

## **APPENDIX C**

### **RESPONSE TO COMMENTS**

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION  
1515 Clay Street, Suite 1400  
Oakland, CA 94612**

**RESPONSE TO COMMENTS**

**TENTATIVE ORDER: WASTE DISCHARGE REQUIREMENTS, WATER  
QUALITY CERTIFICATION  
FOR:  
HAMILTON WETLAND RESTORATION PROJECT: DREDGED MATERIAL  
AND FILL PLACEMENT**

This document summarizes Board staff's responses to public comments on the above-referenced Tentative Order. The Tentative Order was transmitted for public comment on May 23, and the public comment period closed on June 22, 2005. Each comment is summarized and followed by staff's response. For brevity, many of the comments are paraphrased. The Tentative Order was revised in response to the received comments. In addition, the Tentative Order was revised to fix minor typographical errors.

**I. Marin Audubon Society (MAS) comment letter, received by FAX on June 22, 2005.**

**Comment 1:** Figures provided in the Tentative Order do not show the proposed height of the tidal marsh in relation to the wildlife berm at the edge of the wildlife corridor. An adequate vegetated transition zone, 300 feet wide should be included in the design to provide refuge for endangered species during high tides. Please explain how and when the wildlife berm will be graded after being used to contain dredged material. The berm should be removed immediately after the adjacent dredged materials are consolidated to provide a continuous slope. Vegetation that provides cover should be planted.

**Response to Comment 1:** The wildlife corridor itself is considered transitional habitat and is expected to provide refuge for endangered species. At the time of levee breach, the project anticipates that the fill in the tidal marsh will have initially consolidated to about 4.7 feet NAVD 88. The slope of the wildlife corridor is planned to be gradual, approximately 125:1. The wildlife berm will be graded to the same slope from the marsh plain up to the City of Novato's levee. The grading will occur prior to levee breach. Portions or all of the wildlife corridor may be planted.

**Comment 2:** How will runoff flow from the wildlife corridor area while the two berms are in place?

**Response to Comment 2:** During sediment placement, the wildlife corridor will be constructed to ensure drainage occurs into Nina's Pond (See Figure 8). Provision E.5 of the Tentative Order requires preparation and submission of a Site Operation Plan, which will discuss management of surface water runoff at the site.

**Comment 3:** How are the Dredged Material Management Office (DMMO) meeting agendas made available to the public?

**Response to Comment 3:** The schedule of DMMO public meetings is available to the public through the DMMO web site; see the following website for meeting agendas: <http://www.spn.usace.army.mil/conops/meeting.html> The agenda is put together seven days prior to the meeting and is usually up on the Corps' DMMO web site six days before the meeting. Members of the public without internet access should call David Dwinell of the Corps at 415-977-8471.

**Comment 4:** MAS has major concerns with public access to the site, specifically two access areas: 1) the trail between Pacheco Pond and the seasonal wetlands fragments the habitats, and 2) access at the southeast end of the project site near the existing tidal marsh. The transition zone in relation to the tidal marsh at the southeast end of the project is not clearly presented.

**Response to Comment 4:** The Tentative Order does not address design issues regarding public access. BCDC and USFWS have engaged the Hamilton Wetland Restoration Project (HWRP) on issues regarding the design of public access elements of the restoration. BCDC will include public access design in its permitting/consistency determination for the project.

**Comment 5:** MAS opposes inclusion of trail segment D, near the St. Vincent's property.

**Response to Comment 5:** See response to Comment 4 above.

## **II. Letter from Madeline Swartz dated June 21, 2005**

**Comment:** The Commenter is concerned about increased turbidity from the project increasing siltation of Novato Creek and thinks it would be appropriate to monitor the Creek for sedimentation and water quality.

**Response:** It is the Board Staff's understanding that a Bel Marin Keys 5, Phase 2 hydrology study is currently underway to evaluate the issue of sedimentation on Novato Creek. The Corps and the State Coastal Conservancy are conducting this study. In addition, Staff notes that Novato Creek is more than three miles from the discharge point of the HWRP. Based on the Total Suspended Solids (TSS) limitations in the Tentative Order, it is not expected that the project will increase siltation of Novato Creek.

## **III. Memo from CLE Engineering, Inc. to Bel Marin Keys Community Service District, emailed on June 21, 2005.**

**Comment 1:** The draft WDR appears to be quite thorough and if implemented and reported as stated should protect San Pablo Bay, Novato Creek area from excessive turbidity and shoaling.

**Response to Comment 1:** Comment Noted.

**Comment 2:** The WDR language in Specification B.4 states that if any pollutant chemical concentration in the pre-dredge sediment samples exceeds the dredged material acceptance criteria (DMAC) screening values, the Discharger may submit a technical report to the Executive Officer at least 60 days prior to the proposed placement of dredged material, demonstrating the Discharger's ability to comply with the requirements of this Order. The language in the Order does not clearly state how the Discharger can demonstrate its ability to comply with the Order if this is the case. The Commenter notes that they would envision submitting a technical report that compares the dredged material sediment data for their project at Bel Marin Keys to information about San Pablo Bay sediments and demonstrate that the levels are consistent with ambient levels throughout the connected waterway. The report would also need to demonstrate that contaminant levels are below levels that would impact wildlife.

**Response to Comment 2:** Staff has revised the language in Specification B.4 of the Tentative Order to state that, "if any pollutant....demonstrating the Discharger's ability to comply with *all other* requirements of this Order and *demonstrate that the material is unlikely to impact beneficial uses.*" [language changes in italics]

**Comment 3:** It would be good to know more about the progress of the Methylmercury Adaptive Management Plan.

**Response to Comment 3:** Provision E.7 of the Tentative Order requires submission of a Wetlands Monitoring and Adaptive Management Plan; one important element of which is a Methylmercury Adaptive Management Plan. The due date for this plan is June 1, 2006.

