

February 15, 2019

TO: Board of Directors

FROM: Bruce DiGennaro, Executive Director

RE: Executive Director's Report

The following summarizes key activities since the December board meeting:

A. CalPERS Termination

- Per the Board's direction in December, we have elected a "Frozen" termination method. CalPERS is currently calculating our termination liability. A preliminary termination liability estimate of \$2,139,300 was provided by CALPERS in September. This is slightly less than our previous estimate of \$2.3 million.
- CalPERS has indicated that termination of our contract will end all existing health benefits, including benefits to existing retirees.

B. SFCWA Office Space

- We have had no interest in the office space.

C. Tule Red

The following provides a summary of outstanding issues associated with the completion of the Tule Red Habitat Restoration Project.

1. Phase 2 Construction Contract

a. Contracting for Phase 2 Construction

i. Phase 2 will consist of the following elements:

1. demolition the clubhouse and removing all debris;
2. completing the habitat berm in the area of the clubhouse
3. installing an aeration structure on the CDFW outfall pump;
4. removing the tidegates and bulkheads;
5. breaching the natural berm and,
6. potentially constructing public access improvements required by the BCDC permit (see below).

ii. Staff are exploring options for amending the existing contract with Four M to conduct the Phase 2 work.

iii. There are significant advantages and potential cost savings associated with amending the existing contract with Four M to conduct Phase 2 including: (1) familiarity with the site and site conditions; (2) established working relationships with the project team; (3) time savings; AND (4) reduced administrative and legal costs associated with a bid process and procuring a new contract.

b. Notifying DWR

SFCWA is required to notify DWR if it intends to amend the contract with Four M, and DWR needs to concur. DWR staff are aware that SFCWA may be pursuing an amendment with Four M for Phase 2.

2. BCDC Permit Compliance

a. Background

- i. The existing BCDC permit requires improvements to two existing CDFW fishing piers, installation of an interpretive sign and other public signage, completion of a public access study, and a \$150,000 payment for future public access improvements.
- ii. The BCDC permit, and associated terms were received after the contract and budget was negotiated with DWR. Attachment A provides a timeline regarding the permit.
- iii. The project budget did not account for the level of public access improvements required by BCDC.
- iv. DWR funded the public access study, which has been completed.
- v. Engineering designs have been completed and approved by BCDC for one of the two fishing piers (BCDC review and approval are conditions of the permit). Engineering design work is currently underway for the second pier.
- vi. The \$150,000 payment to the Coastal Conservancy has been paid, per the permit.

b. Construction of Public Access Improvements

- i. The total estimated cost to comply with the BCDC permit (including planning, design and construction) is \$425,000 (including costs to date).
- ii. There are insufficient funds in the current DWR contract to cover these costs.
- iii. In consultation with DWR, staff are pursuing an amendment to the DWR contract to account for the cost of complying with the BCDC permit.

3. Budget Status

- a. Current projections indicate that SFCWA will need an additional \$500,000 to complete the project, above and beyond the current DWR contract (3% over budget).

Existing DWR Contract	\$14,527,000
Expenses to Date	\$11,922,000
Estimated Cost to Complete	<u>\$ 3,063,000</u>
Total	\$14,985,000

- b. The above is based on the engineer’s estimate for Phase 2 construction (including design and construction of required public access improvements).

4. Title Transfer and Long-term Management

- a. The final step in completing the restoration project, and perfecting the mitigation credits will involve permanent protection of the site and financial assurance of long-term operation and maintenance costs.
- b. CDFW has indicated that they would be willing to take fee title, but need assurance from DWR that there are adequate funds in place for long-term management of the site before they will agree to take ownership.
- c. DWR has indicated that existing funds and staff are in place to provided long-term management.
- d. Preliminary discussions have occurred between SFCWA, DWR and CDFW, and additional discussions are planned to ensure that all parties are in agreement, and to ensure that there are no issues associated with title transfer.
- e. Title transfer is anticipated to occur in January or February 2020.

