



**BOARD OF DIRECTORS
EAST BAY MUNICIPAL UTILITY DISTRICT**

375 - 11th Street, Oakland, CA 94607

Office of the Secretary: (510) 287-0440

**AGENDA
REGULAR CLOSED SESSION**

Tuesday, March 12, 2024

11:00 a.m.

Boardroom

375 11th Street

Oakland, CA 94607

*****Please see appendix for public participation instructions*****

ROLL CALL:

PUBLIC COMMENT: The Board of Directors is limited by State law to providing a brief response, asking questions for clarification, or referring a matter to staff when responding to items that are not listed on the agenda.

ANNOUNCEMENT OF CLOSED SESSION AGENDA:

1. Existing litigation pursuant to Government Code section 54956.9(a):
 - a. *Saji Pierce, et al. v. East Bay Municipal Utility District, et al.*
USDC, N.D. Cal., Case No. 3:21-cv-04325-AGT
2. Threat to public services or facilities pursuant to Government Code section 54957:
Conference with David A. Briggs, Director of Operations & Maintenance, and David M. Cook,
Manager of Security & Emergency Preparedness.
3. Initiation of litigation pursuant to Government Code section 54956.9(d)(4): one matter.

(The Board will discuss Closed Session agenda items in Conference Room 8.)

REGULAR BUSINESS MEETING
1:15 p.m.

*****Please see appendix for public participation instructions*****

ROLL CALL:

BOARD OF DIRECTORS:

- Recognizing Women's History Month and EBMUD's Women Employees' Resource Opportunity Collaboration Community (WE ROCC) Affinity Group

ANNOUNCEMENTS FROM CLOSED SESSION:

PUBLIC COMMENT: The Board of Directors is limited by State law to providing a brief response, asking questions for clarification, or referring a matter to staff when responding to items that are not listed on the agenda.

CONSENT CALENDAR: (Single motion and vote approving 6 recommendations, including 1 resolution.)

1. Approve the Regular Meeting Minutes of February 27, 2024.
2. File correspondence with the Board.
3. Award a sole source contract beginning on or after March 12, 2024 to Rexel USA, Inc. for supplying four 4kV breakers and one remote racking device for Camanche Powerhouse for a total cost, after the addition of taxes, not to exceed \$414,875.
4. Authorize an agreement beginning on or after March 12, 2024 with Panorama Environmental, Inc. in an amount not to exceed \$249,818 for preparation of California Environmental Quality Act documentation for the Miller Road Trench Soil Management Project.
5. Authorize the purchase of network firewall hardware and software licensing, maintenance and support, and implementation support beginning on or after March 12, 2024 from NuSpective, Inc. for five years for a total amount not to exceed \$701,866. This purchase will be made under State of California contracts available for use by local governments.
6. Adopt a resolution authorizing the District to execute a funding agreement and accept a grant from the U.S. Bureau of Reclamation WaterSMART Aquatic Ecosystem Restoration Program in an amount not to exceed \$650,000 to develop habitat improvements on the Lower Mokelumne River in support of the Bay-Delta Voluntary Agreements. (Resolution)

DETERMINATION AND DISCUSSION:

7. Legislative Update.
 - Receive Legislative Report No. 02-24 and consider a position on the following bill: SB 903 (Skinner) Environmental health: product safety: perfluoroalkyl and polyfluoroalkyl substances; and receive information on connection fee and capacity charge legislation.
 - Update on Legislative Issues of Interest
8. Consider a second reading of amendments to East Bay Municipal Utility District Campaign Finance Reform Ordinance No. 316. (Second Reading and Vote – Ordinance No. 375-24)
9. Appoint an ad hoc committee comprised of members of the Board of Directors to advise staff on issues arising from the Bay-Delta Water Quality Control Plan update process, including the development and implementation of the proposed Voluntary Agreements and other alternatives under consideration by the State Water Resources Control Board.
10. Consider actions related to the lease of property at EBMUD's Oakport property in Oakland to K to College, d.b.a. SupplyBank.Org. (Resolution)
 - 10.1. Adopt findings and a Mitigation Monitoring Program, as a Responsible Agency under the California Environmental Quality Act, for the lease of 4.52 acres of property to K to College, d.b.a. SupplyBank.org (SBO) and associated actions at the District's Oakport property in Oakland.
 - 10.2. Authorize a 65-year lease with SBO for 4.52 acres of property, located at the District's Oakport property in Oakland, to allow SBO to develop an office building and a warehouse for its charitable organization and construct for the District a new warehouse and service yard at the District's Oakport property as consideration for the lease term.
11. General Manager's Report.
 - Water Supply Update - water production; precipitation to date; reservoir storage; and forecasted supply conditions for the remainder of water year 2024
 - General Manager's Monthly Report – February 2024

REPORTS AND DIRECTOR COMMENTS:

12. Committee Reports:
 - Finance/Administration
 - Planning
 - Legislative/Human Resources
13. Other Items for Future Consideration.
14. Director Comments.

ADJOURNMENT:

The next Regular Meeting of the Board of Directors will be held at 1:15 p.m. on Tuesday, March 26, 2024.

Disability Notice

If you require a disability-related modification or accommodation to participate in an EBMUD public meeting please call the Office of the Secretary (510) 287-0404. We will make reasonable arrangements to ensure accessibility. Some special equipment arrangements may require 48 hours advance notice.

Document Availability

Materials related to an item on this agenda that have been submitted to the EBMUD Board of Directors within 72 hours prior to this meeting are available for public inspection in EBMUD's Office of the Secretary at 375 11th Street, Oakland, California, during normal business hours, and can be viewed on our website at www.ebmud.com.

W:\Board of Directors - Meeting Related Docs\Agendas 2024\03122024_regular agenda.doc

BOARD CALENDAR

Meeting dates, times, and locations are subject to change

Date	Meeting	Time/Location	Topics
Tuesday, March 12	Planning Committee	9:00 a.m. Boardroom	- Follow-up Dam Safety Program - Water Quality Program Annual Update – 2023 - Regulatory Compliance Semi-Annual Report – July 1, 2023 through December 31, 2023 2023 Mokelumne Fishery Update - Los Vaqueros Reservoir Expansion Project Update
	Legislative/Human Resources Committee	10:30 a.m. Boardroom	Legislative Update
	Board of Directors	11:00 a.m. Boardroom 1:15 p.m. Boardroom	- Closed Session - Regular Meeting
Tuesday, March 26	Finance/Administration Committee	TBD Boardroom	
	2024 Recycled Water Strategic Plan Update Workshop	TBD Boardroom	
	Board of Directors	11:00 a.m. Boardroom 1:15 p.m. Boardroom	- Closed Session - Regular Meeting
Tuesday, April 9	Planning Committee	TBD Boardroom	
	Legislative/Human Resources Committee	TBD Boardroom	
	Board of Directors	11:00 a.m. Boardroom 1:15 p.m. Boardroom	- Closed Session - Regular Meeting
2024 Board Committee Members			
Finance/Administration		Katz {Chair}, Chan, Patterson	
Legislative/Human Resources		Patterson {Chair}, McIntosh, Young	
Planning		Young {Chair}, Chan, Linney	
Sustainability		Linney {Chair}, Katz, Young	

APPENDIX

**Closed Session and Regular Business Meetings
11:00 a.m. and 1:15 p.m.**

*EBMUD public Board meetings will be conducted in person and accessible via Zoom.
These meetings are recorded, live-streamed, and posted on the District's website.*

Online*

<https://ebmud.zoom.us/j/97065086667?pwd=eUdZSGh5SG82akZiRDF2UDg2b0IyUT09>

Webinar ID: 970 6508 6667

Passcode: 238500

By Phone*

Telephone: 1 669 900 6833

Webinar ID: 970 6508 6667

Passcode: 238500

International numbers available: <https://ebmud.zoom.us/u/adMXn1VnPP>

*To familiarize yourself with Zoom, please visit <https://support.zoom.us/hc/en-us/articles/201362193-Joining-a-Meeting>

Providing public comment - *The EBMUD Board of Directors is limited by State law to providing a brief response, asking questions for clarification, or referring a matter to staff when responding to items that are not listed on the agenda.*

- Each speaker is allotted 3 minutes to speak; the Board President has the discretion to amend this time based on the number of speakers
- The Secretary will track time and inform each speaker when the allotted time has concluded
- Comments on **non-agenda items** will be heard at the beginning of the meeting
- Comments on **agenda items** will be heard when the item is up for consideration
- The Secretary will call each speaker in the order received

In person

- Fill out and submit a blue speaker card which is available in the meeting room

Via Zoom

- Use the raise hand feature in Zoom to indicate you wish to make a public comment
<https://support.zoom.us/hc/en-us/articles/205566129-Raising-your-hand-in-a-webinar>
- If you participate by phone, press *9 to raise your hand
- When prompted by the Secretary, please state your name, affiliation if applicable, and topic

Submitting written comments or materials

- Email written comments or other materials for the Board of Directors to SecOffice@ebmud.com
- Please indicate the meeting date and agenda item number or non-agenda item topic in the subject line of the email. Contact information is optional.
- **Please email by 4 p.m. the day prior to the scheduled regular meeting;** written comments and other materials submitted to the Board of Directors will be filed in the record.

To view the livestream of Board meetings, please visit:
<https://www.ebmud.com/about-us/board-directors/board-meetings/>

MINUTES

**Tuesday, February 27, 2024
East Bay Municipal Utility District
Board of Directors
375 Eleventh Street
Oakland, California**

Regular Closed Session Meeting

President Lesa R. McIntosh called to order the Regular Closed Session Meeting of the Board of Directors at 11:03 a.m. in the Administration Building Boardroom.

ROLL CALL

Directors John A. Coleman, Andy Katz, Doug A. Linney, Marguerite Young, William B. Patterson and President Lesa R. McIntosh were present at roll call. Director April Chan was absent (excused).

Staff participants included General Manager Clifford C. Chan and General Counsel Derek T. McDonald.

PUBLIC COMMENT

- Addressing the Board were the following: 1) Joey Smith, President, AFSCME Local 2019 thanked the Board for approving funds to repair damage to the Administration building and commented on discussions the unions have had with management regarding safety, and security and safety at District worksites; 2) Eric Larsen, President, AFSCME Local 444 commented on the security and safety of District employees and an increased need for a security presence; and 3) Ivette Rivera commented on documents she will provide at Regular Board meeting and New York District Attorney Latisha James' Twitter posts, and congratulated Director Coleman on his retirement.

ANNOUNCEMENT OF CLOSED SESSION AGENDA

President McIntosh announced the closed session agenda and the Board convened to Administration Building Conference Room 8 for discussion.

Regular Business Meeting

President Lesa R. McIntosh called to order the Regular Business Meeting of the Board of Directors at 1:17 p.m. in the Administration Building Boardroom.

ROLL CALL

Directors John A. Coleman, Andy Katz, Doug A. Linney, Marguerite Young, William B. Patterson and President Lesa R. McIntosh were present at roll call. Director April Chan was absent (excused).

Staff participants included General Manager Clifford C. Chan, General Counsel Derek T. McDonald, and Secretary of the District Rischa S. Cole.

BOARD OF DIRECTORS

President McIntosh led the Pledge of Allegiance.

President McIntosh read a proclamation recognizing Director John A. Coleman's 33 years of service on the Board of Directors and presented Director Coleman with a framed copy of the proclamation.

- Addressing the Board was Mark Foley, EBMUD Information Systems Administrator II, who commented on his tenure as president of AFSCME Local 2019 working with Director Coleman and thanked Director Coleman for his service and leadership.

ANNOUNCEMENTS FROM CLOSED SESSION

There were no announcements required from closed session.

PUBLIC COMMENT

- Addressing the Board were the following: 1) Kelly A. commented on water usage and reevaluating the District's method for forecasting water demand; 2) Tracie King, EBMUD Dispatch Center Representative, expressed continued concerns regarding safety and afterhours security in the Administration Building and said no one reached out to her after her comments at the February 13, 2024 Regular Board meeting; and 3) Ivette Rivera commented on documents she provided to the Board and email communications with Cindy Charan, and congratulated Director Coleman and thanked him for his service.

Director Linney thanked Tracie King for bringing this matter to the Board's attention and asked for suggestions to improve security in the Administration Building. Director Linney asked General Manager Clifford C. Chan to comment on actions taken since the last Board meeting to address Tracie's concerns. Director of Operations and Maintenance David A. Briggs commented on security in the Administration Building, coordinating a meeting with Tracie, and provided clarification regarding a security incident that occurred in the Administration Building parking garage in May 2023. The Board commented on the need to address and resolve Tracie's concerns and asked questions about telecommuting options. General Counsel Derek T. McDonald cautioned the Board to refrain from discussing and deliberating on this issue as it is not on the agenda. The Board asked staff to provide additional information to the unions on security actions being taken by the District, to follow-up with Tracie King, and to provide a security update to the Board.

CONSENT CALENDAR

- Item 10 was pulled from the Consent Calendar for separate discussion.
 - Motion by Director Linney, seconded by Director Patterson to approve the recommended actions for Items 1-9 on the Consent Calendar carried (6-0) by the following voice vote: (Coleman, Katz, Linney, Patterson, Young, and McIntosh); NOES (None); ABSTAIN (None); ABSENT (Chan).
1. **Motion No. 037-24** – Approved the Regular Meeting Minutes of February 13, 2024.
 2. The following correspondence was filed with the Board: **1)** Presentation entitled, "Employees' Retirement System: Actuarial Valuations and Contribution Rates," dated February 27, 2024; **2)** Presentation entitled, "EBMUD Campaign Finance Reform Ordinance (CFRO): First Reading of

Proposed Amendments” dated February 27, 2024; **3)** Presentation entitled, “Options for Filling a Board Vacancy” dated February 27, 2024; **4)** Presentation entitled, “Water Supply Update” dated February 27, 2024; **5)** Draft Resolution entitled, “Adopting The Actuarial Valuations Of The East Bay Municipal Utility District Employees’ Retirement System And Setting The Pension And Health Benefit Employer Contribution Rates For Fiscal Year 2025”; **6)** Speakers’ Bureau and Outreach Record CY24 dated February 27, 2024; **7)** Emailed dated February 18, 2024 from Ivette Rivera to Clifford Chan et. al regarding FYI: AFSCME 444 Position (with attachments); **8)** Email dated February 19, 2024 from Ivette Rivera to Vladmir Bessarabov et. al regarding Correct Subject Header: Please see attached amended Rivera v. EBMUD Tort Complaints; and **9)** Document titled, “Rivera Reply Charan 02_27_24.”

3. **Motion No. 038-24** – Awarded a contract beginning on or after February 27, 2024 to the lowest responsive/responsible bidder, Airgas USA LLC, for supplying liquid oxygen and maintenance and repair services for the Hypolimnetic Oxygenation System at the District’s San Pablo Reservoir for two years, with three options to renew for additional one-year periods for a total cost, after the addition of taxes, including option years, not to exceed \$1,666,005 under Request for Quotation No. 2403.
4. **Motion No. 039-24** – Awarded a contract beginning on or after February 27, 2024 to the lowest responsive/responsible bidder, Trace3, Inc., for supplying computer data storage equipment, installation, and maintenance support for the District’s main data center for three years, for a total cost, after the addition of taxes, not to exceed \$403,049.56.
5. **Motion No. 040-24** – Authorized an agreement beginning on or after February 27, 2024 with Comprehensive Construction Services, Inc. in an amount not to exceed \$214,010 for materials and labor for renovations at Pardee Center’s McLean Hall and Garage 115.
6. **Motion No. 041-24** – Authorized an agreement beginning on or after February 28, 2024, with Jacobs Engineering Group, Inc. in an amount not to exceed \$1,488,047 for engineering, condition assessment, and infrastructure planning services for the Interceptor Master Plan.
- 7.1. – **Motion No. 042-24** – Ratified the extension of the agreement with Aquatic Informatics ULC
7.2. (AQI) authorized under Board Motion No. 050-18 to February 26, 2024 and the total payment of \$308,010 to AQI for the continuous licensing of Sedaru software facilitating repair and public communication of main break repairs as well as hydrant and valve inspections between April 23, 2023 and February 26, 2024; and authorized an amendment to extend the agreement previously authorized under Board Motion No. 050-18 with AQI from February 27, 2024 through December 31, 2024, and to increase the agreement amount by \$215,705, which incorporates the ratified amount from the action above, for a total amount not to exceed \$2,377,615 for licensing of Sedaru software facilitating main break repairs, as well as hydrant and valve inspections.
8. **Motion No. 043-24** – Approved the January 2024 Monthly Investment Transactions Report.
9. **Resolution No. 35385-24** – Adopting Revised Policy 3.01, Annexations; Revised Policy 7.04, Access To District Property For Tours; And Rescinding Policy 3.08, Advisory Election For Annexations Outside The Contra Costa County Urban Limit Line.

10. **Adopt a resolution to appoint Dr. Ayoka Medlock-Nurse as Standby Officer No. 1 in Ward No. 1 for the East Bay Municipal Utility District Board of Directors.**

President McIntosh read the resolution to appoint Dr. Ayoka Medlock-Nurse as Standby Officer for the Board of Directors and asked Dr. Medlock-Nurse if she would accept the role of Standby Officer. Dr. Medlock-Nurse affirmed she would accept the role.

- Motion by Director Coleman, seconded by Director Patterson to approve the recommended actions for Item 10 carried (6-0) by the following voice vote: (Coleman, Katz, Linney, Patterson, Young, and McIntosh); NOES (None); ABSTAIN (None); ABSENT (Chan).

Resolution. 35386-24 – Appointing Dr. Ayoka Medlock-Nurse As Standby Officer For The Board Of Directors As Standby Officer Number 1 For Ward No. 1 Under The Emergency Succession Plan For The Board Of Directors.

DETERMINATION AND DISCUSSION

11. **Adopt a Resolution to recognize Black History Month and the 30th Anniversary of the Black Employee Network.**

Special Assistant III Derry L. Moten introduced the resolution. Mr. Moten background on Black History Month which was initiated by Carter G. Woodson, PhD also known as a Father of Black History, to address the glaring absence of African American and black contributions in mainstream historical narratives. In 1986 the United States Congress, in a joint resolution of the House and Senate designated the month of February as National Black History Month. In 1994, a group of African American District employees founded the Black History Committee and hosted their first annual Black History Month celebration with the mission to foster the inclusion, visibility, and advancement of District employees, particularly those that identify as Black or of African descent. The group was chartered and became the District's first Affinity Group and is today operating under the name the Black Employee Network. In celebration of its 30th anniversary and service to the District, the Black Employee Network has sponsored a series of educational and experiential events.

- Motion by Director Patterson, seconded by Director Katz to approve the recommended actions for Item 11 carried (6-0) by the following voice vote: (Coleman, Katz, Linney, Patterson, Young, and McIntosh); NOES (None); ABSTAIN (None); ABSENT (Chan).

Resolution No. 35387-24 – Recognizing Black History Month And The 30th Anniversary Of The Black Employee Network.

12. **Adopt the Actuarial Valuations of the Employees' Retirement System as of June 30, 2023 prepared by the Retirement System's actuary. In addition, set Retirement System Contribution Rates for Fiscal Year 2025 based on the actuarially determined contribution rates in the valuations.**

Treasury Manager Robert L. Hannay provided the presentation. Under Ordinance No. 40 (the Retirement Ordinance), actuarial valuations for the Retirement System are required at least every two years. Based on these actuarial valuations, the District and Retirement System adopt annual contribution rates. The District's practice is to adopt actuarial valuations and set contribution rates

each year. Mr. Hannay reported the FY 2023 valuations led to higher actuarially determined employer contributions for the coming fiscal year. Actuarially determined contributions for FY 2025 are up 0.54 percent to 49.02 percent of covered payroll for 1955/1980 Plan members and up 0.86 percent to 40.07 percent of covered payroll for 2013 Plan members. The employee contribution rates remain unchanged for FY 2025. The Retirement Board recommended adopting these rates at its January 18, 2024 meeting and this information was presented to the Finance/Administration Committee earlier in the day. The Board is being asked to adopt a resolution to accept the actuarial valuations and to adopt the FY 2025 employer contribution rates. A copy of the resolution had been provided at Board places. Mr. Hannay responded to questions on how the District's pension fund compares to other agencies, the status of the fund ten years ago, the fund's funded ratio, and legislation on unfunded liabilities. Director Young, commenting as a Retirement Board member, commented the Retirement Board's recommendation is to consistently pay the recommended employer contribution for the pension.

- Motion by Director Young, seconded by Director Katz to approve the recommended actions for Item 12 carried (6-0) by the following voice vote: (Coleman, Katz, Linney, Patterson, Young, and McIntosh); NOES (None); ABSTAIN (None); ABSENT (Chan).

