway Center project.