ATTACHMENT A**Tule Red Tidal Restoration Project**

Memo: Summary of Bay Conservation Development Commission Interactions

Purpose: To describe, in general terms, the most significant interactions between WES, SFCWA and BCDC regarding public access elements of the project

Timeline: June 2015 to Present

June 16, 2015

As part of normal project permitting process, representatives of Westervelt Ecological Services (WES), and SFCWA conducted a pre-application briefing with the responsible permitting agencies for the project to outline the project and have the agencies identify any significant resource issues to be highlighted in the permit application packages. There were representatives from the US Army Corps of Engineers (404 Permit), Regional Water Quality Control Board (401 permit), BCDC (Marsh Development Permit), and the US Fish and Wildlife Service (Section 7 consultation). The project's conceptual plan was presented and discussed. Significant issues discussed were the timing of the breach, and the net wetland acreage conversion to uplands from the creation of the habitat berm. There was no mention from the BCDC representative present (Cody Aichelle) of having to provide public access with our project description in our application.

June 16-October 20, 2015

During this period, the design of the habitat berm and the resultant net wetland impacts were negotiated with the resource agencies. The SF Regional Board was the only agency that required mitigation for the conversion of wetlands to uplands from the project.

October 20, 2015

At a permit-specific pre-application meeting, WES and SFCWA met with BCDC staff at their offices in San Francisco. Representatives included Bob Batha, then Chief of Permits, and Cody Aichelle, as BCDC Susuin Marsh staff representative. Again, the project's conceptual plan and schedule were presented and discussed, and no requirement for inclusion of public access with our plan was requested.

March 25, 2016

Design refinements continued in an effort to address other resource agency's permitting approval needs, and the draft BCDC Marsh Development Permit Application was submitted with no plan to provide public access. The application included an explanation that public access at the site would be incompatible with the purpose of the project (wildlife preserve) and with adjacent uses (adjacent private duck club and wildlife area).

April 28, 2016

A comment letter requesting supplemental information for the application was received from Pascale Soumoy (BCDC), who was not present at earlier meetings, but was assigned to the project permit application. The letter contained the following statement:

“The Commission's law and policies require that proposed projects provide the maximum feasible public access consistent with the project. Your proposal does not include or propose public access, and provides a statement as to why access and associated improvements are not feasible at the project site or a nearby off-site location at this time. To be consistent with BCDC's policies, the project proposal must provide the maximum public access, consistent with the project. We believe that there are opportunities for public access related to this site and will discuss them with you at our upcoming meeting.”

June 15, 2016

In response, SFCWA submitted the supplemental application information requested and made a commitment to provide off-site public access as follows: *“SFCWA proposes to provide funding to improve existing fishing piers in the Suisun Marsh”*.

June 17 2016

A site visit was arranged by SFCWA for WES and several BCDC staff, including Pascale Soumoy and Brad McCrea, the Regulatory Director of BCDC. Also present were representatives from DWR (Erik Lobochevsky), the Suisun Resource Conservation District (Steve Chappell) and The Resources Agency (David Okita).

At the meeting BCDC agreed to issue a permit, in August, at the earliest, with the following requirements:

1. Funding and conducting a Suisun Marsh-wide public access study
2. Funding for future public access improvements (no dollar amount specified)
3. Completion of fishing pier improvements
4. Completion of an interpretive sign

June 24, 2016

A letter sent by SFCWA to BCDC included a check for \$11,000 as a processing fee and the following commitments to be included as conditions in the BCDC permit:

“We believe it was agreed in concept that providing the following elements would be sufficient to move our application to the BCDC Commission members for consideration at its earliest August meeting.

- 1) *Installation of an interpretative sign at the restored Marsh site.*

2) *Restoration of the two fishing piers identified by CDFW and visited during the tour.*

3) *Development of a study to identify future, comprehensive public access improvements consistent with the Suisun Marsh Plan (SMP) and to provide a menu of options to improve public access as additional restoration and other development projects in the Marsh are pursued.*

4) *Contribution of \$150,000 to the Coastal Trust Fund held by the State Coastal Conservancy to be held in escrow to implement future Suisun Marsh Region public access improvements.*

SFCWA will be responsible for the first two items and the California Department of Water Resources will be responsible for the second two items, consistent with overall implementation of the California EcoRestore Program and DWR's Fish Restoration Program. DWR will provide specific commitment to items 3 and 4 by separate letter."

August 18, 2016

BCDC staff recommends and Commission approves SFCWA application on a 16-0 vote.