Resolution No. 35388-24 – Adopting The Actuarial Valuations Of The East Bay Municipal Utility District Employees' Retirement System And Setting The Pension And Health Benefit Employer Contribution Rates For Fiscal Year 2025.

13. **Introduction and first reading of An Ordinance to amend the East Bay Municipal Utility District Campaign Finance Reform Ordinance No. 316.**

General Counsel Derek T. McDonald presented an overview of the proposed amendments to the Campaign Finance Reform Ordinance (CFRO) No. 316. The District's CFRO was enacted in 1992 and has been amended several times since to reflect changes in federal and state law. The CFRO was last updated in January 2010. Since that time, there have been several changes in the Political Reform Act (PRA) and its implementing regulations that are recommended for incorporation into the CFRO. All recommended changes have been drafted or reviewed in coordination with the District's outside legal counsel who has expertise in campaign finance and elections laws. Mr. McDonald discussed the CFRO legal review process and the initial recommended amendments that were presented to the Legislative/Human Resources Committee on January 9 and February 13, 2024. At the January 9 meeting, staff recommended increasing the contribution limit for persons from \$600 to \$900 to reflect CPI adjustments since 2010; the Committee requested the contribution limit be increased to \$1,000. Staff also recommended increasing the contribution limit for Small Contributor Committees from \$1,200 to \$1,800 and adjusting the limit biennially based on CPI; the Committee requested the contribution limit be increased to \$2,000. Mr. McDonald reviewed contribution limits in other jurisdictions, noting the PRA default limit for cities and counties is \$5,500; however, that default limit does not apply to special districts. He reviewed the proposed revisions to Paragraph IV.4 regarding prohibitions on contractor donations that were discussed with the Committee on January 9 which would prohibit donations from any District contractor, not just for Board-approved contracts and prohibit a contractor who violates the CFRO's donation prohibitions from being awarded any contract for one year following the violation, even if the contract is a low-bid contract. At its meeting on February 13, the Committee requested revisions to eliminate the prohibition on contracting with contractors that have contributed in violation of the CFRO, and to allow Board members to recuse themselves from participating in the consideration of a contract from a contractor that has donated to their campaign. Other proposed revisions include incorporating the Levine Act into the CFRO; updating definitions (e.g., contribution, qualified

campaign expenditure, Small Contributor Committee); reorganization of the document information; mandating website publishing of contribution limits as a best practice; correcting and updating the reference to the CPI to “San Francisco-Oakland-Hayward Consumer Price Index for Urban Consumers”; using non-binary terms when referencing persons; updating references to the PRA and other common terms for consistency; updating the voluntary expenditure limit from \$0.53 to \$0.80 per ward resident to reflect CPI adjustments since the CFRO was last updated in 2010; and updating advertisement disclaimer requirements. The second reading and consideration for the Board to vote to adopt the amendments is scheduled for the Regular meeting on March 12, 2024. Adoption of the amendments would take effect 30 days after the vote to adopt, or April 11, 2024. There was considerable discussion by the Board regarding the proposed revisions and on increasing the amount a candidate can loan (e.g., self-fund) their campaign to an amount that reflects CPI adjustments; additional increases to the contribution limits for persons and Small Contributor Committees; and further revisions to Paragraph IV.4 regarding prohibitions on contractor donations. Director Linney commented on the current and proposed contribution limits for persons and Small Contributor Committees and recommended the limits be increased to \$2,500 and \$5,000, respectively. There was additional discussion on the language regarding prohibitions on contractor donations and Mr. McDonald clarified the current CFRO language and the intent in the proposed amended language. President McIntosh asked if adopting the amendments to the CFRO is time sensitive as Board members needed more time for discussion and to ask questions and the event for Director Coleman immediately following the Board meeting. Mr. McDonald commented candidate statements will be filed in the upcoming months, and while the Board could conduct reviews and readings of the proposed amendments as many times as they’d like, the revised CFRO (including any new contribution limits) would not take effect until 30 days after it is adopted. President McIntosh asked Board members to submit their questions to Mr. McDonald prior to the second reading of the CFRO on March 12.

- Addressing the Board was Kelly A. who commented on political contributions received from contributors that may reside inside or outside of the District’s service area.

Ordinance No. 375-24 – An Ordinance To Amend The East Bay Municipal Utility District Campaign Finance Reform Ordinance No. 316. (*Introduction and 1st Reading Only*)

14. **Approve the following actions related to filling the anticipated vacant Board seat in East Bay Municipal Utility District Ward 2 as recommended by the Board of Directors’ Ad Hoc Committee: Notice of Vacancy and distribution plan; candidate information packet; and candidate application process.**

General Manager Clifford Chan provided the presentation. At the January 23, 2024 Board meeting, Director John A. Coleman announced his resignation as Director of EBMUD Ward 2 effective March 8, 2024. At its February 13, 2024 meeting, the Board approved an appointment process for filling the vacant Board seat in Ward 2 and appointed an Ad Hoc Committee comprised of Directors April Chan, Andy Katz, and Marguerite Young to develop the process. The Ad Hoc Committee met on February 15, 2024 and developed the proposed actions to fill the vacant Board seat. In accordance with Municipal Utility District (MUD) Act section 11865 et seq., the Board must appoint someone within 60 days of the effective date of Director Coleman’s resignation or by May 7, 2024. The appointee would serve as Director for Ward 2 until the general election on November 5, 2024. The person elected on November 5 would serve the remainder of Director Coleman’s term – through December 31, 2026. Mr. Chan reviewed requirements for noticing the vacancy; the proposed distribution plan and locations for the Notice of Vacancy; items to be included in a candidate information packet; the application process; the application evaluation

process; and the appointment process. He said the Board is being asked to provide feedback on the proposed appointment process and to consider approving the Notice of Vacancy and distribution plan; candidate information packet; candidate application process; candidate evaluation process; and appointment process which includes conducting candidate interviews at the Regular Board meeting on April 9, 2024 starting at 4 p.m. or at a Special Board meeting on April 16 or April 17, 2024 with a start time of 4 p.m. Director Coleman asked if staff or the Ad Hoc Committee would be seeking his input on who would be a good candidate as mentioned by Director Katz at the Board's February 13 meeting. Director Katz clarified his comments at the February 13 meeting was to seek feedback from Director Coleman on where to distribute the Notice of Vacancy. There was additional comments and President McIntosh asked Director Coleman to provide information regarding this matter to the General Manager.

- Motion by Director Young, seconded by Director Patterson to approve the recommended actions for Item 14 carried (6-0) by the following voice vote: (Coleman, Katz, Linney, Patterson, Young, and McIntosh); NOES (None); ABSTAIN (None); ABSENT (Chan).

Motion No. 042-24 – Approved the following actions related to filling the anticipated vacant Board seat in East Bay Municipal Utility District Ward 2 as recommended by the Board of Directors' Ad Hoc Committee: Notice of Vacancy and distribution plan; candidate information packet; candidate application process; candidate evaluation process; and appointment process which includes conducting candidate interviews at the Regular Board meeting on April 9, 2024 starting at 4 p.m. or at a Special Board meeting on April 16 or April 17, 2024 with a start time of 4 p.m.

15. **General Manager's Report.**

Water Supply Update – water production; precipitation to date; reservoir storage; and forecasted supply conditions for the remainder of water year 2024

Director of Operations and Maintenance David A. Briggs provided an update on the District's current water supply, the State's water supply, and water supply projections. He highlighted the following data as of February 22: gross water production; precipitation in the East Bay (14.52 inches) and in the Mokelumne (28.24 inches); and the snow depth (81 inches) and snow water content (21.51 inches) at Caples Lake. He reviewed 30-day precipitation outlook data from the Climate Prediction Center issued on February 15 and snowpack levels and snow water equivalent in the Sierras as of February 22. The District's total system storage was 651,000 acre-feet as of February 22 and is still projected to be approximately 630,000 acre-feet by September 30.

General Manager's Report

General Manager Clifford C. Chan announced the Speakers' Bureau and Outreach Record CY24 had been provided at Board places.

REPORTS AND DIRECTOR COMMENTS

16. **Committee Reports.**

- Filed with the Board were the Minutes for the February 13, 2024 Planning and Legislative/Human Resources Committee.

- Chair Andy Katz reported the Finance/Administration Committee met earlier in the day and received updates and reports on the Monthly Investment Transactions Report; Fiscal Year 2024 Semi-Annual Budget Performance Report; Employees' Retirement System Annual Financial Update; Employees' Retirement System Fiscal Year 2023 Actuarial Valuations and Fiscal Year 2025 Employer Contribution Rates; Revisions to District Policies; Semi-Annual Internal Audit Report; and Camanche Mobilehome Park Rent.

17. **Other Items for Future Consideration.**

None.

18. **Director Comments.**

- Director Patterson thanked the District and the Black Employee Network for honoring him during Black History Month and commented on participating in an NAACP event at the Chapel of the Chimes in Oakland on February 19, security concerns, dedicating his time to working with young people, and his vision for Oakland.
- President McIntosh thanked Director Coleman for his service to the District and said he will be missed.
- Directors Chan, Coleman, Katz, Linney, and Young had no reports.

ADJOURNMENT

President McIntosh adjourned the meeting at 2:59 p.m.

SUBMITTED BY:

Rischa S. Cole, Secretary of the District

APPROVED: March 12, 2024

Lesa R. McIntosh, President of the Board



BOARD ACTION

Agenda Number:	3.	Meeting Date:	March 12, 2024
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TITLE **CAMANCHE POWERHOUSE BREAKER REPLACEMENT**

ACTION ☒ Motion: ☐ Resolution: ☐ Ordinance:

RECOMMENDED ACTION Award a sole source contract beginning on or after March 12, 2024 to Rexel USA, Inc. for supplying four 4kV breakers and one remote racking device for Camanche Powerhouse for a total cost, after the addition of taxes, not to exceed \$414,875.

SUMMARY The contract will include four modern breakers to replace the existing 4kV breakers at Camanche Powerhouse nearing the end of their service life. A new remote racking device is included in the purchase.

DISCUSSION The existing 4kV breakers are at the end of their service life. A breaker failure could take Camanche Powerhouse offline for up to one year due to the long lead time to deliver the breakers at a cost to the District of approximately \$2 million in lost generation revenue. In addition, a failure of one of the breakers could result in widespread damage to the facility and could result in serious injury to staff. This item supports the District's Long-Term Infrastructure Investment Strategic Plan goal.

VENDOR SELECTION Eaton Corporation is the only manufacturer of the specific type of breakers used in the Camanche Powerhouse switchgear. Rexel USA, Inc. is the only Eaton-approved representative in the area from which the District can purchase these breakers.

SUSTAINABILITY **Economic**
Funding for this purpose is available in the FY 2024 and FY 2025 adopted capital budget for Powerhouse Improvements.
Social
This type of work is not performed by District forces and consequently union notification was not required.

ALTERNATIVES **Do not replace the existing breakers.** This alternative is not recommended because the existing breakers are at the end of their service life.
Seek competitive bids. This alternative is not recommended because only one vendor and manufacturer can provide the needed breakers. The bid received meets all the specifications and is reasonable for the equipment being purchased.

I:\Sec\2024 Board Related Items\031224 Board Agenda Items\OMD - Camanche Powerhouse 4kv Switchgear Upgrade.docx

Originating Department: Operations and Maintenance	Department Director or Manager: David A. Briggs	CEP Forms? Yes	Board Action Type: Materials and Supplies
Funds Available: FY2024/2025; Award#7000117; Page 90	Budget Coding: 11.762.2014422.53010		Approved: 
Attachment(s): P-035; P-061			

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CONTRACT EQUITY PROGRAM SUMMARY (P-035)

This summary contains information on the contractor's workforce and contract equity participation. (Completed by District)

TITLE Materials and Supplies Agreement Camanche Powerhouse Breaker Replacement						DATE: February 3, 2024						
CONTRACTOR: Rexel USA, Inc. Oakland, CA				Sole Source/ Local Business		PERCENTAGE OF CONTRACT DOLLARS						
BID/PROPOSER'S PRICE:		FIRM'S OWNERSHIP		White Men		25%		100.0%				
		Ethnicity	Gender	White Women		6%		0.0%				
		White	Men	Ethnic Minorities		25%		0.0%				
CONTRACT EQUITY PARTICIPATION												
COMPANY NAME	ESTIMATED AMOUNT	ETHNICITY	GENDER		CONTRACTING PARTICIPATION							
			M	W	White-Men	White-Women	Ethnic Minorities	Unclassified	Publicly Held Corp.	Gov't/Non Profit	Foreign	
PRIME: Rexel USA, Inc.		\$414,875	White	X		100.0%						
SUBS: None												
TOTAL		\$414,875				100.0%	0.0%	0.0%	0.0%	0.0%	0.0%	
CONTRACTOR'S WORKFORCE PROFILE (From P-025 Form)												
		White Men		White Women		Ethnic Minorities		Total Employees				
No. of Employees:		4,148		973		1,703		6,824				
Percent of Total Employees:		60.8%		14.3%		25.0%						
MSA Labor Market %:		39.0%		3370.0%		27.2%						
MSA Labor Market Location:		USA										
COMMENTS												
Contract Equity Participation: 100% White Men participation. Contract Duration : NA *Total not to exceed: \$414,875												
Workforce Profile & Statement of Nondiscrimination Submitted				Good Faith Outreach Efforts Requirement Satisfied				Award Approval Recommended				
NA				NA								

AFFIRMATIVE ACTION SUMMARY (P-061)

(Completed by District)

This summarizes information provided by the contractor(s)' P-025 Form regarding their workforce.

Title: Camanche Powerhouse Breaker Replacement			Ethnic Minority Percentages From U.S. Census Data						
					B	H	A/PI	AI/AN	TOTAL
			National		10.5	10.7	3.7	0.7	27.3
Materials and Supplies Agreement		DATE: 2/3/2024	9 Bay Area Counties	5.5	16.2	14.2	0.4	39.9	
		Alameda/CC Counties	10.7	15.6	15.4	0.5	46.2		
R=Recmmnd P=Prime S=Sub	Composition of Ownership	Number of Ethnic Minority Employees							
Company Name, Owner/Contact Person, Address, and Phone Number			B	H	A/PI	AI/AN	TOTAL	PERCENT	MSA %
RP	WM: LBE	Company Wide	568	664	168	59	1,459	21.4%	27.2%
Rexel USA, Inc. Gertrude Kitia 955 Kennedy St Oakland, CA 94606 510-483-0931		Manager/Prof	102	107	74	10	293	17.0%	
		Technical/Sales	106	257	50	17	430	13.5%	
		Clerical/Skilled	51	25	4	5	85	33.1%	
		Semi/Unskilled	309	275	40	27	651	39.3%	
		Bay Area	0	0	0	0	0	0.0%	39.9%
		AA Plan on File:	NA		Date of last contract with District:		NA		
		Co. Wide MSA:	USA		# Employees-Co. Wide:		6,824	Bay Area:	0

WM=White Male, WW=White Women, EM=Ethnic Minority (Ethnicities: **B**=Black, **H**=Hispanic, **A/PI**=Asian/Pacific Islander, and **A/AN**=American Indian/Alaskan Native)



BOARD ACTION

Agenda Number:	4.	Meeting Date:	March 12, 2024
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TITLE**CEQA DOCUMENTATION FOR THE MILLER ROAD TRENCH SOIL MANAGEMENT PROJECT****ACTION**☒ Motion:☐ Resolution:☐ Ordinance:**RECOMMENDED ACTION**

Authorize an agreement beginning on or after March 12, 2024 with Panorama Environmental, Inc. (Panorama) in an amount not to exceed \$249,818 for preparation of California Environmental Quality Act (CEQA) documentation for the Miller Road Trench Soil Management Project.

SUMMARY

The Miller Road Trench Soil Management Project includes the import, temporary storage, and removal of trench soil from District-owned property on Miller Road. The agreement's scope of work includes the preparation of an Initial Study and Mitigated Negative Declaration (IS/MND) pursuant to CEQA.

DISCUSSION

During construction and maintenance of the District's pipelines, excavated soil is hauled to one of the District's three temporary stockpiles (Briones near Orinda, Miller Road near Castro Valley, and Amador Reservoir in San Ramon). Although the District is exploring a variety of other trench soil management options, continued use of the District's temporary stockpile sites is required while other options are being developed. When the stockpile sites approach their capacity, soil is removed for permanent disposal at other locations. In June 2023, Alameda County informed the District that continued use of the Miller Road site would require a Conditional Use Permit. An IS/MND will be prepared to ensure the stakeholders are aware of the project features and potential mitigations.

The work under this agreement supports the District's Long-Term Infrastructure Investment and Water Quality and Environmental Protection Strategic Plan goals.

CONSULTANT SELECTION

A request for proposals was posted on the District's website and sent to 51 firms with expertise in environmental documentation. Two firms submitted proposals and both firms were interviewed. Panorama was selected based on their team's experience with similar trench soil projects and efficient organization (i.e., fewer subconsultants). In addition, Panorama is a minority-owned, American Indian/Alaskan Native, small business enterprise.

Originating Department: Operations and Maintenance	Department Director or Manager: Crystal J. Yezman	CEP Forms? Yes	Board Action Type: Professional Services
Funds Available: FY2024; Award#7000042; Page 25	Budget Coding: 11.790.2011061.52310		Approved: 
Attachment(s): P-035; P-061			

Title:	CEQA Documentation for the Miller Road Trench Soil Management Project	Meeting Date:	March 12, 2024
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SUSTAINABILITY**Economic**

Funding for this purpose is available in the FY 2024 adopted capital budget for Trench Soils Management.

Social

Locals 2019 and 21 were notified of this agreement on September 14, 2023 and did not raise any specific issues related to this agreement.

ALTERNATIVES

Do not perform the work. This alternative is not recommended because trench soil management and removal are required to maintain capacity for continued pipeline replacement, repair, and construction.

Perform the work with District staff. This alternative is not recommended because District staff are unable to complete the work within the project's schedule. District staff will support the project by reviewing the deliverables and answering questions.

I:\Sec\2024 Board Related Items\031224 Board Agenda Items\OMD - CEQA Document for the Miller Road Trench Soil Management Project.docx



CONTRACT EQUITY PROGRAM SUMMARY (P-035)

This summary contains information on the contractor's workforce and contract equity participation. (Completed by District)

TITLE <i>Professional Services Agreement -Professional Services Consultant Roster</i> CEQA documentation for the Miller Road Trench Soils Management Project					DATE: February 9, 2024						
CONTRACTOR: Panorama Environmental, Inc. Small Business San Francisco, CA					PERCENTAGE OF CONTRACT DOLLARS						
BID/PROPOSER'S PRICE:		FIRM'S OWNERSHIP			White Men		25%		15.0%		
		Ethnicity	Gender		White Women		6%		0.0%		
		Asian	Women		Ethnic Minorities		25%		85.0%		
CONTRACT EQUITY PARTICIPATION											
COMPANY NAME		ESTIMATED AMOUNT	ETHNICITY	GENDER		CONTRACTING PARTICIPATION					
				M	W	White-Men	White-Women	Ethnic Minorities	Unclassified	Publicly Held Corp.	Gov't/Non Profit
PRIME: Panorama Environmental, Inc.		\$145,960	Asian		x			58.4%			
SUBS: Baseline Environmental Consulting		\$37,428	White	X		15.0%					
CHS Consulting Group		\$66,430	Asian	X				26.6%			
TOTAL		\$249,818				15.0%	0.0%	85.0%	0.0%	0.0%	0.0%
CONTRACTOR'S WORKFORCE PROFILE (From P-025 Form)											
		White Men		White Women		Ethnic Minorities		Total Employees			
No. of Employees:		10		21		11		42			
Percent of Total Employees:		23.8%		50.0%		26.2%					
MSA Labor Market %:		21.3%		27.8%		39.9%					
MSA Labor Market Location:		9 Bay Area Counties									
COMMENTS											
Contract Equity Participation: 85% Ethnic Minority and 15% White Men Participation. Contract Duration: NA *Total not to exceed: \$249,818											
Workforce Profile & Statement of Nondiscrimination Submitted				Good Faith Outreach Efforts Requirement Satisfied				Award Approval Recommended			
NA				NA							



AFFIRMATIVE ACTION SUMMARY (P-061)

(Completed by District)

This summarizes information provided by the contractor(s)' P-025 Form regarding their workforce.