**Comment 4:** Regarding Section C, Effluent Limitations: Total suspended solids for discharge are set at 50 mg/L over background, which 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 *are lower* (language in italics added by Board staff) 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. We interpreted this comment to mean that although TSS in the decant water may add to sediment load in San Pablo Bay, receiving water turbidity limits will ensure no significant change in loading.

**Response to Comment 4:** This comment does not accurately reflect the limitations presented in the Tentative Order. TSS is not set at 50 mg/L over background. Regional Monitoring Data collected by the San Francisco Estuary Institute (SFEI) between 1993 through 2001 show a range of TSS from less than 50 mg/L to greater than 200 mg/L. The Tentative Order reflects a limitation on TSS of less than 100 mg/L, 90 percent of the time, and less than 50 mg/L, 50% of the time. The maximum turbidity receiving water limit is a 10% increase above San Pablo Bay background, not 50 units over background. However, we agree with the Commenter's conclusion that it is unlikely that the project will lead to significant changes in sediment loading in San Pablo Bay. See also Response to Comment by Madeleine Swartz above in Section II.

#### **IV. Letter from Jim Levine, representing Montezuma Wetlands LLC, received by FAX on June 21, 2005**

**General Comment:** The proposed discharge criteria in the Tentative Order (T.O.) are much less stringent than those imposed on the privately-owned Montezuma Wetlands LLC (Montezuma) project; treating a government-owned site differently than a privately-owned site creates an artificial incentive for dredging projects to preferentially use the government-owned (Hamilton) site. We request that the Board restructure its approval of the Hamilton permit so as to treat government-owned sites and privately-owned sites alike.

**Response:** It is inappropriate to compare the Hamilton Wetland Restoration Project (HWRP) and Montezuma projects due to the differences in design, location and operation of the sites. Montezuma was designed as an operating business to provide a disposal site for beneficial reuse of dredged material and can accept contaminated dredged material (i.e., “foundation” material as per the Board’s Beneficial Reuse Guidelines of May 2000), whereas the HWRP can only accept “surface” quality dredged material. At the time the Montezuma project was proposed there was concern that “foundation” quality dredged material would contaminate the decant water and that recycling, coupled with evaporation, would concentrate contaminants to elevated levels. This issue was deemed a “significant impact” in the Montezuma EIS/EIR. In addition, the Montezuma project uses groundwater as its make-up water to slurry sediments onto the site.

The HWRP is a congressionally-approved wetland restoration site that will be allowed to accept only “surface” quality dredged material that is pumped onto the site using San Pablo Bay water. The discharge limitations in the HWRP T.O. are focused on TSS, since most, if not all, of the pollutants of concern in the dredge slurry delivered to the site are expected to be bound to suspended sediment particles; thus TSS were used as surrogate parameters for effluent quality. The T.O. does require monitoring for metal toxic pollutants for both the influent and the effluent to determine whether the process of slurrying and settling of sediments at Hamilton leads to any increases in the soluble levels of metals in the decant water.

#### **Specific Comments**

**Comment 1:** We (Montezuma) 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.

**Response to Comment 1:** At the time the Board adopted the WDR for Montezuma, there had been no studies done to compare contaminant concentrations in decant water effluent from cover (surface) vs. non-cover (foundation) dredged material. Staff received the first and, so far, only self-monitoring report containing decant water monitoring data from the Montezuma project in January 2005. These data indicate that the project has been able to meet the decant water effluent limitations for toxic metal pollutants currently in its permit. Board Staff has agreed to meet with Montezuma to discuss modifications to their self-monitoring program. Montezuma may also submit a written request,

providing its technical rationale, to Board Staff to amend its Board Order, based on these recent data.

**Comment 2:** We believe that the HWRP permit, as currently structured, deviates from current Bay protection policies and would harm private sector efforts to achieve beneficial reuse goals.

**Response to Comment 2:** Staff disagrees that the T.O., “deviates from current Bay protection policies.” We do not see any logical connection between the requirements in the T.O. and harm to private sector beneficial reuse goals. The 1999 Water Resources Development Act approved by Congress linked both HWRP and Montezuma to the Port of Oakland’s 50-Foot Project; beneficial reuse goals are established for both projects, and the Port of Oakland expects to meet these goals.

**Comment 3:** 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.... 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.

**Response to Comment 3:** The T.O. does not provide for preferential treatment of the HWRP, skew the analysis of alternatives or create an artificial incentive for material to go to the HWRP. The regulatory agencies cannot go forward with an analysis of alternatives to in-bay aquatic disposal without first reviewing the sediment testing data and determining whether the sediment is suitable for beneficial reuse; no project is given preferential treatment in this process. After a suitability determination is made, economic factors beyond the scope of this T.O. (e.g., longer hauling distance) may drive the analysis between reuse alternatives.

**Comment 4:** 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, then the Board should adopt a region-wide permit or policy to that effect. It is not appropriate to conclude that such a regulation is needed for private projects but not from similar government projects.

**Response to Comment 4:** Staff does not see the need for a region-wide permit or policy at this time. It is unclear at this time how many other new or additional project proposals of this nature will be submitted to the Board.

**Comment 5:** 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, then 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.

**Response to Comment 5:** Staff is unclear what the Commenter means by “normal discharge limits.” Based on the experience at Montezuma, beneficial reuse projects are able to meet toxic metal pollutant effluent limitations; the HWRP will also monitor for these pollutants.

**Comment 6:** 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.

**Response to Comment 6:** Provision E.5 of the T.O. requires submission of a Site Operation Plan that details management of on-site water management facilities. Staff will require corrective actions if the discharge is causing problems in the receiving water.