Permit conditions regarding public access include:

"B. Public Access. Prior to completing the work in the Tule Red restoration site or no later than December 31, 2018, unless otherwise noted, the permittees shall conduct the public access improvements (1) through (5) below. In the event that the pier Improvements cannot be completed as required below, the permittees shall propose and seek authorization to complete alternative comparable public access improvements. The permittees shall provide plans for review and approval and obtain or facilitate the application for all required permits for the improvements and repairs to the fishing piers and other public access activities.

- 1. Island Slough Fishing Pier. Repair and improve CDFW-owned, Island Slough wooden fishing pier. Work would include restoring the pier to stable and safe condition with additional improvements per Americans with Disabilities Act (ADA) requirements.*
- 2. Montezuma Slough Fishing Pier. Repair and improve a CDFW-owned Montezuma Slough aluminum fishing pier. Repairs would include raising and stabilizing the pier; levee repair and stabilization; and reconnecting pier with the adjacent walkway, with additional improvements per ADA requirements.*
- 3. Tule Red Interpretive Sign. Near the restored Tule Red site, adjacent existing public access and visible to public, install a 4 foot by 6 foot information sign depicting specifics about the Tule Red restoration project, site features and other public access opportunities in the vicinity. The design and information*

contained in the interpretive sign shall be subject to review and approval by or on behalf of the Commission.

4. *Parking Lot Signage. By December 31, 2016, the permittees shall improve the adjacent public parking lot signage to clarify that the parking lot is available for public use. Sign improvements shall be reviewed and approved by or on behalf of the Commission.*
5. *Maintenance. The public access structures and their improvements required herein shall be permanently maintained by and at the expense of the permittees or its assignees. Such maintenance shall include, but is not limited to, repairs to all paths leading to the piers, pier surfaces, maintenance of the public access amenities such as periodic cleanup of litter and other materials deposited within the access areas, removal of any encroachments into the access areas, and assuring that the public access signs remain in place and visible. Within 30 days after notification by staff, the permittees shall correct any maintenance deficiency noted in a staff inspection of the site and shall obtain approval by or on behalf of the Commission of any maintenance that involves more than in-kind repair and replacement.*
6. *Suisun Marsh Comprehensive Public Access Study and Public Access Funding.*
 - a. *To better inform public access decisions that will likely arise from future restoration activities in the area, and selection of the public access improvements specified in (b) through (d) below, the permittees shall prepare and submit a public access study to the Commission. The study shall be initiated in the Fall of 2016, and include scope and schedule for review; a draft report will be submitted by September 30, 2017; and a final report submitted by December 31, 2017. The comprehensive study shall include stakeholder involvement; identify current and future public access opportunities within Suisun Marsh; and provide a suite of options that would improve public access as future restoration and development projects are pursued in the Suisun Marsh.*
 - b. *By December 31, 2017 the permittees shall contribute \$150,000 to the California Coastal Conservancy's Coastal Trust Fund (Public Trust Fund) to be held for future Suisun Marsh public access improvements.*
 - c. *The funds shall be used to improve public access on Tule Red Restoration site in the form of trail, signage or parking improvements. If the above described study finds that public access at Tule Red is not appropriate, the permittees shall propose additional in lieu public access improvements at another site located within Suisun Marsh for review and approval by or on behalf of the Commission.*

d. The permittees shall apply for BCDC authorization no later than December 31, 2019 to construct the additional public access improvements through amendment to this permit, or by a separate permit as needed.”

August 19, 2019

The groundbreaking ceremony was held with BCDC and all other major stakeholders present.

January 29, 2017

Parking Lot #1 sign was completed and documentation provided to BCDC (condition #4).

April 13, 2017

Permit amendment #1 was approved by BCDC for the revised construction plans.

December 14, 2017

A meeting in the Suisun Marsh was held with SRCDC, BCDC, Resources Agency WES, SFCWA, and DWR representatives to discuss Suisun Marsh-BCDC issues.

January 26, 2018

Permit Amendment #2 was approved by BCDC for time extension on the project.

June 7, 2018

Permit Amendment #3 was approved for relocation of temporary staging area within the project area.

August 31, 2018

WES submitted engineered drawings of the Montezuma Slough fishing pier to BCDC for review

December 21, 2018

DWR delivered the final public access study to BCDC.

January 25, 2019

A request was submitted by WES and SFCWA for Permit Amendment #4 – time extension.