Title: CEQA documentation for the Miller Road Trench Soils Management Project		Ethnic Minority Percentages From U.S. Census Data							
			B	H	A/PI	AI/AN	TOTAL		
		National	10.5	10.7	3.7	0.7	27.3		
Professional Services Agreement - Professional Services Consultant Roster		DATE: 2/9/2024	9 Bay Area Counties		5.5	16.2	14.2	0.4	39.9
		Alameda/CC Counties		10.7	15.6	15.4	0.5	46.2	
R=Recmmnd P=Prime S=Sub	Composition of Ownership	Number of Ethnic Minority Employees							
Company Name, Owner/Contact Person, Address, and Phone Number			B	H	A/PI	AI/AN	TOTAL	PERCENT	MSA %
RP	EMW-AI/AN: SBE	Company Wide	1	5	5	0	11	26.2%	39.9%
Panorama Environmental, Inc. Susanne Heim 717 Market Street, Suite 400 San Francisco, CA 94103 650-373-1200		Manager/Prof	1	4	5	0	10	25.0%	
		Technical/Sales	0	0	0	0	0	0.0%	
		Clerical/Skilled	0	1	0	0	1	0.0%	
		Semi/Unskilled	0	0	0	0	0	0.0%	
		Bay Area	0	5	4	0	9	40.9%	39.9%
		AA Plan on File:	NA		Date of last contract with District:		3/30/2021		
		Co. Wide MSA:	9 Bay Area Counties		# Employees-Co. Wide:		42		Bay Area: 22
S	WM: LBE	Company Wide	-	-	1	0	1	14.3%	47.8%
Baseline Environmental Consulting Patrick Sutton 388 17th Street, Suite 230 Oakland, CA 94612 (510) 922-0080		Manager/Prof	0	0	0	0	0	0.0%	
		Technical/Sales	0	0	0	0	0	0.0%	
		Clerical/Skilled	0	0	1	0	1	33.3%	
		Semi/Unskilled	0	0	0	0	0	0.0%	
		Bay Area	0	0	0	0	0	0.0%	39.9%
		Co. Wide MSA:	Oakland		# Employees-Co. Wide:		7		Bay Area: 7
S	EMM-A/PI: LBE	Company Wide	1	1	7	0	9	69.2%	47.8%
CHS Consulting Group Chi-Hsin Shao 1617 Clay Street Oakland, CA 94612 (510) 272-9597		Manager/Prof	0	1	7	0	8	66.7%	
		Technical/Sales	0	0	0	0	0	0.0%	
		Clerical/Skilled	1	0	0	0	1	100.0%	
		Semi/Unskilled	0	0	0	0	0	0.0%	
		Bay Area	1	1	7	0	9	53.8%	39.9%
		Co. Wide MSA:	Oakland		# Employees-Co. Wide:		13		Bay Area: 13
P	WM: LBE	Company Wide	23	39	31	0	93	8.6%	27.2%
Woodard & Curran, Inc. Rachel Gilbert 2175 N. California Blvd., Suite 315 Walnut Creek, CA 94596 978.482.7902		Manager/Prof	7	25	28	1	61	8.2%	
		Technical/Sales	0	0	0	0	0	0.0%	
		Clerical/Skilled	3	4	3	0	10	8.9%	
		Semi/Unskilled	13	10	0	1	0	0.0%	
		Bay Area	0	0	0	0	0	0.0%	39.9%
		Co. Wide MSA:	USA		# Employees-Co. Wide:		1,079		Bay Area: 0

WM=White Male, WW=White Women, EM=Ethnic Minority (Ethnicities: B=Black, H=Hispanic, A/PI=Asian/Pacific Islander, and AI/AN=American Indian/Alaskan Native)



BOARD ACTION

Agenda Number:	5.	Meeting Date:	March 12, 2024
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TITLE **FIREWALL HARDWARE AND SOFTWARE FOR INDUSTRIAL CONTROLS SYSTEM NETWORKS**

ACTION ☒ Motion: ☐ Resolution: ☐ Ordinance:

RECOMMENDED ACTION Authorize the purchase of network firewall hardware and software licensing, maintenance and support, and implementation support beginning on or after March 12, 2024 from NuSpective, Inc. for five years for a total amount not to exceed \$701,866. This purchase will be made under State of California contracts available for use by local governments.

SUMMARY The current industrial controls system (ICS) network firewalls are nearing the end of their usable lifespan and need to be replaced. The ICS firewalls are a critical part of the District's cybersecurity program and help protect the District's ICS networks from cyberattacks.

DISCUSSION The District uses firewalls as a key layer of protection to secure the District's ICS networks. The current firewalls are approaching their end-of-life and need to be replaced to maintain effective security of the environment. The replacement will improve the ability to detect and prevent cyberattacks. This item supports the District's Long-Term Financial Stability Strategic Plan goal.

VENDOR SELECTION Under Public Contract Code, Section 10298, agencies such as EBMUD are allowed to purchase directly through the State of California contracts or through State authorized participating agreements without pursuing separate competitive bidding. The State of California, Department of General Services has certified contract No. 7-17-70-40-05/AR#2472 for the selected firewalls. By leveraging the State of California contracts, the District was able to receive highly favorable quotes with pre-negotiated pricing.

SUSTAINABILITY

Economic
Funding for this purpose is available in the FY 2024/2025 adopted capital budget for ERF Current DSS/Server/Network.

Social
The safeguarding of the District's digital and physical infrastructure is a high priority in view of increasing cybersecurity threats. This purchase will help facilitate the District's goal of providing uninterrupted and high-quality services to its customers.

Originating Department: Information Systems	Department Director or Manager: Orlando W. Leon	CEP Forms? Yes	Board Action Type: Materials and Supplies
Funds Available: FY2024/2025	Budget Coding: 11/255/0000/2014197/2014207:00; 11/255/0000/2012197/2014223:00		Approved: 
Attachment(s): P-035; P-061			

Title:	Firewall Hardware and Software for ICS Networks	Meeting Date:	March 12, 2024
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ALTERNATIVE

Do not authorize the purchase of the firewalls. This alternative is not recommended because existing products will be at their end of support in 2024, and the District would be at higher risk of cybersecurity events that could compromise the District’s ICS environment.

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CONTRACT EQUITY PROGRAM SUMMARY (P-035)

This summary contains information on the contractor's workforce and contract equity participation. (Completed by District)

TITLE Materials and Supplies Contract Firewall Hardware and Software for ICS Networks					DATE: February 28, 2024							
CONTRACTOR: NuSpective, Inc. Pleasanton, CA					PERCENTAGE OF CONTRACT DOLLARS							
State Contract/ Direct Award/ Local Business					Availability Group		Contracting Objectives		Participation			
BID/PROPOSER'S PRICE:		FIRM'S OWNERSHIP			White Men		25%		100.0%			
		Ethnicity	Gender		White Women		6%		0.0%			
\$701,866 *		White	Men		Ethnic Minorities		25%		0.0%			
CONTRACT EQUITY PARTICIPATION												
COMPANY NAME		ESTIMATED AMOUNT	ETHNICITY	GENDER		CONTRACTING PARTICIPATION						
				M	W	White- Men	White- Women	Ethnic Minorities	Unclassified	Publicly Held Corp.	Gov't/Non Profit	Foreign
PRIME: NuSpective, Inc.		\$701,866	White	x		100.0%						
SUBS: None												
TOTAL		\$701,866				100.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
CONTRACTOR'S WORKFORCE PROFILE (From P-025 Form)												
		White Men		White Women		Ethnic Minorities		Total Employees				
No. of Employees:		4		2		1		7				
Percent of Total Employees:		57.1%		28.6%		14.3%						
MSA Labor Market %:		24.5%		21.6%		53.9%						
MSA Labor Market Location:		Alameda										
13.2												
Contract Equity Participation: 100% White Men participation. Contract Duration : NA												
*Total not to exceed: \$701,866												
Workforce Profile & Statement of Nondiscrimination Submitted				Good Faith Outreach Efforts Requirement Satisfied				Award Approval Recommended				
NA				NA								

AFFIRMATIVE ACTION SUMMARY (P-061)

(Completed by District)

This summarizes information provided by the contractor(s)' P-025 Form regarding their workforce.

Title: Firewall Hardware and Software for ICS Networks			Ethnic Minority Percentages From U.S. Census Data						
					B	H	A/PI	AI/AN	TOTAL
			National	10.5	10.7	3.7	0.7	27.3	
Materials and Supplies Contract		DATE: 2/28/2024	9 Bay Area Counties	5.5	16.2	14.2	0.4	39.9	
			Alameda/CC Counties	10.7	15.6	15.4	0.5	46.2	
R=Recmmd P=Prime S=Sub	Composition of Ownership	Number of Ethnic Minority Employees							
Company Name, Owner/Contact Person, Address, and Phone Number			B	H	A/PI	AI/AN	TOTAL	PERCENT	MSA %
RP	WM: LBE	Company Wide	0	1	0	0	1	14.3%	53.9%
NuSpective, Inc. David McMorrow 5700 Stoneridge Mall Road, Suite 220 Pleasanton, CA 94588 925-271-7557		Manager/Prof	0	0	0	0	0	0.0%	
		Technical/Sales	0	1	0	0	1	33.3%	
		Clerical/Skilled	0	0	0	0	0	0.0%	
		Semi/Unskilled	0	0	0	0	0	0.0%	
		Bay Area	0	1	0	0	1	0.0%	39.9%
		AA Plan on File:	NA		Date of last contract with District:		8/12/2021		
		Co. Wide MSA:	Alameda		# Employees-Co. Wide:	7	Bay Area:	5	

WM=White Male, WW=White Women, EM=Ethnic Minority (Ethnicities: **B**=Black, **H**=Hispanic, **A/PI**=Asian/Pacific Islander, and **A/AN**=American Indian/Alaskan Native)



BOARD ACTION

Agenda Number:	6.	Meeting Date:	March 12, 2024
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TITLE **U.S. BUREAU OF RECLAMATION WATERSMART GRANT FUNDING AGREEMENT TO SUPPORT HEALTHY RIVERS AND LANDSCAPES**

ACTION ☐ Motion: ☒ Resolution: ☐ Ordinance:

RECOMMENDED ACTION Adopt a resolution authorizing the District to execute a funding agreement and accept a grant from the U.S. Bureau of Reclamation (USBR) WaterSMART Aquatic Ecosystem Restoration Program (AERP) in an amount not to exceed \$650,000 to develop habitat improvements on the Lower Mokelumne River in support of the Bay-Delta Voluntary Agreements.

SUMMARY District staff has been pursuing grant opportunities to support habitat restoration on the lower Mokelumne River. In December of 2023, staff was notified of the selection of the District's application and is preparing the agreement language in coordination with USBR. Under the grant agreement, the District would receive up to \$650,000 for planning and design of habitat improvements on the lower Mokelumne River. The total cost of the project is approximately \$1,000,000. The District would be required to provide a 30 percent match to the grant funding. This work is in support of the Bay-Delta Voluntary Agreement for the Mokelumne River.

DISCUSSION On August 11, 2022, the District signed the Memorandum of Understanding (MOU) advancing a term for the Voluntary Agreements (VAs) to update and implement the Bay-Delta Water Quality Control Plan. If implemented, the VAs would include a suite of flow and non-flow measures meant to protect the beneficial uses of the Bay-Delta, including improving habitat for fish. As part of the VA package, the District proposed non-flow measures on the Mokelumne River including habitat restoration. The non-flow measures include restoration of a minimum of 25 acres of floodplain rearing habitat and one acre of instream rearing habitat.

The USBR WaterSMART AERP grant will cover the planning, design, permitting and pre-project surveys needed to move this project to shovel-ready in 2025.

This agreement, like other grant agreements, will require the District to indemnify and hold harmless the grantor, USBR, from claims and damages arising out of the project or the grant agreement. This agreement supports the District's Water Quality and Environmental Protection Strategic Plan goal.

Originating Department: Water and Natural Resources	Department Director or Manager: Michael T. Tognolini	CEP Forms? N/A	Board Action Type: Grant
Funds Available: FY2024-2025/Award #7000070/Vol.2 page 24	Budget Coding: 11.481.3100049.52310		Approved: 
Attachment(s): Resolution			

Title:	USBR Watersmart Grant Funding Agreement	Meeting Date:	March 12, 2024
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SUSTAINABILITY**Economic**

The non-Federal match of \$350,000 is available in the FY 2024 adopted capital budget for River and Watershed.

Environmental

The execution of the grant agreement is exempt from the requirements of the California Environmental Quality Act (CEQA) under CEQA Guidelines Section 15061 because there is no possibility that this action may have a significant effect on the environment. Before approving and undertaking the projects that will be funded through the agreement, the District will determine the appropriate level of CEQA review that is required.

ALTERNATIVE

Do not authorize the District to execute a grant agreement with the USBR. This alternative is not recommended because these funds would support habitat improvements on the lower Mokelumne River and could help the District meet its VA obligations.

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RESOLUTION NO. _____

AUTHORIZING ACCEPTANCE OF GRANT AWARDED BY THE UNITED STATES
BUREAU OF RECLAMATION FOR AQUATIC ECOSYSTEM RESTORATION

Introduced by Director _____ ; Seconded by Director _____

WHEREAS, the United States Bureau of Reclamation (USBR) provides WaterSMART Aquatic Ecosystem Restoration Program grants to provide cost sharing to entities as they study, design, and construct aquatic ecosystem restoration projects; and

WHEREAS, on May 13, 2023, the East Bay Municipal Utility District (District) submitted a WaterSMART grant application to USBR seeking funding for the Mokelumne River Floodplain Reconnection and Restoration Project (Project); and

WHEREAS, the Project will assist in meeting the habitat needs of fisheries in the Lower Mokelumne River and will link scientists, managers, and landowners as they work toward common goals to preserve and enhance the fishery; and

WHEREAS, on December 19, 2023, USBR notified the District that its grant application was selected for funding and that a grant in the amount of six hundred and fifty thousand dollars (\$650,000) would be awarded for the Project;

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the East Bay Municipal Utility District hereby authorizes the General Manager to accept the USBR WaterSMART Aquatic Ecosystem Restoration Program grant funds and authorizes the General Manager or his designee(s) to execute all agreements and other documents required to accept and administer the USBR grant, including any indemnity, defense and hold harmless provisions in such agreements, in a form approved by the General Counsel, and further authorizes the General Manager or his designee(s) to sign and submit all progress reports, reimbursement claims, and requests for disbursements, which

may be necessary for the award of grant funds.

ADOPTED this 12th day of March, 2024 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

President

Secretary

APPROVED AS TO FORM AND PROCEDURE:

General Counsel

EAST BAY MUNICIPAL UTILITY DISTRICT

DATE: March 7, 2024

MEMO TO: Board of Directors

THROUGH: Clifford C. Chan, General Manager *CCC*

FROM: Kathy Viatella, Manager of Legislative Affairs *KV*

SUBJECT: Legislative Report No. 02-24

The following issues are being referred to the Legislative/Human Resources Committee for review and recommendation to the Board of Directors for action, as appropriate, on March 12, 2024.

RECOMMENDED ACTION

Approve a position on the following bill: Support SB 903 (Skinner) Environmental health: product safety: perfluoroalkyl and polyfluoroalkyl substances; and receive information on connection fee and capacity charge legislation.

STATE LEGISLATION

RECOMMENDED POSITION

SB 903 (Skinner)	ENVIRONMENTAL HEALTH: PRODUCT SAFETY: PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES	SUPPORT
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Existing law, beginning January 1, 2025, prohibits the manufacture, distribution, sale, or offer for sale in commerce of any new textile articles that contain regulated perfluoroalkyl and polyfluoroalkyl substances (PFAS) and any cosmetic product that contains intentionally added PFAS. Existing law also prohibits the distribution, sale, or offering for sale in the state any food packaging that contains regulated PFAS.

SB 903 (Skinner), as amended on February 21, 2024, is intended to provide a comprehensive pollution prevention approach for PFAS. The bill is a follow-up to last year's veto of several product specific PFAS ban bills and attempts to address the governor's direction in his veto messages that the Department of Toxic Substances Control (DTSC) should work with the legislature on alternative approaches as the product specific legislation was difficult to implement and enforce.

SB 903 would primarily do four things: 1) beginning January 1, 2030, prohibit the distribution, sale, or offer for sale in the state any product that contains intentionally added PFAS unless the DTSC has determined that the use of PFAS in a product is a currently unavoidable use; 2) allow DTSC to implement the PFAS ban earlier than 2030 if it is feasible to do so; 3) establish a process by which manufacturers can petition DTSC for a determination, and DTSC makes an evaluation and determination, as to whether the use of PFAS in a product category is a currently unavoidable use; and 4) require DTSC to adopt regulations on or before January 1, 2027, to implement the bill's provisions.

SB 903 also authorizes civil penalties not to exceed \$1,000 per day for a first violation of the PFAS prohibition and penalties of up to \$2,500 per day for a second violation. Penalties collected would be deposited into the PFAS Penalty Account and would be available, upon appropriation by the legislature, to be used for administration and enforcement of the bill's provisions.

According to the Senate Committee on Environmental Quality, PFAS are a large group of synthetic substances that have been widely used in industrial and consumer applications for their heat, water, and oil resistance properties since their invention in the 1930s. PFAS are used extensively in commercial applications and consumer products such as carpets, furniture fabrics, apparel, paper packaging for food, nonstick cookware, personal care products, and other products designed to be waterproof; grease, heat, water and stain resistant; or non-stick. PFAS can migrate into soil, water, and air during production, use, and disposal. Extensive research has shown that there are health risks associated with some PFAS.

The author's office notes that while California has led the nation in addressing PFAS, PFAS still remain in hundreds of products sold. "With SB 903, California will end the unnecessary use of forever chemicals and significantly reduce the harm PFAS poses to our environment and our health."

EBMUD has an extensive water quality program, which includes sampling, testing, and treatment, to ensure that customers receive high-quality drinking water that meets or exceeds all state and federal regulatory requirements. EBMUD voluntarily monitored its drinking water in 2020-2021 for several PFAS chemicals and did not detect significant concentrations of these substances. The State Water Resources Control Board's (SWRCB) Division of Drinking Water has initiated phased monitoring orders that prioritize monitoring based on the vulnerability of each water source to PFAS contamination and has established notification and response levels for four PFAS.

Under the state's phased PFAS monitoring requirement, EBMUD monitors the Freeport Regional Water Facility intake in coordination with Sacramento County Water Agency. EBMUD's local and upcountry watersheds are considered more protected against PFAS contamination and are not included in the state's monitoring orders. On the federal side, beginning in 2023 the United States Environmental Protection Agency (U.S. EPA), as part of the fifth Unregulated Contaminant Monitoring Rule, requires all water systems to monitor for 29

PFAS compounds between 2023 and 2025. Samples must be collected from each water treatment plant quarterly. All EBMUD samples collected under the U.S. EPA monitoring program have been below the minimum reporting levels.

With regard to wastewater, the SWRCB has issued an investigative order that requires publicly owned treatment works to monitor for a variety of PFAS compounds in influent, effluent, and biosolids. EBMUD's Main Wastewater Treatment Plant is part of a PFAS monitoring study in collaboration with the San Francisco Bay Regional Water Quality Control Board through the Regional Monitoring Program run by the San Francisco Estuary Institute.

The first phase of the study showed PFAS in the influent and effluent of all Bay Area municipal wastewater plants, including EBMUD's, but at levels comparable to, or much lower than, the level of PFAS found in household products. The second phase of the study initiated in 2022 looked at upstream sources to better understand how residential, commercial, and specific industrial sources contribute to PFAS found in wastewater. The second phase of the study showed that businesses such as industrial laundries and car washes contribute the highest concentrations, but private residences appear to be the most significant overall source of PFAS. EBMUD is continuing collaborations to better characterize the sources of PFAS in residential wastewater and implement source reduction methods.

As PFAS are ubiquitous in consumer and industrial products, and water and wastewater agencies have limited means to control the trace amounts of these chemicals that enter the environment from a variety of sources, a source control or pollution prevention approach may offer the best way to reduce PFAS in the environment and protect public health.

SB 903 takes a pollution prevention approach to address the proliferation of PFAS in the environment by eliminating their use in products sold and used in California unless the use of PFAS is necessary. The bill is consistent with EBMUD's 2024 state legislative initiative on water quality. The bill could result in increased costs to EBMUD if there is an increase in costs to purchase manufactured products without PFAS, but the long-term benefit of eliminating a source of PFAS in products could outweigh those costs.

EBMUD has supported prior legislation to address PFAS pollution at its source. In 2023, EBMUD supported AB 727 (Weber) that would have banned PFAS in cleaning products and AB 1423 (Schiavo) that would have prohibited the sale of artificial turf containing PFAS. Both AB 727 and AB 1423 were vetoed by Governor Newsom. In 2022, EBMUD supported AB 1817 (Ting) that banned PFAS in textile products. AB 1817 was signed into law (Chapter 762 of 2022). Also in 2022, EBMUD supported AB 2247 (Bloom) that would have required manufacturers of PFAS or products containing PFAS sold or distributed in California to report those PFAS or products containing PFAS on a publicly accessible database. AB 2247 was vetoed. In 2021, EBMUD supported AB 1200 (Ting) that banned food packaging containing PFAS beginning January 1, 2023 and requires chemical disclosures for cookware sold in California beginning January 1, 2024. AB 1200 was signed into law (Chapter 503 of 2021).

SB 903 is co-sponsored by the California Association of Sanitation Agencies, Breast Cancer Prevention Partners, Clean Water Action, Environmental Working Group, and the National Resources Defense Council. An official support/opposition list for SB 903 is not currently available.

INFORMATION ITEM

CONNECTION FEE AND CAPACITY CHARGE LEGISLATION

INFORMATION

Proposition 26, enacted in 2010, amended Article XIII C of the California Constitution to among other things, require that fees or charges imposed by local governments to be no more than necessary to cover the reasonable costs of the governmental activity, and that the allocation of those costs to a payor bear a fair or reasonable relationship to the payor's burden on, or benefit received from, the governmental activity.

Existing law establishes the Mitigation Fee Act (Act) which allows local agencies to impose fees on development projects, specifies the requirements that local agencies must meet to establish, impose or increase these fees, and dictates how funds can be spent. The Act also allows for the imposition of capacity charges and connection fees for water and wastewater service, although these particular fees are treated in a different manner than other general development fees in the Act. Under the Act, water and sewer connection fees and capacity charges may not exceed the estimated reasonable cost of providing the service for which the fee or charge is imposed.

As part of a broader interest in housing supply and affordability in the legislature, several development-related fee bills, including bills pertaining to water and sewer connection fees and capacity charges, have been introduced. Four measures of direct interest to EBMUD are as follows:

- AB 1820 (Schiavo): Housing development projects: applications: fees and exactions. This bill would:
 - Authorize a development proponent that submits a preliminary application to a city, county, or city and county to include in the preliminary application a request for a preliminary fee and exaction estimate.
 - Require a local agency, including a special district, to comply with the request for a preliminary fee and exaction estimate within 10 business days of the preliminary application's submittal to the city, county, or city and county, if the application is complete.
 - Require a city, county, city or county, or special district that determines an application for a housing development project is complete to provide an itemized list and total sum of all fees and exactions that will apply to the projects when transmitting a formal determination of completeness.
 - Include water and sewer connection fees and capacity charges in the "fees" for which preliminary estimates and total sums must be provided.

- AB 2729 (Joe Patterson): Residential fees and charges.

This bill would:

- Prohibit local governments from requiring the payment of mitigation or development fees, possibly including water and wastewater connection fees and capacity charges, on a residential development prior to when the first dwelling in a development receives its final inspection or certificate of occupancy, whichever occurs first.

- SB 937 (Wiener): Development projects: permits and other entitlements: fees and charges.

This bill would:

- Specifically include water districts and sanitation districts, as well as water and wastewater connection fees and capacity charges in the provisions of the bill.
- Prohibit local governments from requiring the payment of mitigation or development fees, including water and wastewater connection fees and capacity charges, on a residential development until the date the certificate of occupancy is issued, and would prohibit local governments from charging interest on any amount deferred. If the development contains more than one dwelling unit, fees shall be paid on a pro rata basis based on a percentage of dwellings that have received certificates of occupancy or when all dwellings have received certificates of occupancy.
- Require that for specified lower-income housing development the cost of mitigation or development fees and charges must be equal to the cost that would have been charged had the fees been paid at the time the building permit was issued.
- Allow a city or county to withhold certificate of occupancy for a development project until the fees imposed are fully paid.

- SB 1210 (Skinner): New housing construction: electrical, gas, sewer, and water service connections: charges.

This bill would:

- Cap connection fees and capacity charges for electrical, gas, sewer, and or water service imposed by public utilities (electrical, gas, sewer, and water corporations) and special districts at 1 percent of the reported building permit value of the housing unit.
- Require a public utility or special district to collect the connection fees and capacity charges over a period of at least 10 years beginning on the date when the housing unit is first occupied. If the housing unit is sold before that time is up, the subsequent owner shall continue paying the charge over the remainder of that period of time.
- Require a public utility to prioritize the processing, approval, scheduling, and completion of electrical, gas, sewer, and water service connections to new

housing construction over the processing, approval, scheduling, and completion of service connections to all other structures.

- Require a public utility to report each year on its website the amount of any connection fee and capacity charges issued by housing unit.

Staff is evaluating these measures and have identified initial areas of concern. In general, the bills fail to acknowledge or recognize that connection fees and capacity charges are fees for service and therefore different from other development and mitigation fees. Also, the bills assume that special districts provide permits for, or are included in the permitting of, developments.

AB 1820 would include special districts in code sections that place requirements on cities and counties that permit and approve housing developments and require information about development fees, including water and wastewater connection fees and capacity charges imposed by special districts, to be provided to development proponents based on the building permit application information, process, and timelines. This could require special districts, including EBMUD, to provide fee estimates without having been notified of a potential development or without having received the information needed to calculate connection fee and capacity charge estimates. Assessing connection fees and capacity charges requires information that is different from, and sometimes only known much later in the building process, than the information included in and known at the time permit applications are submitted to a city or county.

AB 2729 would prohibit local governments from requiring the payment of mitigation or development fees on residential development until the first dwelling unit receives its final building inspection or certificate of occupancy. AB 2729 would apply to special districts, and while the bill does not specifically reference water and wastewater connection fees and capacity charges at this time, the bill may be construed to include those fees in the requirement to defer the payment of fees until first occupancy.

SB 937 has provisions similar to AB 2729 regarding the delay of when local governments can collect mitigation or development fees, and expressly includes water and wastewater connection fees and capacity charges in the fees that cannot be collected until occupancy. This could require water and wastewater agencies to perform work without being paid in a timely manner and without a way to guarantee payment once a building is occupied, or if a project is delayed or never completed. SB 937 also places restrictions on fees that can be charged to specified lower-income residential development projects.

SB 1210 would cap connection fees and capacity charges imposed by public utilities (electrical, gas, sewer, or water corporations regulated by the California Public Utilities Commission) and special districts on new housing development at 1 percent of the reported building permit value of a housing unit. The bill would also require public utilities and special districts to allow the connection fees and capacity charges to be paid over at least 10 years beginning once the housing unit is first occupied. This would prohibit water and wastewater special districts, including EBMUD, from imposing connection fees and capacity charges on new housing development that

are proportional to the cost of service (if the fees and chargers are higher than 1 percent of a housing unit's building permit value) and may result in shifting costs for new housing development onto existing ratepayers. The bill would also require special districts to provide water and sewer connections and perform work before receiving payment and could mean that all multi-family units will need separate water meters in order to bill the individual housing units for service and recover the connection fees and capacity charges over the payback period. Some of the bill's requirements could conflict with state constitutional provisions regarding water and sewer fees and charges.

Additional legislation may be amended in the future to address connection fee and capacity charge that may be of interest to EBMUD. Staff will continue to monitor and evaluate connection fee and capacity charge legislation in the context of constitutional requirements and EBMUD's operations. Staff will bring relevant measures to the Board for consideration at future board meetings, as appropriate.

CCC:KCV/JW

Attachments

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AMENDED IN SENATE FEBRUARY 21, 2024

SENATE BILL

No. 903

Introduced by Senator Skinner

January 4, 2024

An act to *add Chapter 18 (commencing with Section 109030) to Part 3 of Division 104 of the Health and Safety Code*, relating to product safety.

LEGISLATIVE COUNSEL'S DIGEST

SB 903, as amended, Skinner. Environmental health: product safety: perfluoroalkyl and polyfluoroalkyl substances.

Existing law, commencing January 1, 2025, prohibits the manufacture, distribution, sale, or ~~offer offering~~ for sale in the state *of* any new, not previously used, textile articles that contain regulated perfluoroalkyl and polyfluoroalkyl ~~substances~~. *substances (PFAS)*. Existing law, commencing January 1, 2025, prohibits the manufacture, sale, delivery, holding, or ~~offer offering~~ for sale in commerce *of* any cosmetic product that contains intentionally added ~~perfluoroalkyl and polyfluoroalkyl substances~~. *PFAS*.

Existing law prohibits the distribution, sale, or ~~offer offering~~ for sale in the state ~~any of certain~~ food packaging that contains regulated ~~perfluoroalkyl and polyfluoroalkyl substances~~. *PFAS*. Existing law prohibits the sale or distribution in commerce in the state *of* any new, not previously owned, juvenile product, as defined, that contains regulated perfluoroalkyl and polyfluoroalkyl chemicals.

~~This bill would state the intent of the Legislature to enact subsequent legislation to phase out the sale of products with avoidable perfluoroalkyl and polyfluoroalkyl substances.~~

This bill would, beginning January 1, 2030, prohibit a person from distributing, selling, or offering for sale a product that contains intentionally added PFAS, as defined, unless the Department of Toxic Substances Control has made a determination that the use of PFAS in the product is a currently unavoidable use, the prohibition is preempted by federal law, or the product is used. The bill would specify the criteria and procedures for determining whether the use of PFAS in a product is a currently unavoidable use, for renewing that determination, and for revoking that determination. The bill would require the department to maintain on its internet website a list of each determination of currently unavoidable use, when each determination expires, and the products and uses that are exempt from the prohibition. The bill would impose a civil penalty for a violation of the prohibition, as specified. The bill would establish the PFAS Penalty Account and require all civil penalties received to be deposited into that account and, upon appropriation by the Legislature, to be used for the administration and enforcement of these provisions, as specified.

This bill would, by January 1, 2027, require the department to adopt regulations to carry out the provisions of this bill. The bill would require the regulations to establish and provide for the assessment of an application fee. The bill would create the PFAS Oversight Fund and require all application fees to be deposited into the fund. The bill would require moneys in the account, upon appropriation by the Legislature, to be used to cover the department's reasonable costs of administering this act.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Perfluoroalkyl and polyfluoroalkyl substances (PFAS) are
- 4 a class of persistent and highly toxic chemicals with widespread
- 5 contamination across the United States, including California. The
- 6 United States Geological Survey estimates that 45 percent of the
- 7 United States' tap water is contaminated with PFAS. It is also
- 8 estimated that 98 percent of people living in the United States have
- 9 PFAS in their blood.

(b) PFAS have been and continue to be used in a broad range of industrial processes and in manufacturing products because of their water and stain resistant, nonstick, surfactant, and other properties, including for making packaging, plastic food ware, cleaning products, ski waxes, menstrual products, metal products, propellants, coatings and paints, and much more, despite the growing body of evidence that these chemicals may leach into food, water supplies, and even the human body through exposures.

(c) Exposure to PFAS poses a significant threat to the environment and public health. Adverse health effects associated with PFAS include, but are not limited to, kidney and liver damage, decreased immune system function, including interference with vaccine response and increased risk of asthma, developmental and reproductive harm, increased cholesterol levels, increased thyroid disorders and other hormone disruption, and increased incidences of testicular and kidney cancer.

(d) PFAS in products is a major source of PFAS contamination and phasing out nonessential uses of PFAS must be an immediate legislative objective.

(e) The intent of this act is to phase out the sale of products with avoidable PFAS use to address the imminent threat of further contamination of the environment in the state.

SEC. 2. Chapter 18 (commencing with Section 109030) is added to Part 3 of Division 104 of the Health and Safety Code, to read:

*CHAPTER 18. PERFLUOROALKYL AND POLYFLUOROALKYL
SUBSTANCES*

109030. For purposes of this chapter, the following definitions apply unless the context otherwise indicates:

(a) "Component" means an identifiable ingredient, part, or piece of a product, regardless of whether the manufacturer of the product is the manufacturer of the component.

(b) "Currently unavoidable use" means a use of PFAS that the department has determined is permissible for a limited time pursuant to subdivision (a) of Section 109030.2.

(c) "Department" means the Department of Toxic Substances Control.

(d) "Intentionally added PFAS" means either of the following:

1 (1) PFAS added to a product that have a functional or technical
2 effect in the product, including the PFAS components of
3 intentionally added chemical mixtures and PFAS that are
4 intentional products of an added chemical or process.

5 (2) PFAS used or produced during a product's manufacture or
6 processing that is introduced into or onto the product, whether or
7 not it confers a functional or technical effect in the product. This
8 includes any source of PFAS that is reasonably known to be
9 present, including the use of processing agents, mold release
10 agents, or fluorination.

11 (e) (1) Subject to paragraphs (2) and (3), "manufacturer"
12 means either of the following:

13 (A) A person that manufactures the product and whose name
14 appears on the product label.

15 (B) A person for whom the product is manufactured or by whom
16 it is distributed, and who owns or is the licensee of the brand or
17 trademark under which the product is used in a commercial
18 enterprise, sold, offered for sale, or distributed in the state.

19 (2) In the case of a product imported into the United States,
20 "manufacturer" includes the importer or first domestic distributor
21 of the product if no person that meets the requirements of
22 subparagraph (A) or (B) of paragraph (1) has a presence in the
23 United States.

24 (3) "Manufacturer" does not include trade associations or
25 similar entities.

26 (4) For purposes of this chapter, a product may have more than
27 one manufacturer.

28 (f) "Necessary for the product to work" means required for the
29 product to perform its primary function, as determined by the
30 department.

31 (g) "Perfluoroalkyl and polyfluoroalkyl substances" or "PFAS"
32 means a class of fluorinated organic chemicals containing at least
33 one fully fluorinated carbon atom.

34 (h) "Person" means an individual, firm, corporation,
35 association, or other entity doing business in California.

36 (i) "Product" means an item manufactured, assembled,
37 packaged, or otherwise prepared for sale in California, including,
38 but not limited to, its components, sold or distributed for personal,
39 residential, commercial, or industrial use, including for use in
40 making other products.

(j) “Product category” means a group of similar products that are used for a similar purpose and that could functionally replace each other for that purpose, as determined by the department, and does not mean a specific variation within a product. For example, pants, insulation, and cookware are each a product category whereas stain resistant pants, spray insulation, and nonstick cookware are specific variations of products within those product categories.

(k) “Reliable information” means a study or evaluation that meets both the following:

(1) The study or evaluation design was appropriate to the hypothesis being tested, and sufficient to support the proposition for which the study or evaluation is presented to the department.

(2) The study or evaluation was published in one of the following:

(A) A scientifically peer-reviewed report or other literature.

(B) A report of the United States National Academies.

(C) A report by an international, federal, state, or local agency that implements laws governing chemicals.

(l) “Safer alternative” means an alternative that, in comparison with another product or product manufacturing process, has reduced potentially adverse impacts or potential exposures associated with PFAS. Alternatives include materials, processes, designs, products, or chemicals that achieve the desired result. For example, a safer alternative to stain resistant sprays for avoiding stains could be the use of detergents or the use of fibers that are inherently stain resistant.

109030.1. (a) (1) Except as provided in subdivision (b), beginning January 1, 2030, a person shall not distribute, sell, or offer for sale in this state a product that contains intentionally added PFAS.

(2) The department may establish by regulation an effective date for the prohibition of PFAS in a product or product category that is before January 1, 2030, if it is feasible to do so. The department shall consider public petitions that request an earlier effective date for a product category. Feasibility shall be deemed to exist if any of the following conditions are met:

(A) If a safer alternative to PFAS in the product or product category is reasonably available, as determined by the department.

1 (B) If the findings of all or part of an applicable publicly
2 available study or evaluation of alternatives shows the viability
3 of safer alternatives to PFAS in the product or product category.
4 The department shall only rely on a study or evaluation that is
5 reliable information.

6 (C) If the sale or use of PFAS in the product or product category
7 has already been banned in another state or states within the
8 United States or in other countries.

9 (b) A prohibition described in subdivision (a) shall not apply
10 to any of the following:

11 (1) A product or product category for which there is an
12 applicable determination of currently unavoidable use identified
13 on the department's internet website pursuant to subdivision (g)
14 of Section 109030.2.

15 (2) A product or product category for which federal law governs
16 the presence of PFAS in the product in a manner that preempts
17 state authority.

18 (3) A used product.

19 109030.2. (a) Upon a petition from the manufacturer of a
20 product, the department shall review and determine whether the
21 use of PFAS in the product category to which the product belongs
22 is a currently unavoidable use. The department shall use the
23 broadest reasonable product category in making its determination.
24 In making a determination, the department shall rely on analysis
25 and findings from a prior determination. The department may
26 identify exclusions from a product category. The department shall
27 find that the use of PFAS in the product category or for an
28 exclusion is a currently unavoidable use only if it finds all the
29 following:

30 (1) There are no safer alternatives to PFAS that are reasonably
31 available.

32 (2) The function provided by PFAS in the product is necessary
33 for the product to work.

34 (3) The use of PFAS in the product is critical for health, safety,
35 or the functioning of society.

36 (b) The manufacturer in its petition shall provide the following:

37 (1) Evidence that demonstrates the criteria in paragraphs (1)
38 to (3), inclusive, of subdivision (a) are met.

39 (2) Any additional information requested by the department to
40 assist in making the determination.

1 (3) Any other information that the manufacturer believes is
2 relevant, with an explanation of the relevance.

3 (4) The applicable application fee established pursuant to
4 Section 109030.4.

5 (c) When determining whether the use of PFAS in a product
6 category is a currently unavoidable use, the department shall do
7 all of the following:

8 (1) Consider the information provided pursuant to subdivision
9 (b), including relevance and significance for the product category.

10 (2) Consider available reliable information.

11 (3) Consider bans on the sale or use of PFAS in the product or
12 product category in another state, the United States, or other
13 countries. If the sale or use of PFAS in the product or product
14 category has already been banned in another state, the United
15 States, or other countries, and if the ban is in effect, then that
16 demonstrates that the use of PFAS is not a currently unavoidable
17 use.

18 (4) Provide an opportunity for public comment.

19 (d) When determining whether the use of PFAS in a product
20 category is a currently unavoidable use, the department shall make
21 a determination without evaluating all the criteria pursuant to
22 subdivision (b) if the determination can be made based on fewer
23 criteria.

24 (e) (1) Upon finding that the use of PFAS in a product category
25 is a currently unavoidable use, the department shall issue a
26 determination of currently unavoidable use.

27 (2) A determination of currently unavoidable use shall expire
28 five years after its issuance.

29 (3) The department may review a determination of currently
30 unavoidable use before its expiration and may revoke the
31 determination if there is a significant change in the information
32 supporting the determination.

33 (4) The department shall consider public petitions requesting
34 a review of a determination of currently unavoidable use based
35 on a significant change of information.

36 (f) A manufacturer may submit a petition to renew a
37 determination of currently unavoidable use no later than six months
38 before its expiration. The petition for renewal shall comply with
39 subdivision (b) and also provide evidence of significant efforts to
40 develop a safer alternative to the continued use of PFAS in the

1 product or product category, including, but not limited to,
2 published peer-reviewed papers and funding of third-party
3 research with no financial conflict of interest. In reviewing a
4 petition to renew, the department shall comply with subdivisions
5 (a), (c), (d), and (g).

6 (g) The department shall maintain on its internet website a list
7 of each determination of currently unavoidable use, when each
8 determination expires, and the products and uses that are exempt
9 from the prohibition specified in subdivision (a) of Section
10 109030.1.

11 (h) A manufacturer subject to the prohibition in paragraph (1)
12 of subdivision (a) of Section 109030.1 shall not submit a petition
13 for unavoidable use determination before January 1, 2030, and
14 no later than January 1, 2032.

15 109030.3. (a) A person who violates Section 109030.1 or fails
16 to comply with the requirements of subdivision (b) shall be liable
17 for a civil penalty not to exceed one thousand dollars (\$1,000) for
18 each day during which the violation continues, and, in addition,
19 the person may be enjoined from continuing the violation. For a
20 second violation, the person shall be liable to the people of the
21 state for a civil penalty not to exceed two thousand five hundred
22 dollars (\$2,500) for each day during which the violation continues.
23 Any civil penalties received pursuant to this subdivision shall be
24 deposited into the PFAS Penalty Account, that is hereby created
25 in the PFAS Oversight Fund created pursuant to Section 109030.4.
26 Moneys in the fund shall, upon appropriation by the Legislature,
27 be used for the administration and enforcement of this chapter.

28 (b) If the department has reason to believe that a product
29 contains intentionally added PFAS and is being distributed, sold,
30 or offered for sale in violation of Section 109030.1, the department
31 shall direct the manufacturer of the product to, within 30 days, do
32 either of the following:

33 (1) Provide the department with independent, third-party
34 laboratory test results demonstrating that the product does not
35 contain the intentionally added PFAS.

36 (2) Notify persons who sell that product in the state that the
37 sale of that product is prohibited in this state and provide the
38 department with a list of the names and addresses of those notified.

39 109030.4. On or before January 1, 2027, the department shall
40 adopt regulations to administer this chapter. The regulations shall

1 *establish and provide for the assessment of an application fee.*
2 *Moneys received from the application fee shall be deposited into*
3 *the PFAS Oversight Fund, that is hereby created in the State*
4 *Treasury. Moneys in the account shall, upon appropriation by the*
5 *Legislature, be used to cover the department's reasonable costs*
6 *of administering this chapter.*

7 ~~SECTION 1. (a) The Legislature finds and declares that~~
8 ~~perfluoroalkyl and polyfluoroalkyl substances (PFAS) are a class~~
9 ~~of persistent and highly toxic chemicals responsible for widespread~~
10 ~~contamination across California and the United States.~~

11 ~~(b) It is the intent of the Legislature to enact subsequent~~
12 ~~legislation to phase out the sale of products with avoidable PFAS~~
13 ~~use to address the imminent threat of further contamination of the~~
14 ~~environment in the state.~~

AMENDED IN ASSEMBLY FEBRUARY 20, 2024

CALIFORNIA LEGISLATURE—2023–24 REGULAR SESSION

ASSEMBLY BILL

No. 1820

**Introduced by Assembly Member Schiavo
(Coauthor: Assembly Member Grayson)**

January 11, 2024

An act to amend ~~Section~~ *Sections 65940.1 and 65941.1* of, and to add Section 65943.1 to, the Government Code, relating to housing.

LEGISLATIVE COUNSEL’S DIGEST

AB 1820, as amended, Schiavo. Housing development projects: applications: fees and exactions.

(1) Existing law requires a city or county to deem an applicant for a housing development project to have submitted a preliminary application upon providing specified information about the proposed project to the city or county from which approval for the project is being sought. Existing law requires a housing development project be subject only to the ordinances, policies, and standards adopted and in effect when the preliminary application was submitted.

This bill would authorize a development proponent that submits a preliminary application for a housing development project to request a preliminary fee and exaction estimate, ~~as defined. The bill defined, and~~ would require ~~a the~~ local agency to ~~comply with the request~~ *provide the estimate* within 10 business days of the submission of the preliminary application, ~~except as specified.~~ *application.*

(2) Existing law requires a public agency that receives an application for a development project to, within 30 calendar days, determine in writing whether the application is complete and immediately transmit

its determination to the applicant for the development project, as specified.

This bill would require a public agency that determines an application for a housing development project is complete to provide the development proponent with an itemized list and total sum amount of all fees and exactions that will apply to the project ~~with~~ *within 10 days* of the above-described determination of completeness transmitted to the applicant.

(3) Existing law requires a city, county, or special district that has an internet website to make specified information available on its internet website, as applicable, including a current schedule of fees, exactions, affordability requirements it has imposed that are applicable to a proposed housing development project, and an archive of impact fee nexus studies, cost of service studies, or equivalent, conducted by that city, county, or special district on or after January 1, 2018. Existing law requires a city or county to request from a development proponent, upon issuance of a certificate of occupancy or the final inspection, whichever occurs last, the total amount of fees and exactions associated with the project for which the certificate was issued.

This bill would clarify that these provisions may not be construed to impose any obligation on any entity, including a development proponent, other than a city, county, or special district, as specified. The bill would also require the request from the city or county for the total amount of fees and exactions associated with the project to clearly state that the request does not create any obligation to respond and that the development proponent will not be subjected to any consequences for not responding or for the content of a response.

~~(3)~~

(4) The bill would include findings that changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities.

~~(4)~~

(5) By imposing new duties on local governments when receiving and reviewing certain development project applications, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 65940.1 of the Government Code is
2 amended to read:
3 65940.1. (a) (1) A city, county, or special district that has an
4 internet website shall make all of the following available on its
5 internet website, as applicable:
6 (A) (i) A current schedule of fees, exactions, and affordability
7 requirements imposed by that city, county, or special district,
8 including any dependent special districts, as defined in Section
9 56032.5, of the city or county applicable to a proposed housing
10 development project.
11 (ii) The city, county, or special district shall present the
12 information described in clause (i) in a manner that clearly
13 identifies the fees, exactions, and affordability requirements that
14 apply to each parcel and the fees that apply to each new water and
15 sewer utility connection.
16 (iii) The city, county, or special district shall post a written fee
17 schedule or a link directly to the written fee schedule on its internet
18 website.
19 (B) All zoning ordinances and development standards adopted
20 by the city or county presenting the information, which shall
21 specify the zoning, design, and development standards that apply
22 to each parcel.
23 (C) The list required to be compiled pursuant to Section 65940
24 by the city or county presenting the information.
25 (D) The current and five previous annual fee reports or the
26 current and five previous annual financial reports, that were
27 required pursuant to subdivision (b) of Section 66006 and
28 subdivision (d) of Section 66013.
29 (E) An archive of impact fee nexus studies, cost of service
30 studies, or equivalent, conducted by that city, county, or special
31 district on or after January 1, 2018. For purposes of this
32 subparagraph, “cost of service study” means the data provided to
33 the public pursuant to subdivision (a) of Section 66016.

(2) A city, county, or special district shall update the information made available under this subdivision within 30 days of any changes.

(3) (A) A city or county shall request from a development proponent, upon issuance of a certificate of occupancy or the final inspection, whichever occurs last, the total amount of fees and exactions associated with the project for which the certificate was issued. *The request shall clearly state that the development proponent is under no obligation to respond to the request for information and that the development proponent will not be subjected to any consequences for not responding or for the content of a response.* The city or county shall post this information on its internet website, and update it at least twice per year.

(B) A city or county shall not be responsible for the accuracy for the information received and posted pursuant to subparagraph (A). A city or county may include a disclaimer regarding the accuracy of the information posted on its internet website under this paragraph.

(b) For purposes of this section:

(1) “Affordability requirement” means a requirement imposed as a condition of a development of residential units, that the development include a certain percentage of the units affordable for rent or sale to households with incomes that do not exceed the limits for moderate-income, lower income, very low income, or extremely low income households specified in Sections 50079.5, 50093, 50105, and 50106 of the Health and Safety Code, or an alternative means of compliance with that requirement including, but not limited to, in-lieu fees, land dedication, off-site construction, or acquisition and rehabilitation of existing units.

(2) (A) “Exaction” means any of the following:

(i) A construction excise tax.

(ii) A requirement that the housing development project provide public art or an in-lieu payment.

(iii) Dedications of parkland or in-lieu fees imposed pursuant to Section 66477.

(iv) A special tax levied on new housing units pursuant to the Mello-Roos Community Facilities Act of 1982 (Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5).

(B) “Exaction” does not include fees or charges pursuant to Section 66013 that are not imposed (i) in connection with issuing or approving a permit for development or (ii) as a condition of approval of a proposed development, as held in *Capistrano Beach Water Dist. v. Taj Development Corp.* (1999) 72 Cal.App.4th 524.

(3) “Fee” means a fee or charge described in the Mitigation Fee Act (Chapter 5 (commencing with Section 66000), Chapter 6 (commencing with Section 66010), Chapter 7 (commencing with Section 66012), Chapter 8 (commencing with Section 66016), and Chapter 9 (commencing with Section 66020)).

(4) “Housing development project” means a use consisting of any of the following:

(A) Residential units only.

(B) Mixed-use developments consisting of residential and nonresidential uses with at least two-thirds of the square footage designated for residential use.

(C) Transitional housing or supportive housing.

(c) This section shall not be construed to alter the existing authority of a city, county, or special district to adopt or impose an exaction or fee.

(d) This section shall not be construed to impose any obligation on any entity, including a development proponent, other than a city, county, or special district. This subdivision does not constitute a change in, but is declaratory of, existing law.

SECTION 1.

SEC. 2. Section 65941.1 of the Government Code, as amended by Section 27 of Chapter 258 of the Statutes of 2022, is amended to read:

65941.1. (a) An applicant for a housing development project, as defined in paragraph (3) of subdivision (b) of Section 65905.5, shall be deemed to have submitted a preliminary application upon providing all of the following information about the proposed project to the city, county, or city and county from which approval for the project is being sought and upon payment of the permit processing fee:

(1) The specific location, including parcel numbers, a legal description, and site address, if applicable.

(2) The existing uses on the project site and identification of major physical alterations to the property on which the project is to be located.

1 (3) A site plan showing the location on the property, elevations
2 showing design, color, and material, and the massing, height, and
3 approximate square footage, of each building that is to be occupied.

4 (4) The proposed land uses by number of units and square feet
5 of residential and nonresidential development using the categories
6 in the applicable zoning ordinance.

7 (5) The proposed number of parking spaces.

8 (6) Any proposed point sources of air or water pollutants.

9 (7) Any species of special concern known to occur on the
10 property.

11 (8) Whether a portion of the property is located within any of
12 the following:

13 (A) A very high fire hazard severity zone, as determined by the
14 Department of Forestry and Fire Protection pursuant to Section
15 51178.

16 (B) Wetlands, as defined in the United States Fish and Wildlife
17 Service Manual, Part 660 FW 2 (June 21, 1993).

18 (C) A hazardous waste site that is listed pursuant to Section
19 65962.5 or a hazardous waste site designated by the Department
20 of Toxic Substances Control pursuant to Article 5 (commencing
21 with Section 78760) of Chapter 4 of Part 2 of Division 45 of the
22 Health and Safety Code.

23 (D) A special flood hazard area subject to inundation by the 1
24 percent annual chance flood (100-year flood) as determined by
25 the Federal Emergency Management Agency in any official maps
26 published by the Federal Emergency Management Agency.

27 (E) A delineated earthquake fault zone as determined by the
28 State Geologist in any official maps published by the State
29 Geologist, unless the development complies with applicable seismic
30 protection building code standards adopted by the California
31 Building Standards Commission under the California Building
32 Standards Law (Part 2.5 (commencing with Section 18901) of
33 Division 13 of the Health and Safety Code), and by any local
34 building department under Chapter 12.2 (commencing with Section
35 8875) of Division 1 of Title 2.

36 (F) A stream or other resource that may be subject to a
37 streambed alteration agreement pursuant to Chapter 6 (commencing
38 with Section 1600) of Division 2 of the Fish and Game Code.

39 (9) Any historic or cultural resources known to exist on the
40 property.

1 (10) The number of proposed below market rate units and their
2 affordability levels.

3 (11) The number of bonus units and any incentives, concessions,
4 waivers, or parking reductions requested pursuant to Section 65915.

5 (12) Whether any approvals under the Subdivision Map Act,
6 including, but not limited to, a parcel map, a tentative map, or a
7 condominium map, are being requested.

8 (13) The applicant's contact information and, if the applicant
9 does not own the property, consent from the property owner to
10 submit the application.

11 (14) For a housing development project proposed to be located
12 within the coastal zone, whether any portion of the property
13 contains any of the following:

14 (A) Wetlands, as defined in subdivision (b) of Section 13577
15 of Title 14 of the California Code of Regulations.

16 (B) Environmentally sensitive habitat areas, as defined in
17 Section 30240 of the Public Resources Code.

18 (C) A tsunami run-up zone.

19 (D) Use of the site for public access to or along the coast.

20 (15) The number of existing residential units on the project site
21 that will be demolished and whether each existing unit is occupied
22 or unoccupied.

23 (16) A site map showing a stream or other resource that may
24 be subject to a streambed alteration agreement pursuant to Chapter
25 6 (commencing with Section 1600) of Division 2 of the Fish and
26 Game Code and an aerial site photograph showing existing site
27 conditions of environmental site features that would be subject to
28 regulations by a public agency, including creeks and wetlands.

29 (17) The location of any recorded public easement, such as
30 easements for storm drains, water lines, and other public rights of
31 way.

32 (b) (1) A development proponent that submits a preliminary
33 application ~~pursuant to this section providing the information~~
34 ~~required by subdivision (a)~~ may include in its preliminary
35 application a request for a preliminary fee and exaction ~~estimate.~~
36 ~~A estimate, which the local agency shall comply with the request~~
37 ~~of the development proponent provide~~ within 10 business days of
38 the submission of the preliminary application ~~unless the local~~
39 ~~government otherwise determines that the preliminary application~~

1 ~~does not include all of the information required by subdivision (a)-~~
2 ~~application.~~

3 (2) For purposes of this subdivision:

4 (A) “Fee” and “exaction” mean the same as those terms are
5 defined in Section 65940.1.

6 (B) “Fee and exaction estimate” means a good faith estimate of
7 the total amount of fees and exactions expected to be imposed in
8 connection with the project.

9 (3) Except for the provision of the fee and exaction estimate by
10 the local agency, nothing in this subdivision shall create or affect
11 any rights or obligations with respect to fees or exactions.

12 (c) (1) Each local agency shall compile a checklist and
13 application form that applicants for housing development projects
14 may use for the purpose of satisfying the requirements for submittal
15 of a preliminary application.

16 (2) The Department of Housing and Community Development
17 shall adopt a standardized form that applicants for housing
18 development projects may use for the purpose of satisfying the
19 requirements for submittal of a preliminary application if a local
20 agency has not developed its own application form pursuant to
21 paragraph (1). Adoption of the standardized form shall not be
22 subject to Chapter 3.5 (commencing with Section 11340) of Part
23 1 of Division 3 of Title 2 of the Government Code.

24 (3) A checklist or form shall not require or request any
25 information beyond that expressly identified in subdivision (a).

26 (d) After submittal of all of the information required by
27 subdivision (a), if the development proponent revises the project
28 such that the number of residential units or square footage of
29 construction changes by 20 percent or more, exclusive of any
30 increase resulting from the receipt of a density bonus, incentive,
31 concession, waiver, or similar provision, the housing development
32 project shall not be deemed to have submitted a preliminary
33 application that satisfies this section until the development
34 proponent resubmits the information required by subdivision (a)
35 so that it reflects the revisions. For purposes of this subdivision,
36 “square footage of construction” means the building area, as
37 defined by the California Building Standards Code (Title 24 of the
38 California Code of Regulations).

39 (e) (1) Within 180 calendar days after submitting a preliminary
40 application with all of the information required by subdivision (a)

1 to a city, county, or city and county, the development proponent
2 shall submit an application for a development project that includes
3 all of the information required to process the development
4 application consistent with Sections 65940, 65941, and 65941.5.

5 (2) If the public agency determines that the application for the
6 development project is not complete pursuant to Section 65943,
7 the development proponent shall submit the specific information
8 needed to complete the application within 90 days of receiving the
9 agency's written identification of the necessary information. If the
10 development proponent does not submit this information within
11 the 90-day period, then the preliminary application shall expire
12 and have no further force or effect.

13 (3) This section shall not require an affirmative determination
14 by a city, county, or city and county regarding the completeness
15 of a preliminary application or a development application for
16 purposes of compliance with this section.

17 (f) Notwithstanding any other law, submission of a preliminary
18 application in accordance with this section shall not preclude the
19 listing of a tribal cultural resource on a national, state, tribal, or
20 local historic register list on or after the date that the preliminary
21 application is submitted. For purposes of Section 65589.5 or any
22 other law, the listing of a tribal cultural site on a national, state,
23 tribal, or local historic register on or after the date the preliminary
24 application was submitted shall not be deemed to be a change to
25 the ordinances, policies, and standards adopted and in effect at the
26 time that the preliminary application was submitted.

27 (g) This section shall remain in effect only until January 1, 2030,
28 and as of that date is repealed.

29 ~~SEC. 2.~~

30 *SEC. 3.* Section 65943.1 is added to the Government Code, to
31 read:

32 65943.1. (a) A public agency that determines an application
33 for a housing development project is complete pursuant to Section
34 65943 shall provide the development proponent with an itemized
35 list and total sum amount of all fees and exactions that will apply
36 to the project ~~with~~ *within 10 days of* its formal determination of
37 completeness transmitted to the applicant.

38 (b) For purposes of complying with subdivision (a), a public
39 agency that calculates fees using a cost recovery method to cover
40 administrative cost shall provide fee estimates for those cost

1 recovery fees based on the average amount of the fees imposed
2 on similar projects.

3 (c) For purposes of this section:

4 (1) (A) “Exaction” means any of the following:

5 (i) A construction excise tax.

6 (ii) A requirement that the housing development project provide
7 public art or an in-lieu payment.

8 (iii) Dedications of parkland or in-lieu fees imposed pursuant
9 to Section 66477.

10 (iv) A special tax levied on new housing units pursuant to the
11 Mello-Roos Community Facilities Act of 1982 (Chapter 2.5
12 (commencing with Section 53311) of Part 1 of Division 2 of Title
13 5).

14 (B) “Exaction” does not include fees or charges pursuant to
15 Section 66013 that are not imposed (i) in connection with issuing
16 or approving a permit for development or (ii) as a condition of
17 approval of a proposed development, as held in *Capistrano Beach*
18 *Water Dist. v. Taj Development Corp.* (1999) 72 Cal.App.4th 524.

19 (2) “Fee” means a fee or charge described in the Mitigation Fee
20 Act (Chapter 5 (commencing with Section 66000), Chapter 6
21 (commencing with Section 66010), Chapter 7 (commencing with
22 Section 66012), Chapter 8 (commencing with Section 66016), and
23 Chapter 9 (commencing with Section 66020)).

24 (3) “Housing development project” means a use consisting of
25 any of the following:

26 (A) Residential units only.

27 (B) Mixed-use developments consisting of residential and
28 nonresidential uses with at least two-thirds of the square footage
29 designated for residential use.

30 (C) Transitional housing or supportive housing.

31 (4) “Public agency” means a city, including a charter city, a
32 county, including a charter county, or special district.

33 ~~SEC. 3.~~

34 *SEC. 4.* The Legislature finds and declares all of the following:

35 (a) A recent study conducted by the Turner Center for Housing
36 Innovation at the University of California, Berkeley, found that
37 fees and exactions can amount to up to 18 percent of the median
38 home price, that these fees and exactions are extremely difficult
39 to estimate, and that fees and exactions continue to rise in
40 California while decreasing nationally. Further, escalating fee and

1 exaction costs make it more difficult for builders to deliver new
2 housing for sale or rent at affordable prices.

3 (b) Ensuring access to affordable housing is a matter of statewide
4 concern rather than a municipal affair as that term is used in Section
5 5 of Article XI of the California Constitution. Therefore, Section
6 4 2 of this act amending Section 65941.1 of the Government Code,
7 and Section—2 3 of this act adding Section 65943.1 to the
8 Government Code apply to all cities, including charter cities.

9 ~~SEC. 4.~~

10 SEC. 5. No reimbursement is required by this act pursuant to
11 Section 6 of Article XIII B of the California Constitution because
12 a local agency or school district has the authority to levy service
13 charges, fees, or assessments sufficient to pay for the program or
14 level of service mandated by this act, within the meaning of Section
15 17556 of the Government Code.

ASSEMBLY BILL

No. 2729

Introduced by Assembly Member Joe Patterson

February 15, 2024

An act to amend Section 66007 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

AB 2729, as introduced, Joe Patterson. Residential fees and charges.

Existing law prohibits a local agency that imposes fees or charges on a residential development for the construction of public improvements or facilities from requiring the payment of those fees or charges until the date of the final inspection or the date the certificate of occupancy is issued, whichever occurs first, except that the payment may be required sooner if the local agency determines that the fees or charges will be collected for public improvements or facilities for which an account has been established and funds appropriated and for which the local agency has adopted a proposed construction schedule or plan prior to final inspection or issuance of the certificate of occupancy, or if the fees or charges are to reimburse the local agency for expenditures previously made.

This bill would delete the above-described authorization for a local agency to require payment of fees or charges prior to the date of final inspection or issuance of the certificate of occupancy, whichever occurs first.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 66007 of the Government Code is amended to read:

66007. (a) Except as otherwise provided in ~~subdivisions (b) and (g); subdivision (e)~~, any local agency that imposes any fees or charges on a residential development for the construction of public improvements or facilities shall not require the payment of those fees or charges, notwithstanding any other provision of law, until the date of the final inspection, or the date the certificate of occupancy is issued, whichever occurs first. However, utility service fees may be collected at the time an application for utility service is received. If the residential development contains more than one dwelling, the local agency may determine whether the fees or charges shall be paid on a pro rata basis for each dwelling when it receives its final inspection or certificate of occupancy, whichever occurs first; on a pro rata basis when a certain percentage of the dwellings have received their final inspection or certificate of occupancy, whichever occurs first; or on a lump-sum basis when the first dwelling in the development receives its final inspection or certificate of occupancy, whichever occurs first.

~~(b) (1) Notwithstanding subdivision (a), the local agency may require the payment of those fees or charges at an earlier time if (A) the local agency determines that the fees or charges will be collected for public improvements or facilities for which an account has been established and funds appropriated and for which the local agency has adopted a proposed construction schedule or plan prior to final inspection or issuance of the certificate of occupancy or (B) the fees or charges are to reimburse the local agency for expenditures previously made. "Appropriated," as used in this subdivision, means authorization by the governing body of the local agency for which the fee is collected to make expenditures and incur obligations for specific purposes.~~

~~(2) (A) Paragraph (1) does not apply to units reserved for occupancy by lower income households included in a residential development proposed by a nonprofit housing developer in which at least 49 percent of the total units are reserved for occupancy by lower income households, as defined in Section 50079.5 of the Health and Safety Code, at an affordable rent, as defined in Section 50053 of the Health and Safety Code. In addition to the contract~~

1 that may be required under subdivision (c), a city, county, or city
2 and county may require the posting of a performance bond or a
3 letter of credit from a federally insured, recognized depository
4 institution to guarantee payment of any fees or charges that are
5 subject to this paragraph. Fees and charges exempted from
6 paragraph (1) under this paragraph shall become immediately due
7 and payable when the residential development no longer meets
8 the requirements of this paragraph.

9 (B) The exception provided in subparagraph (A) does not apply
10 to fees and charges levied pursuant to Chapter 6 (commencing
11 with Section 17620) of Part 10.5 of Division 1 of Title 1 of the
12 Education Code.

13 (c)

14 (b) (1) If any fee or charge specified in subdivision (a) is not
15 fully paid prior to issuance of a building permit for construction
16 of any portion of the residential development encumbered thereby,
17 the local agency issuing the building permit may require the
18 property owner, or lessee if the lessee's interest appears of record,
19 as a condition of issuance of the building permit, to execute a
20 contract to pay the fee or charge, or applicable portion thereof,
21 within the time specified in subdivision (a). If the fee or charge is
22 prorated pursuant to subdivision (a), the obligation under the
23 contract shall be similarly prorated.

24 (2) The obligation to pay the fee or charge shall inure to the
25 benefit of, and be enforceable by, the local agency that imposed
26 the fee or charge, regardless of whether it is a party to the contract.
27 The contract shall contain a legal description of the property
28 affected, shall be recorded in the office of the county recorder of
29 the county and, from the date of recordation, shall constitute a lien
30 for the payment of the fee or charge, which shall be enforceable
31 against successors in interest to the property owner or lessee at the
32 time of issuance of the building permit. The contract shall be
33 recorded in the grantor-grantee index in the name of the public
34 agency issuing the building permit as grantee and in the name of
35 the property owner or lessee as grantor. The local agency shall
36 record a release of the obligation, containing a legal description
37 of the property, in the event the obligation is paid in full, or a partial
38 release in the event the fee or charge is prorated pursuant to
39 subdivision (a).

(3) The contract may require the property owner or lessee to provide appropriate notification of the opening of any escrow for the sale of the property for which the building permit was issued and to provide in the escrow instructions that the fee or charge be paid to the local agency imposing the same from the sale proceeds in escrow prior to disbursing proceeds to the seller.

~~(d)~~

(c) This section applies only to fees collected by a local agency to fund the construction of public improvements or facilities. It does not apply to fees collected to cover the cost of code enforcement or inspection services, or to other fees collected to pay for the cost of enforcement of local ordinances or state law.

~~(e)~~

(d) “Final inspection” or “certificate of occupancy,” as used in this section, have the same meaning as described in Sections 305 and 307 of the Uniform Building Code, International Conference of Building Officials, 1985 edition.

~~(f) Methods of complying with the requirement in subdivision (b) that a proposed construction schedule or plan be adopted, include, but are not limited to, (1) the adoption of the capital improvement plan described in Section 66002, or (2) the submittal of a five-year plan for construction and rehabilitation of school facilities pursuant to subdivision (c) of Section 17017.5 of the Education Code.~~

~~(g)~~

(e) A local agency may defer the collection of one or more fees up to the close of escrow. This subdivision shall not apply to fees and charges levied pursuant to Chapter 6 (commencing with Section 17620) of Part 10.5 of Division 1 of Title 1 of the Education Code.

Introduced by Senator Wiener
(Coauthor: Assembly Member Grayson)

January 17, 2024

An act to amend Sections 66000, 66007, and 66013 of, and to add Section 65914.6 to, the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

SB 937, as introduced, Wiener. Development projects: permits and other entitlements: fees and charges.

The Planning and Zoning Law requires each county and each city to adopt a comprehensive, long-term general plan for its physical development, and the development of specified land outside its boundaries, that includes, among other mandatory elements, a housing element. Existing law, the Permit Streamlining Act, among other things, requires a public agency that is the lead agency for a development project to approve or disapprove that project within specified time periods. Existing law extended by 18 months the period for the expiration, effectuation, or utilization of a housing entitlement, as defined, that was issued before, and was in effect on, March 4, 2020, and that would expire before December 31, 2021, except as specified. Existing law provides that if the state or a local agency extended the otherwise applicable time for the expiration, effectuation, or utilization of a housing entitlement for not less than 18 months, as specified, that housing entitlement would not be extended an additional 18 months pursuant to these provisions.

This bill would extend by 18 months the period for the expiration, effectuation, or utilization of a housing entitlement, as defined, that was issued before January 1, 2024, and that will expire before December 31, 2025, except as specified. The bill would toll this 18-month

extension during any time that the housing entitlement is the subject of a legal challenge. By adding to the duties of local officials with respect to housing entitlements, this bill would impose a state-mandated local program. The bill would include findings that changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities.

The Mitigation Fee Act regulates fees for development projects, fees for specific purposes, including water and sewer connection fees, and fees for solar energy systems, among others. The act, among other things, requires local agencies, as defined, to comply with various conditions when imposing fees, extractions, or charges as a condition of approval of a proposed development or development project. The act defines fee to mean a monetary exaction other than a tax or special assessment that is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project. The act exempts certain fees from this definition, including a fee paid or land dedicated for park or recreational purposes as a condition to the approval of a tentative map or parcel map, as specified.

This bill would remove that exception. The bill would specify that water districts and sanitation districts are included in the definition of a local agency for purposes of the act.

The act prohibits a local agency that imposes fees or charges on a residential development for the construction of public improvements or facilities from requiring the payment of those fees or charges until the date of the final inspection or the date the certificate of occupancy is issued, whichever occurs first. The act authorizes a local agency to require the payment sooner if specified conditions are met, including if the fees or charges are to reimburse the local agency for expenditures previously made. The act exempts units reserved for occupancy by lower income households included in a residential development proposed by a nonprofit housing developer, as specified, from the authorization to require an earlier payment, but authorizes a city or county to require for those exempt units the posting of a performance bond or a letter of credit from a federally insured, recognized depository institution to guarantee payment of any fees or charges. The act, if a fee or charge is not fully paid prior to issuance of a building permit for construction, authorizes the local agency to require the property owner to execute a contract to pay the fee or charge, as specified.

This bill would instead prohibit a local agency from requiring the payment of those fees or charges until the date the certificate of occupancy is issued, and would prohibit the local agency from charging interest or other fees on any amount deferred. The bill would remove the authorization for a local agency to require the payment sooner if the fees or charges are to reimburse the local agency for expenditures previously made. The bill would revise the exemption from earlier payment for units reserved for occupancy by lower income households by a nonprofit housing developer to be those by an affordable housing developer, as specified, and would repeal the authorization for a city or county to require the posting of a performance bond or a letter of credit for those exempt units. The bill would repeal the authorization of the local agency to require the property owner to execute a contract to pay the fee or charge, and would instead authorize the local agency to withhold the certificate of occupancy until the fees and charges are paid.

Existing law prohibits a local agency from imposing fees for water connections or sewer connections, or capacity charges, that exceed the estimated reasonable cost of providing the service, and specifies that those fees or charges are not subject to the specified provisions of the act applicable to development projects, including requiring local agencies to comply with certain requirements when imposing fees, extractions, or charges as a condition of approval of a proposed development or development project.

This bill would provide that those fees or charges are subject to specified provisions of the act. By requiring local agencies to comply with specified requirements when imposing fees, extractions, or charges as a condition of approval of a proposed development or development project, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 65914.6 is added to the Government Code, to read:

65914.6. (a) Except as provided in subdivision (b), notwithstanding any law, including any inconsistent provision of a local agency's general plan, ordinances, or regulations, the otherwise applicable time for the expiration, effectuation, or utilization of a housing entitlement that is within the scope of the timeframes specified in paragraphs (1) and (2) is extended by 18 months. For the purposes of this section, housing entitlements that are extended are entitlements where both of the following apply:

(1) It was issued prior to and was in effect on January 1, 2024.

(2) It will expire prior to December 31, 2025.

The otherwise applicable time for the utilization of a housing entitlement provided by this section includes any requirement to request the issuance of a building permit within a specified period of time.

(b) If the state or a local agency extends, on or after January 1, 2024, but before the effective date of the act adding this section, the otherwise applicable time for the expiration, effectuation, or utilization of a housing entitlement for not less than 18 months and pursuant to the same conditions provided in subdivision (a), that housing entitlement shall not be extended for an additional 18 months by operation of subdivision (a).

(c) For purposes of this section, the following definitions apply:

(1) "Housing entitlement" means any of the following:

(A) A legislative, adjudicative, administrative, or any other kind of approval, permit, or other entitlement necessary for, or pertaining to, a housing development project issued by a state agency.

(B) An approval, permit, or other entitlement issued by a local agency for a housing development project that is subject to Chapter 4.5 (commencing with Section 65920).

(C) A ministerial approval, permit, or entitlement by a local agency required as a prerequisite to issuance of a building permit for a housing development project.

(D) A requirement to submit an application for a building permit within a specified period of time after the effective date of a housing entitlement described in subparagraph (B) or (C).

1 (E) A vested right associated with an approval, permit, or other
2 entitlement described in subparagraphs (A) to (D), inclusive.

3 (2) For the purposes of this section, a housing entitlement does
4 not include any of the following:

5 (A) A development agreement issued pursuant to Article 2.5
6 (commencing with Section 65864).

7 (B) An approved or conditionally approved tentative map that
8 is extended for a minimum of 18 months pursuant to Section
9 66452.6 on or after January 1, 2024.

10 (C) A preliminary application as defined in Section 65941.1.

11 (3) “Housing development project” means a residential
12 development or mixed-use development in which at least two-thirds
13 of the square footage of the development is designated for
14 residential use. Both of the following apply for the purposes of
15 calculating the square footage usage of a development for purposes
16 of this section:

17 (A) The square footage of a development shall include any
18 additional density, floor area, and units, and any other concession,
19 incentive, or waiver of development standards pursuant to Section
20 65915.

21 (B) The square footage of a development shall not include any
22 underground space, including, but not limited to, a basement or
23 underground parking garage.

24 (4) “Local agency” means a county, city, whether general law
25 or chartered, city and county, school district, special district,
26 authority, agency, any other municipal public corporation or
27 district, or other political subdivision of the state.

28 (d) The extension granted pursuant to subdivision (a) shall be
29 tolled during any time that the housing entitlement is the subject
30 of a legal challenge.

31 (e) Nothing in this section is intended to preclude a local
32 government from exercising its existing authority to provide an
33 extension to an entitlement identified in this section.

34 (f) The Legislature finds and declares that this section addresses
35 a matter of statewide concern rather than a municipal affair as that
36 term is used in Section 5 of Article XI of the California
37 Constitution. Therefore, this section applies to all cities, including
38 charter cities.

39 SEC. 2. Section 66000 of the Government Code is amended
40 to read:

1 66000. As used in this chapter, the following terms have the
2 following meanings:

3 (a) “Development project” means any project undertaken for
4 the purpose of development. “Development project” includes a
5 project involving the issuance of a permit for construction or
6 reconstruction, but not a permit to operate.

7 (b) “Fee” means a monetary exaction other than a tax or special
8 assessment, whether established for a broad class of projects by
9 legislation of general applicability or imposed on a specific project
10 on an ad hoc basis, that is charged by a local agency to the
11 applicant in connection with approval of a development project
12 for the purpose of defraying all or a portion of the cost of public
13 facilities related to the development project, but does not include
14 ~~fees specified in Section 66477~~, fees for processing applications
15 for governmental regulatory actions or approvals, fees collected
16 under development agreements adopted pursuant to Article 2.5
17 (commencing with Section 65864) of Chapter 4, or fees collected
18 pursuant to agreements with redevelopment agencies that provide
19 for the redevelopment of property in furtherance or for the benefit
20 of a redevelopment project for which a redevelopment plan has
21 been adopted pursuant to the Community Redevelopment Law
22 (Part 1 (commencing with Section 33000) of Division 24 of the
23 Health and Safety Code).

24 (c) “Local agency” means a county, city, whether general law
25 or chartered, city and county, school district, special district,
26 authority, agency, any other municipal public corporation or
27 district, *including, but not limited to, water districts and sanitation*
28 *districts*, or other political subdivision of the state.

29 (d) “Public facilities” includes public improvements, public
30 services, and community amenities.

31 SEC. 3. Section 66007 of the Government Code is amended
32 to read:

33 66007. (a) Except as otherwise provided in subdivisions (b)
34 and (g), any local agency that imposes any fees or charges on a
35 residential development for the construction of public
36 improvements or facilities shall not require the payment of those
37 fees or charges, notwithstanding any other provision of law, until
38 ~~the date of the final inspection, or the date the certificate of~~
39 ~~occupancy is issued, whichever occurs first. However, utility~~
40 ~~service fees may be collected at the time an application for utility~~

~~service is received.~~ issued. If the residential development contains more than one dwelling, the local agency may determine whether the fees or charges shall be paid on a pro rata basis for each dwelling when it receives its ~~final inspection or~~ certificate of occupancy, ~~whichever occurs first;~~ occupancy, on a pro rata basis when a certain percentage of the dwellings have received their ~~final inspection or~~ certificate of occupancy, ~~whichever occurs first;~~ occupancy, or on a lump-sum basis when ~~all the first dwelling dwellings~~ in the development ~~receives its final inspection or receive~~ their certificate of occupancy, ~~whichever occurs first.~~ occupancy. For development projects that meet the conditions in subparagraph (A) of paragraph (2) of subdivision (b), the amount due and payable for the fees and charges when the development receives its certificate of occupancy shall be the same amount as would have been paid had the fees and charges been paid prior to the issuance of building permits. The local agency shall not charge interest or other fees on any amount deferred.

(b) (1) Notwithstanding subdivision (a), the local agency may require the payment of those fees or charges at an earlier time if ~~(A)~~ the local agency determines that the fees or charges will be collected for public improvements or facilities for which an account has been established and funds appropriated and for which the local agency has adopted a proposed construction schedule ~~or plan~~ and commenced or will commence construction prior to final inspection or issuance of the certificate of occupancy ~~or (B) the fees or charges are to reimburse the local agency for expenditures previously made.~~ of the development project. “Appropriated,” as used in this subdivision, means authorization by the governing body of the local agency for which the fee is collected to make expenditures and incur obligations for specific purposes.

(2) (A) Paragraph (1) does not apply to units reserved for occupancy by lower income households included in a residential development proposed by ~~a nonprofit~~ an affordable housing developer in which at least 49 percent of the total units are reserved for occupancy by lower income households, as defined in Section 50079.5 of the Health and Safety Code, at an affordable rent, as defined in Section 50053 of the Health and Safety Code. ~~In addition to the contract that may be required under subdivision (c), a city, county, or city and county may require the posting of a performance bond or a letter of credit from a federally insured, recognized~~

1 depository institution to guarantee payment of any fees or charges
2 that are subject to this paragraph. Fees and charges exempted from
3 paragraph (1) under this paragraph shall become immediately due
4 and payable when the residential development no longer meets
5 the requirements of this paragraph.

6 (B) The exception provided in subparagraph (A) does not apply
7 to fees and charges levied pursuant to Chapter 6 (commencing
8 with Section 17620) of Part 10.5 of Division 1 of Title 1 of the
9 Education Code.

10 (c) ~~(1) If any fee or charge specified in subdivision (a) is not~~
11 ~~fully paid prior to issuance of a building permit for construction~~
12 ~~of any portion of the residential development encumbered thereby,~~
13 ~~the local agency issuing the building permit may require the~~
14 ~~property owner, or lessee if the lessee's interest appears of record,~~
15 ~~as a condition of issuance of the building permit, to execute a~~
16 ~~contract to pay the fee or charge, or applicable portion thereof,~~
17 ~~within the time specified in subdivision (a). If the fee or charge is~~
18 ~~prorated pursuant to subdivision (a), the obligation under the~~
19 ~~contract shall be similarly prorated. withhold certificate of~~
20 ~~occupancy for the development project until such fees and charges~~
21 ~~specified in subdivision (a) are fully paid.~~

22 ~~(2) The obligation to pay the fee or charge shall inure to the~~
23 ~~benefit of, and be enforceable by, the local agency that imposed~~
24 ~~the fee or charge, regardless of whether it is a party to the contract.~~
25 ~~The contract shall contain a legal description of the property~~
26 ~~affected, shall be recorded in the office of the county recorder of~~
27 ~~the county and, from the date of recordation, shall constitute a lien~~
28 ~~for the payment of the fee or charge, which shall be enforceable~~
29 ~~against successors in interest to the property owner or lessee at the~~
30 ~~time of issuance of the building permit. The contract shall be~~
31 ~~recorded in the grantor-grantee index in the name of the public~~
32 ~~agency issuing the building permit as grantee and in the name of~~
33 ~~the property owner or lessee as grantor. The local agency shall~~
34 ~~record a release of the obligation, containing a legal description~~
35 ~~of the property, in the event the obligation is paid in full, or a partial~~
36 ~~release in the event the fee or charge is prorated pursuant to~~
37 ~~subdivision (a).~~

38 ~~(3) The contract may require the property owner or lessee to~~
39 ~~provide appropriate notification of the opening of any escrow for~~
40 ~~the sale of the property for which the building permit was issued~~

1 and to provide in the escrow instructions that the fee or charge be
2 paid to the local agency imposing the same from the sale proceeds
3 in escrow prior to disbursing proceeds to the seller.

4 (d) This section applies only to fees collected by a local agency
5 to fund the construction of public improvements or facilities. It
6 does not apply to fees collected to cover the cost of code
7 enforcement or inspection services, or to other fees collected to
8 pay for the cost of enforcement of local ordinances or state law.

9 (e) “Final inspection” or “certificate of occupancy,” as used in
10 this section, have the same meaning as described in Sections 305
11 and 307 of the Uniform Building Code, International Conference
12 of Building Officials, 1985 edition.

13 (f) Methods of complying with the requirement in subdivision
14 (b) that a proposed construction schedule or plan be adopted,
15 include, but are not limited to, (1) the adoption of the capital
16 improvement plan described in Section 66002, or (2) the submittal
17 of a five-year plan for construction and rehabilitation of school
18 facilities pursuant to subdivision (c) of Section 17017.5 of the
19 Education Code.

20 (g) A local agency may defer the collection of one or more fees
21 up to the close of escrow. This subdivision shall not apply to fees
22 and charges levied pursuant to Chapter 6 (commencing with
23 Section 17620) of Part 10.5 of Division 1 of Title 1 of the
24 Education Code.

25 SEC. 4. Section 66013 of the Government Code is amended
26 to read:

27 66013. (a) Notwithstanding any other provision of law, when
28 a local agency imposes fees for water connections or sewer
29 connections, or imposes capacity charges, those fees or charges
30 shall not exceed the estimated reasonable cost of providing the
31 service for which the fee or charge is imposed, unless a question
32 regarding the amount of the fee or charge imposed in excess of
33 the estimated reasonable cost of providing the services or materials
34 is submitted to, and approved by, a popular vote of two-thirds of
35 those electors voting on the issue.

36 (b) As used in this section:

37 (1) “Sewer connection” means the connection of a structure or
38 project to a public sewer system.

1 (2) “Water connection” means the connection of a structure or
2 project to a public water system, as defined in subdivision (h) of
3 Section 116275 of the Health and Safety Code.

4 (3) “Capacity charge” means a charge for public facilities in
5 existence at the time a charge is imposed or charges for new public
6 facilities to be acquired or constructed in the future that are of
7 proportional benefit to the person or property being charged,
8 including supply or capacity contracts for rights or entitlements,
9 real property interests, and entitlements and other rights of the
10 local agency involving capital expense relating to its use of existing
11 or new public facilities. A “capacity charge” does not include a
12 commodity charge.

13 (4) “Local agency” means a local agency as defined in Section
14 66000.

15 (5) “Fee” means a fee for the physical facilities necessary to
16 make a water connection or sewer connection, including, but not
17 limited to, meters, meter boxes, and pipelines from the structure
18 or project to a water distribution line or sewer main, and the
19 estimated reasonable cost of labor and materials for installation of
20 those facilities bears a fair or reasonable relationship to the payor’s
21 burdens on, or benefits received from, the water connection or
22 sewer connection.

23 (6) “Public facilities” means public facilities as defined in
24 Section 66000.

25 (c) A local agency receiving payment of a charge as specified
26 in paragraph (3) of subdivision (b) shall deposit it in a separate
27 capital facilities fund with other charges received, and account for
28 the charges in a manner to avoid any commingling with other
29 moneys of the local agency, except for investments, and shall
30 expend those charges solely for the purposes for which the charges
31 were collected. Any interest income earned from the investment
32 of moneys in the capital facilities fund shall be deposited in that
33 fund.

34 (d) For a fund established pursuant to subdivision (c), a local
35 agency shall make available to the public, within 180 days after
36 the last day of each fiscal year, the following information for that
37 fiscal year:

38 (1) A description of the charges deposited in the fund.

39 (2) The beginning and ending balance of the fund and the
40 interest earned from investment of moneys in the fund.

1 (3) The amount of charges collected in that fiscal year.

2 (4) An identification of all of the following:

3 (A) Each public improvement on which charges were expended
4 and the amount of the expenditure for each improvement, including
5 the percentage of the total cost of the public improvement that was
6 funded with those charges if more than one source of funding was
7 used.

8 (B) Each public improvement on which charges were expended
9 that was completed during that fiscal year.

10 (C) Each public improvement that is anticipated to be undertaken
11 in the following fiscal year.

12 (5) A description of each interfund transfer or loan made from
13 the capital facilities fund. The information provided, in the case
14 of an interfund transfer, shall identify the public improvements on
15 which the transferred moneys are, or will be, expended. The
16 information, in the case of an interfund loan, shall include the date
17 on which the loan will be repaid, and the rate of interest that the
18 fund will receive on the loan.

19 (e) The information required pursuant to subdivision (d) may
20 be included in the local agency's annual financial report.

21 (f) The provisions of subdivisions (c) and (d) shall not apply to
22 any of the following:

23 (1) Moneys received to construct public facilities pursuant to a
24 contract between a local agency and a person or entity, including,
25 but not limited to, a reimbursement agreement pursuant to Section
26 66003.

27 (2) Charges that are used to pay existing debt service or which
28 are subject to a contract with a trustee for bondholders that requires
29 a different accounting of the charges, or charges that are used to
30 reimburse the local agency or to reimburse a person or entity who
31 advanced funds under a reimbursement agreement or contract for
32 facilities in existence at the time the charges are collected.

33 (3) Charges collected on or before December 31, 1998.

34 (g) Any judicial action or proceeding to attack, review, set aside,
35 void, or annul the ordinance, resolution, or motion imposing a fee
36 or capacity charge subject to this section shall be brought pursuant
37 to Section 66022.

38 (h) Fees and charges subject to this section are not subject to
39 the provisions of Chapter 5 (commencing with Section 66000),

1 ~~but~~ *except for Section 66007, and* are subject to the provisions of
2 Sections 66016, 66022, and 66023.

3 (i) Subdivisions (c) and (d) only apply to capacity charges levied
4 pursuant to this section.

5 SEC. 5. No reimbursement is required by this act pursuant to
6 Section 6 of Article XIII B of the California Constitution because
7 a local agency or school district has the authority to levy service
8 charges, fees, or assessments sufficient to pay for the program or
9 level of service mandated by this act, within the meaning of Section
10 17556 of the Government Code.

Introduced by Senator Skinner

February 15, 2024

An act to add Chapter 8 (commencing with Section 8395) to Division 4.1 of the Public Utilities Code, relating to utility service.

LEGISLATIVE COUNSEL'S DIGEST

SB 1210, as introduced, Skinner. New housing construction: electrical, gas, sewer, and water service connections: charges.

The California Constitution establishes the Public Utilities Commission, with jurisdiction over all public utilities. Existing law defines the term “public utility” for certain purposes to include, among other corporations, every gas corporation, electrical corporation, water corporation, and sewer system corporation, where the service is performed for, or the commodity is delivered to, the public or any portion thereof.

This bill would, for new housing construction, prohibit a connection, capacity, or other point of connection charge from a public utility, as defined, or a special district, as defined, for electrical, gas, sewer, or water service from exceeding 1% of the reported building permit value of that housing unit. The bill would require a public utility or special district to issue an above-described charge over a period of at least 10 years commencing on the date when the housing unit is first occupied, as specified. The bill would require a public utility to publicly report on its internet website the amount of any charge issued each year pursuant the above-described provision by the housing unit’s address. The bill would also require a public utility to prioritize the processing, approval, scheduling, and completion of electrical, gas, sewer, and water service connections to new housing construction over the processing, approval, scheduling, and completion of service connections to all other

structures. To the extent that this bill imposes new requirements on certain special districts, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 8 (commencing with Section 8395) is
2 added to Division 4.1 of the Public Utilities Code, to read:

3

4 CHAPTER 8. ELECTRICAL, GAS, SEWER, AND WATER CHARGES
5 FOR NEW HOUSING CONSTRUCTION

6

7 8395. As used in this chapter, the following definitions apply:

8 (a) "Public utility" means any of the following where the service
9 is performed for, or the commodity is delivered to, the public or
10 any portion thereof:

11 (1) An electrical corporation, as defined in Section 218.

12 (2) A gas corporation, as defined in Section 222.

13 (3) A sewer system corporation, as defined in Section 230.6.

14 (4) A water corporation, as defined in Section 241.

15 (b) "Special district" means an agency of the state formed for
16 the performance of governmental or proprietary functions within
17 limited geographic boundaries.

18 8396. (a) For new housing construction, a connection, capacity,
19 or other point of connection charge from a public utility or special
20 district for electrical, gas, sewer, or water service shall not exceed
21 1 percent of the reported building permit value of that housing
22 unit.

23 (b) A public utility or special district shall issue any charge
24 described in subdivision (a) over a period of at least 10 years
25 commencing on the date when the housing unit is first occupied.

1 If the housing unit is sold before the expiration of that period, the
2 subsequent owners of the housing unit shall continue paying the
3 charge over the remainder of that period.

4 8397. A public utility shall prioritize the processing, approval,
5 scheduling, and completion of electrical, gas, sewer, and water
6 service connections to new housing construction over the
7 processing, approval, scheduling, and completion of service
8 connections to all other structures.

9 8398. For new housing construction, a public utility shall
10 publicly report on its internet website the amount of any charge
11 issued each year pursuant to Section 8396 by the housing unit's
12 address.

13 SEC. 2. If the Commission on State Mandates determines that
14 this act contains costs mandated by the state, reimbursement to
15 local agencies and school districts for those costs shall be made
16 pursuant to Part 7 (commencing with Section 17500) of Division
17 4 of Title 2 of the Government Code.

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BOARD ACTION

Agenda Number:	8.	Meeting Date:	March 12, 2024
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TITLE**CONSIDERATION OF AMENDMENTS TO THE EAST BAY MUNICIPAL UTILITY DISTRICT CAMPAIGN FINANCE REFORM ORDINANCE NO. 316 (SECOND READING)****ACTION**☐ Motion:☐ Resolution:☒ Ordinance:**RECOMMENDED ACTION**

Consider a second reading of amendments to East Bay Municipal Utility District Campaign Finance Reform Ordinance No. 316.

SUMMARY

The District's Campaign Finance Reform Ordinance (CFRO) was enacted in 1992 and has been amended several times to reflect changes in federal and state law, including the California Political Reform Act of 1974 (PRA) and the California Election Code. It was last updated in January 2010. Since that time, there have been changes in the PRA and its implementing regulations that are recommended for incorporation into the CFRO. In addition, the Office of General Counsel (OGC) has edited definitions and text in the CFRO for clarity and consistency. Proposed revisions to the CFRO are shown on Exhibit A. They are discussed below and are based on the review and recommendations of OGC, outside counsel with expertise in campaign finance law, and input from the Legislative/Human Resources Committee, which met and considered revisions to the CFRO on January 9, 2024 and February 13, 2024, and the full Board of Directors (Board) on February 13, 2024.

At the Regular Board meeting on February 27, 2024, the Board conducted a first reading of proposed amendments to the CFRO and raised several alternative potential amendments for further discussion. The Board will be asked to discuss proposed amendments and provide further direction to the General Counsel during a second reading of the CFRO at the March 12, 2024 Regular Board meeting. The expected primary topics for consideration by the Board are listed on page 5 of this document and discussed more fully below.

DISCUSSION

The proposed revisions to the CFRO reflect the new applicability of the Levine Act (Government Code section 84308) to local elected officials, Fair Political Practice Commission (FPPC) rules on advertising disclosures, and edits for additional clarity and consistent use of terminology. The specific revisions to each paragraph are discussed below.

Additional revisions have been made based on input and direction received from the Legislative/Human Resources Committee on January 9, 2024 and February 13, 2024. These include increases to contributions limits and eliminating the ban on contractors who have violated the CFRO, replacing it with a mandatory Board member recusal provision.

At the February 27, 2024 Regular Board meeting, the Board discussed the proposed revisions and deferred additional discussion and decisions to the March 12, 2024 Regular Board meeting. Topics for additional discussion are outlined below and listed on page 5.

Originating Department: Office of General Counsel	Department Director or Manager: Derek McDonald	CEP Forms? N/A	Board Action Type: Administrative
Funds Available: N/A	Budget Coding: N/A		Approved: 
Attachment(s): Proposed Revisions to East Bay Municipal Utility District Campaign Finance Reform Ordinance			

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Recitals

Minor clarifying edits have been made to the Recitals.

Paragraph I, "Findings and Declarations," and Paragraph II, "Purpose of this Ordinance"

No changes are being recommended for Paragraphs I or II.

Paragraph III, "Definitions"

The definitions in this paragraph were reorganized alphabetically for ease of reference. Minor changes are being recommended to clarify certain definitions, such as stating that the fair rental value of a premises is not to be included in calculating the costs of holding a fundraising event in a person's home or office when reporting the value of the fundraising event as a "contribution."

Several changes are recommended for the definition of a "Qualified Campaign Expenditure." The words "broadcast or print" have been removed as a qualifier for communications costs to reflect the nature of modern media. The limitation of "by name or image" has been removed as a reference to identification of campaign communications based on FPPC advice that any identification of a candidate qualifies as a communication in connection to election to a future term of office.

The definition of a "small contributor committee" has been updated to more clearly match that stated in the PRA.

Paragraph IV, "Campaign Contribution Limitations"

Paragraph IV.1.a, "Limitations on Contributions from Persons"

When last amended in 2010, the CFRO provided a contribution limit from persons of \$600, to be adjusted annually based on the Consumer Price Index (CPI). Today the limit, after CPI adjustments since 2010, is \$890. At the February 13, 2024 Legislative/Human Resources Committee meeting, Committee members recommended the limit be increased to \$1,000.

At the February 27, 2024 Regular Board meeting, some Board members suggested raising the contribution limit from persons to \$2,500. The Board did not reach resolution on this issue and so it will be discussed at the March 12, 2024 Regular Board meeting.

As a minor revision, it is also recommended that the CFRO mandate publishing of the contribution limit from persons biennially on the District's website, as reflected in the draft CFRO language.

Paragraph IV.1.e (Personal Loans)

The CFRO does not have a limit on candidate's contribution of their own personal funds to a campaign, including personal funds a candidate receives from a loan from a commercial lending institution. (See Paragraph IV.1.d.) However, the CFRO does have a \$10,000 limit on the amount a candidate may loan to their campaign from personal funds. At the February 27, 2024 Regular Board meeting, a Board member requested that the Board consider raising this limit on personal loans. The California statutory limits for a city or county candidate's outstanding personal loans to the candidate's own committee is \$100,000 at any time,

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including funds obtained by the candidate from commercial loans. This will be a topic of discussion at the March 12, 2024 Regular Board meeting.

Paragraph IV.2, “Limitations on Contributions from Small Contributor Committees”

In 2010 the CFRO set a \$1,200 limit for contributions from Small Contributor Committees and did not provide for CPI adjustments. At the February 13, 2024 Legislative/Human Resources Committee meeting, Committee members recommended that this limit be raised to \$2,000, which is double the recommended new limit for persons, and is a common standard for local jurisdictions.

At the February 27, 2024 Regular Board meeting, some Board members suggested raising the contribution limit for small contributor committees to \$5,000. The Board did not reach resolution on this issue and so it will be discussed at the March 12, 2024 Regular Board meeting.

Additionally, draft language has been added to Paragraph IV.2 to reflect outside counsel’s recommendation that the contribution limit for Small Contributor Committees be adjusted biennially based on the CPI, and that the adjustment be published on the District’s website.

Paragraph IV.4, “Prohibition on Contributions from Contractors Doing Business With the District”

Paragraph IV.4 of the CFRO prohibits contributions from any person submitting bids for or contracting with the District for contracts “not subject to the competitive bidding process,” meaning contracts that are not required to be awarded to the low bidder. In 2022, the Levine Act was amended to apply to officials of agencies with elected governing bodies. The Levine Act (Government Code section 84308) prohibits an officer of the agency from accepting, soliciting, or directing a contribution of more than \$250 from any “party” or “participant” with a matter pending before the agency involving a license, permit, entitlement, or contract, both during the matter’s pendency and for 12 months following. Paragraph IV.4 of the CFRO has been amended with a recommended addition to explicitly state that Section 84308 now applies to the District in addition to the prohibitions of the CFRO.

Paragraphs IV.4.b and c were amended, for the Board’s consideration, to clarify that contributions from any persons contracting with the District are prohibited, not just those that are not subject to the competitive bidding process. This is similar to the Levine Act’s applicability to contributions above \$250 from contractors, but is not a requirement of the PRA. Therefore, the Board may choose to continue to apply the zero-dollar limit to only contracts subject to Board approval.

Paragraph IV.4.d of the CFRO currently bars any person who makes a contribution in violation of the CFRO from contracting with the District for one year from the date of the violation. At the January 9, 2024 Legislative/Human Resources Committee meeting, Committee members expressed a concern that this ban on contracting could present operational problems to the District if it prevented the District from obtaining necessary contractor services. OGC presented the Committee with options for altering this paragraph at the February 13, 2024 Legislative/Human Resources Committee. Based on this discussion, the Committee

Title:	Consideration of Amendments to EBMUD Campaign Finance Reform Ordinance No. 316 (Second Reading)	Meeting Date:	March 12, 2024
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recommended that the ban be replaced by alternatives similar to those in the Levine Act. Under the proposed revisions, a person submitting a proposal for a contract must disclose any candidate contributions within 72 hours of making the contribution. A Board member who has received a contribution may recuse themselves from participation in the consideration of the contract or, if the contribution was received before the Board member knew of the contract, may return the contribution within 30 days and participate in the contract approval proceeding.

At the February 27, 2024 Regular Board meeting, some Board members expressed a desire to maintain the contractor ban as is. A Board member has also suggested that a provision be added to the CFRO requiring a Board member to return any contribution given in violation of Paragraph IV.4, and to allow for censure of Board members who repeatedly accept contributions in violation of Paragraph IV.4. The Board has not reach resolution on proposed revisions to Paragraph IV.4 and so they will be discussed at the March 12, 2024 Regular Board meeting.

Paragraph IV.6, "Post-Election Fundraising"

This paragraph states that a candidate may only accept contributions post-election to the extent the contributions do not exceed "net debts outstanding" for the election, and has been amended with recommended updates that clarify the definition of "net debts outstanding from the election" by separately defining the component definitions of "outstanding debts" and "assets."

Paragraph V.4, "Amount of Expenditure Ceiling"

Paragraph V.4 has been amended with a recommended increase in the voluntary expenditure limit from \$0.53 (fifty-three cents) to \$0.80 (eighty cents) per ward resident to reflect CPI adjustments since the CFRO was last updated. Additionally, recommended language has been added to clarify that the ceiling shall be adjusted biennially and published on the District's website.

Paragraph VII, "Independent Expenditures in District Elections"

Paragraph VII has been edited with recommended updates for compliance with FPPC requirements for advertisement disclaimers. The amount of \$5,000 is included as the recommended threshold for the identification of top contributors.

Recommended Revisions throughout the CFRO

Certain revisions are recommended for adoption that appear throughout the CFRO. The term "he or she" has been replaced with the more inclusive, nonbinary "their." References to the PRA have been updated for consistency. References to the "San Francisco/Oakland Consumer Price Index for Urban Wage Earners and Clerical Workers" have been changed to the "San Francisco-Oakland-Hayward Consumer Price Index for Urban Consumers" to reflect the correct name for the CPI region and the fact that the broader CPI-U covers 93 percent of the population whereas the CPI-W covers only 29 percent.

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Conclusion

At the March 12, 2024 Regular Board meeting, the Board will be asked to consider these major topics:

- Establish a new limitation on contributions from persons (Paragraph IV.1.a).
- Consider raising the \$10,000 limit on a candidate's personal loans to their campaign (Paragraph IV.1.e).
- Establish a new limitation on contributions from small contributor committees (Paragraph IV.2).
- Consider revisions to contractor contribution prohibitions of Paragraph IV.4:
 - Apply to any District contractor for contracts not subject to low-bid processes, not just contracts approved by the Board.
 - Maintain existing ban on contractors who have violated Paragraph IV.4, or mandate Board member recusal instead.
 - Require a Board member to return any contribution received in violation of Paragraph IV.4.
 - Provide for Board censure of any Board member who repeatedly accepts contributions in violation of Paragraph IV.4.

SUSTAINABILITY

Economic

Revisions to the CFRO will not have an economic impact on the District.

Social

The intent of the CFRO is to provide equal opportunities for all candidates to participate in District elections, and to ensure that all business conducted by the Board is free of unlawful influence.

Environmental

Revisions to the CFRO will not have an environmental impact.

ALTERNATIVE

Do not adopt amendments to the CFRO. This alternative is not recommended because certain changes to the CFRO, as outlined above, reflect compliance with updates to the PRA.

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EAST BAY MUNICIPAL UTILITY DISTRICT CAMPAIGN FINANCE REFORM ORDINANCE

BE IT ENACTED by the Board of Directors of East Bay Municipal Utility District that this Ordinance is adopted as the policy of East Bay Municipal Utility District setting forth that:

Campaigns for election to the Board of Directors of the East Bay Municipal Utility District be conducted fairly and that each candidate for election to the District Board be aware of the District's commitment to fair campaigns.

Candidates for election to the Board of Directors of the East Bay Municipal Utility District be permitted to accumulate the resources necessary to effectively advocate and to campaign for election to the Board.

Campaigns for election to the Board of Directors of the East Bay Municipal Utility District be free of corruption or the appearance of corruption.

Campaigns for election to the Board of Directors of East Bay Municipal Utility District be free from improper influence stemming from the dependence of candidates on large campaign contributions.

Campaign contributions be reasonably limited so as to not unduly infringe upon the First Amendment rights of political expression and association and not have a significant adverse effect on the funding of campaigns for District office.

The contribution limits set forth herein shall apply for each election to the Board of Directors of the East Bay Municipal Utility District.

I. FINDINGS AND DECLARATIONS

The Board of Directors of the East Bay Municipal Utility District find and declare each of the following:

- (a) Monetary contributions to political campaigns are a legitimate form of participation in the American political process. However, disproportionately large contributions from certain persons or organizations may lead to a perception that they exercise a disproportionate or controlling influence upon candidates.
- (b) The increasing costs of political campaigns compel many candidates to raise larger percentages of money from interest groups with a specific financial stake in matters which may come before the Board of Directors. This has caused a public perception that votes may be improperly influenced by monetary contributions.
- (c) The tendency for campaign contributions to be dominated by a small number of very large contributors undermines the integrity of the

governmental process, the competitiveness of campaigns, and the public's confidence in local officials and local agencies.

II. PURPOSE OF THIS ORDINANCE

The Board of Directors enacts this Ordinance to accomplish the following purposes:

- (a) To improve methods of financing campaigns in order to ensure the public's right-to-know, combat corruption and undue influence, and promote citizen participation in the political process.
- (b) To prevent parties with a specific financial interest in the District's decisions from exerting undue influence over those decisions by means of large campaign contributions.
- (c) To improve the disclosure of contribution sources in reasonable and effective ways.
- (d) To restore public trust in governmental and electoral institutions.

III. DEFINITIONS

1. Unless otherwise specifically provided in this Ordinance or required by the context, the words and phrases in this Ordinance shall have the same meanings as in the ~~California Elections Code and in the~~ Political Reform Act of 1974 as amended (Government Code section 81000 *et seq.*, hereafter "Political Reform Act") and regulations adopted thereunder by the Fair Political Practices Commission (hereafter "FPPC").
2. "Candidate" means a candidate for election to the Board of Directors of the East Bay Municipal Utility District, or an incumbent who holds that office.
3. "Contribution" has the same meaning as in the Political Reform Act of 1974, Government Code section 82015, and includes a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received unless or if it is clear from the surrounding circumstances that ~~it~~ the payment is not made for political purposes. A non-monetary contribution shall be valued at the true or estimated fair market value of the goods, services, or facilities contributed to the campaign. A fair market value is the price that a person would be required to pay to acquire the same goods or services or facilities in the open market place.

The term "contribution" does not include a payment made by an occupant of a home or office for costs related to any meeting or fundraising event held in the occupant's home or office if the total costs for the meeting or fundraising event are five hundred dollars (\$500) or less, exclusive of the fair rental value of the premises; nor does it include volunteer personal services or payments

made by any individual for ~~his or her~~their own travel expenses if such payments are made voluntarily without any understanding or agreement that they shall be, directly or indirectly, repaid ~~for such expenses~~to him or her.

A contribution to the committee designated by the candidate for ~~his or her~~their election to the District ~~Board of Directors~~ is deemed a contribution to the candidate.

4. “District” means the East Bay Municipal Utility District.

5. “Expenditure” has the same meaning as in the Political Reform Act of 1974, Government Code section 82025 and includes a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment, unless it is clear from surrounding circumstances that it is not made for political purposes. “Expenditure” does not include a candidate’s use of ~~his or her~~their own money to pay for either a filing fee for a declaration of candidacy or a candidate statement prepared pursuant to Section 13307 of the Elections Code. An expenditure is made on the date the payment is made or on the date consideration, if any, is received, whichever is earlier.

6. “Officeholder expenses” means those expenditures that arise out of the performance of the officeholder’s official duties, directly assist the officeholder in performing ~~his or her~~those official duties, or are directly related to a governmental purpose. Officeholder expenses include, ~~but are not limited to:~~

(a) Donations to charitable organizations;

(b) Cost of tickets to political or community events;

(c) Postage, office supplies, stationery and similar expenses related to the conduct or performance of the officeholder’s governmental activities and duties;

(d) Reasonable expenses for travel to conferences, seminars, educational events or similar activities related to the officeholder’s position; or

(e) Costs of books or publications reasonably related to the officeholder’s position.

The expenses listed in (a) through (e) shall be considered officeholder expenses as long as they are not used in connection with the candidate’s election to a future term of office.

~~3.1. “Small Contributor Committee” means a committee of persons that has been in existence for more than six months and within 36 months before making a contribution has received contributions from 100 or more persons of no more than \$200 per person per calendar year and has made contributions to five or~~

~~more candidates of at least \$25 each. For purposes of this paragraph, the term “Candidate” shall have the same meaning as in the Political Reform Act of 1974 (Government Code Section 82007).~~

~~4.1. “District” means the East Bay Municipal Utility District.~~

~~5.1. “Contribution” has the same meaning as in the Political Reform Act of 1974, Government Code section 82015, and includes a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received unless it is clear from the surrounding circumstances that it is not made for political purposes. A non-monetary contribution shall be valued at the true or estimated fair market value of the goods, services, or facilities contributed to the campaign. A fair market value is the price that a person would be required to pay to acquire the same goods or services in the open market place.~~

~~The term “contribution” does not include a payment made by an occupant of a home or office for costs related to any meeting or fundraising event held in the occupant’s home or office if the costs for the meeting or fundraising event are five hundred dollars (\$500) or less; nor does it include volunteer personal services or payments made by any individual for his or her own travel expenses if such payments are made voluntarily without any understanding or agreement that they shall be, directly or indirectly, repaid to him or her.~~

~~A contribution to the committee designated by the candidate for his or her election to the District board is deemed a contribution to the candidate.~~

~~6.7. “Person” means an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, limited liability company, corporation, association, committee, and any other organization or group of persons acting in concert.~~

~~7.1. “Expenditure” has the same meaning as in the Political Reform Act of 1974, Government Code section 82025 and includes a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment, unless it is clear from surrounding circumstances that it is not made for political purposes. “Expenditure” does not include a candidate’s use of his or her own money to pay for either a filing fee for a declaration of candidacy or a candidate statement prepared pursuant to Section 13307 of the Elections Code. An expenditure is made on the date the payment is made or on the date consideration, if any, is received, whichever is earlier.~~

8. “Qualified Campaign Expenditure” means any expenditure made or incurred by a candidate or ~~his or her~~their agent for the purpose or with the primary effect of influencing or attempting to influence the actions of the voters for or against the election of the candidate. Such expenditures shall include, but are not limited to:

- (a) Payments for fundraising and campaign strategy expenses for election to a future term of office;
- (b) Payments for mass mailings, political advertising, opinion polls or surveys, and other ~~broadcast or print~~ communications in connection with election to a future term of office. For purposes of this ~~section paragraph~~, a mass mailing, political advertisement, opinion poll or survey, or other communication shall be considered “in connection with election to a future term of office” if it makes reference to the candidate’s future election or status as a candidate for a future term of office, or if it is made by an incumbent officeholder within three (3) months prior to an election for which he or she will be a candidate and it features the candidate ~~by name or image~~;
- (c) Payments for services and actual expenses of political consultants, the campaign treasurer and other campaign staff, pollsters and other persons providing services directly in connection with a future election;
- (d) Payments for office space, postage, office supplies, stationery, newsletters, and equipment which is used primarily for the administration of the candidate’s campaign to a future term of office;
- (e) Payments for voter registration and get-out-the-vote drives;
- (f) That portion of the total cost of a slate mailing or mailing of other campaign literature produced or authorized by more than one candidate which is the cost actually paid or incurred by the candidate; and
- (g) A non-monetary contribution provided at the request of or with the approval of the candidate or his or her agent which is made in connection with the candidate’s future election.

“Qualified campaign expenditure” does not include officeholder expenses.

~~9.1. “Officeholder expenses” means those expenditures that arise out of the performance of the officeholder’s official duties, directly assist the officeholder in performing his or her official duties, or are directly related to a governmental purpose. Officeholder expenses include:~~

- ~~(a) Donations to charitable organizations;~~
- ~~(b)(a) Cost of tickets to political or community events;~~
- ~~(c)(a) Postage, office supplies, stationery and similar expenses related to the conduct or performance of the officeholder’s governmental activities and duties;~~

~~(d)(a) Reasonable expenses for travel to conferences, seminars, educational events or similar activities related to the officeholder's position; or~~

~~(e)(a) Costs of books or publications reasonably related to the officeholder's position.~~

~~The expenses listed in (a) through (e) shall be considered officeholder expenses as long as they are not used in connection with the candidate's election to a future term of office.~~

9. "Small Contributor Committee" has the same meaning as in the Political Reform Act, Government Code section 85203 and Cal. Code of Regulations, title 2, section 18503, and includes means:

(a) A committee of persons that has been in existence for more than six months, and

(b) Within 36 months before making a contribution has received contributions from 100 or more persons, and

(c) Maintains campaign funds that do not include any contributions of no more than \$200 per person per calendar year, and

(d) Has made contributions to five or more candidates every 36 months of at least \$25 each.

For purposes of this Pparagraph III.9 only, the term "Candidate" shall have the same meaning as in the Political Reform Act of 1974 (Government Code sSection 82007).

IV. CAMPAIGN CONTRIBUTION LIMITATIONS

1. Limitations on Contributions from Persons

(a) Except as provided in Paragraph IV.2 of this Ordinance, no person shall make to any candidate and no such candidate shall solicit or accept any contribution which would cause the total amount contributed by that person to that candidate to exceed \$~~1,000,000~~ for each election. The District shall adjust this amount in January of every odd-numbered year starting on January 1, 2025 based on the increase or decrease in the San Francisco-/Oakland-Hayward-Consumer Price Index for Urban ~~Wage Earners and Clerical Workers~~ Consumers. This adjustment shall be rounded to the nearest ten dollars (\$10) and shall be published on the District's website no later than the 1st day of February in the year the adjustment is made.

- (b) No person shall make an anonymous contribution or contributions to a candidate, and no candidate shall accept or solicit an anonymous contribution, totaling twenty-five dollars (\$25) or more for an election.
- (c) A candidate shall maintain a written record of the name and address of each person from whom contributions of twenty-five dollars (\$25) or more are received for an election.
- (d) The provisions of this paragraph shall not apply to a candidate's contribution of ~~his or her~~their own personal funds to ~~his or her~~their designated candidate committee. "Personal funds" includes a loan obtained from a commercial lending institution.
- (e) A candidate may not personally loan to ~~his or her~~their campaign an amount, the outstanding balance of which exceeds ten thousand dollars (\$10,000).

2. Limitations on Contributions from Small Contributor Committees

No small contributor committee shall make contributions to any candidate and no candidate shall solicit or accept any contribution which would cause the total amount contributed by that small contributor committee to that candidate to exceed ~~\$2,000~~\$1,200 for each election. The District shall adjust this amount in January of every odd-numbered year starting on January 1, 2025 based on the increase or decrease in the San Francisco-Oakland-Hayward Consumer Price Index for Urban Wage Earners and Clerical Workers Consumers. This adjustment shall be rounded to the nearest ten dollars (\$10) and shall be published on the District website no later than the 1st day of February in the year the adjustment is made.

3. Return of Excess Contributions

A contribution need not be reported nor shall it be deemed accepted if it is not cashed, negotiated, or deposited and is returned to the contributor before the closing date of the campaign statement on which the contribution would otherwise be reported.

4. Prohibition on Certain Contributions ~~From Contractors Doing Business Before~~With the District

(a) Contributions from participants, parties and their agents or participants in a proceeding before the District involving a license, permit, or other entitlement for use shall be subject to the restrictions and prohibitions of the ~~Levine Act~~ Political Reform Act, Government Code section 84308 and applicable regulations of the FPPC.

~~(a)(b)~~ In addition to the prohibitions and restrictions imposed by Government Code section 84308 and applicable regulations of the FPPC, ~~No~~

person who contracts with the District, pursuant to a contract approved by the Board of Directors or under the authority of the Board of Directors for the rendition of personal services, for the furnishing of any material, supplies, or equipment to the District or for selling of any land or building to the District, whenever the contract was not obtained as a result of a competitive bidding process, shall make any contribution to a candidate at any time between the submittal of a proposal for said contract and ~~one year~~twelve months following the completion of the performance under such contract.

~~(b)~~(c) No person who submits a proposal to contract with the District, pursuant to a contract to be approved by the Board of Directors or under the authority of the Board of Directors for the rendition of personal services, for the furnishing of any material, supplies, or equipment to the District or for the selling of any land or building to the District, when the contract is not subject to the competitive bidding process, shall make any contribution to a candidate at any time between the submittal~~ssion~~ of a proposal for said contract and a final determination by the District to reject the proposal.

~~(e)~~(d) No candidate, or ~~his or her~~their agent, shall knowingly solicit or accept any contribution from any person or organization prohibited by Paragraph IV.4(a), ~~or (b)~~ or (c) of this Ordinance from making such contribution.

~~(e)~~ ~~No person who knowingly violates Paragraph IV.4(a) or (b) of this Ordinance shall be awarded a contract a which is not obtained as a result of a competitive bidding process for one (1) year after the date of the violation.~~Any person who submits a proposal to contract with the District shall disclose to the District any contribution(s) made to a candidate during the time period between submission of the proposal and a final decision by the District to accept or reject the proposal. Such disclosure shall occur no later than 72 hours after making the contribution except that such disclosure shall occur immediately upon making the contribution if the proposal will be subject to decision by the District within the following 72 hours.

~~(f)~~ Prior to rendering any decision on a contract to be approved by the Board of Directors, each Board member who has received a contribution from a party to the contract shall disclose that fact on the record of the proceeding. The Board member shall not make, participate in making, or in any way attempt to use the Board member's official position to influence the decision in a proceeding involving the contract if Board member has willfully or knowingly received a contribution from a party to the contract.

(g) If Board member has received a contribution from a person who submitted a proposal to contract with the District, and the contribution was received prior to the time the Board member knew or had reason to know of the submittal of the proposal, and returns the contribution within 30 days from the time the Board member knows, or should have known, about the contribution and the proceeding involving the contract, the Board member shall be permitted to participate in the proceeding.

5. Limitations on Transfers from Candidate Controlled Committees

Contributions received by any other committee controlled by a candidate shall be subject to the contribution limitations set forth in this Ordinance when such contributions are transferred to the candidate's committee for election to the District ~~B~~board of Directors. The following method shall be utilized to calculate the amount that is in compliance with the contribution limitations.

- (a) The candidate shall review the contributions which have been received by the candidate controlled committee beginning with the last contribution received and working back in time until the total amount of cash and cash equivalents held by the candidate controlled committee is reached.
- (b) Should the review indicate that the aggregate amount of contributions from a contributor in the candidate controlled committee and in the candidate's committee for election to the District ~~B~~board exceeds any applicable limitation, the total amount that may be transferred shall be reduced by the amount in excess of the applicable contribution limitation.

6. Post-Election Fundraising

- (a) A contribution for an election may be accepted by a candidate after the date of the election only to the extent that the contribution does not exceed net debts outstanding from the election, and the contribution does not otherwise exceed the applicable contribution limit for that election.

(b) "Net debts outstanding from the election" means the total of a committee's outstanding debts minus its assets.

~~(b)~~(c) "Outstanding debts" includes all of the following:

- (1) An amount necessary to cover the cost of raising funds as permitted under this Ordinance.
- (2) Costs related to complying with the post-election filing requirements of this Ordinance and the Political Reform Act ~~of~~

~~1974~~ and for other reasonable and necessary administrative costs related to winding down the campaign, including office space rental, staff salaries, and office supplies.

- (3) Legal fees and expenses incurred directly in connection with monitoring the count of absentee or provisional ballots for the election, or with a ballot recount.

- (4) The total amount of unpaid debts, loans and accrued expenditures incurred with respect to the election.

~~(4)~~(d) “Assets” includes all of the following; ~~less the sum of both of the following:~~

- ~~(A)~~(1) The total cash on hand available to pay those debts and obligations, including: currency; balances on deposit in banks, savings and loan institutions, and other depository institutions; traveler's checks; certificates of deposit; treasury bills; and any other committee investments valued at fair market value.

- ~~(B)~~(2) The total amounts owed to the ~~candidate-controlled~~candidate-controlled committee in the form of credits, refunds of deposits, returns, or receivables, or a commercially reasonable amount based on the collectability of those credits, refunds, returns, or receivables.

~~(e)~~(e) Raising Funds. A candidate may accept contributions after the date of the election only up to the amount of net debts outstanding from the election. The contributions accepted are subject to the applicable contribution limit for that election. The candidate shall reduce the total amount of net debts outstanding as additional funds are received. The candidate and ~~his or her~~their controlled committee(s) may not accept a contribution that exceeds the total amount of net debts outstanding on the date the contribution is received. A contribution that exceeds the amount of net debts outstanding shall be treated in the same manner as a contribution in excess of the contribution limits.

~~(f)~~(f) Paying Net Debt. A candidate may only use a contribution accepted after the election for payment of net debts outstanding from the election. The candidate shall use available funds to pay net debts outstanding as soon as practicable.

~~(g)~~(g) Transfer. A candidate may transfer campaign funds from another of ~~his or her~~their controlled committees for the purpose of paying the net debts outstanding of ~~his or her~~their District committee. A transfer of this type is subject to the ~~contribution limit~~transfer and attribution requirements ~~of this Ordinance~~in Paragraph IV.5.

7. Surplus Funds

- (a) Funds remaining in the committee established by the candidate for ~~his or her~~their election to the District ~~B~~oard ~~of Directors~~ as of the end of the first postelection reporting period after the candidate is defeated or has left office may be used only for the following purposes:
 - (1) To pay campaign debts or debts from officeholder expenses;
 - (2) To refund contributions;
 - (3) To donate to any bona fide charitable, educational, civic, religious, or similar tax-exempt, nonprofit organization, where no substantial part of the proceeds will have a material financial effect on the candidate, any member of ~~his or her~~their immediate family, or ~~his or her~~their campaign treasurer; and
 - (4) To pay professional services reasonably required by the committee to assist in the performance of its administrative functions, including payment for attorney's fees for litigation arising directly out of the candidate's duties or status as a candidate or elected officer, including, but not limited to, an action to enjoin defamation, defense of an action brought of a violation of state or local campaign, disclosure, or election laws, and an action from an election contest or recount.
- (b) Funds remaining in the committee established by the candidate for ~~his or her~~their election to the District ~~B~~oard as of the end of the first postelection reporting period after the candidate is defeated or has left office may not be used for ~~his or her~~their election to any other office unless they are first transferred to a committee set up for that other office.

V. VOLUNTARY EXPENDITURE CEILING

1. Ballot Designation of Candidate Accepting Voluntary Expenditure Ceiling

Candidates who adopt the voluntary expenditure ceiling as defined below shall be designated in the voter information portion of the sample ballot as having voluntarily agreed to the expenditure ceiling set forth in this paragraph.

2. Statement Accepting Voluntary Expenditure Ceiling

All candidates who accept the voluntary campaign expenditure ceiling as defined below must file a statement with the Secretary of the District indicating acceptance of the expenditure ceiling and acknowledging such decision to be irrevocable. Said statement shall be filed no later than the time for filing the FPPC Form 501 (Candidate Statement of Intention). A candidate

who does not adopt the voluntary campaign expenditure ceiling by filing the required statement shall be presumed to have rejected the expenditure ceiling.

3. Statement Declining Voluntary Expenditure Ceiling

Candidates who decline to accept the voluntary campaign expenditure ceiling as defined below shall file a statement with the Secretary of the District indicating their decision not to adopt the expenditure ceiling. Said statement shall be filed no later than the time for filing the FPPC Form 501 (Candidate Statement of Intention). A candidate who has filed a statement with the Secretary of the District indicating ~~his or her~~their decision not to accept the expenditure ceiling may, no later than the deadline for filing nomination papers within section 8020 of the Elections Code, revoke such decision by filing with the Secretary of the District a statement accepting the expenditure ceiling and a separate statement, signed under penalty of perjury, verifying that the candidate's qualified campaign expenditures to date have not exceeded the expenditure ceiling.

4. Amount of Expenditure Ceiling

(a) Candidates who agree to expenditure ceilings shall not incur qualified campaign expenditures during the election cycle exceeding \$0.~~53-80~~ (fifty-three)eighty cents) multiplied by the number of residents in the ward in which the candidate seeks election. At the beginning of each election cycle, the number of residents in each ward shall be determined by the Secretary of the District based upon EBMUD's redistricting plan or federal census data, whichever provides the most current information.

(b) The District shall adjust the amount otherwise determined under this Paragraph V.4 in January of every odd-numbered year commencing January 1, 2025, based on the increase or decrease in the San Francisco-~~Oakland-Hayward~~ Consumer Price Index for Urban ~~Wage Earners and Clerical Workers~~Consumers. The adjusted expenditure ceiling is adjustment shall be rounded to the nearest one hundred dollars (\$100) and shall be published on the District website no later than the 1st day of February in the year the adjustment is made.

5. Expenditure Ceiling Lifted

If any candidate declines to accept the campaign expenditure ceiling by the deadline provided in ~~Paragraph V.3 of this section~~, then the expenditure ceiling shall no longer be binding on any candidate.

VI. DISCLOSURE

1. Statements of Organization, Candidate Intention Statements, and Campaign Statements.

Any Statement of Organization (Form 410), Candidate Intention Statement (Form 501) and Campaign Statements (including Forms 460, 465, 470, 495, 496 or 497) required to be filed under the Political Reform Act ~~of 1974~~ ~~(Government Code Section 81000 et seq.)~~ shall also be filed at the same time with the Secretary of the District. The candidate's obligation to file such campaign statements with the Secretary of the District shall continue until such time as the candidate has filed all campaign statements required by the Political Reform Act ~~of 1974~~ for the period ending December 31 following the election, including the Semi-Annual Campaign Statement (Form 460) due on January 31 following the election.

2. Statement Accepting or Declining Voluntary Expenditure Ceiling

Each candidate shall file a statement with the Secretary of the District accepting or declining the voluntary expenditure ceiling for each election as set forth in ~~P~~paragraphs VI.1 and VI.2 ~~of this Ordinance~~. The Secretary shall provide each candidate with a form that may be used for this purpose.

3. Press Disclosure

The Secretary of the District shall, upon determining that a candidate has failed to comply with any filing deadline set forth in this Ordinance, immediately notify the candidate of the apparent violation by any method that provides for confirmation of receipt, including but not limited to certified mail, telephone call and e-mail. The candidate shall be given five (5) working days from the date of actual notification to either cure the violation or to demonstrate that the required filings have been made. Upon conclusion of the five-day period, if the candidate has not demonstrated that full compliance has occurred, the Secretary shall disclose to the public by press release the name of any candidate who has failed to file any statements required under this Ordinance in the current election.

VII. INDEPENDENT EXPENDITURES IN DISTRICT ELECTIONS

1. Campaign Advertising Disclosure

~~(a) In addition to the disclaimers required to appear on advertisements by the Political Reform Act, Government Code sections 84501 et seq. and the regulations of the Fair Political Practices CommissionFPPC, aAny committee that spends at least \$1,000 on advertisements to primarily formed to support or oppose candidates in the District Board election that makes, during the calendar year in which the election is held, more than \$1000 in independent expenditures to support or oppose any candidate for election to the District Board shall list the following information in its advertisements in a clear and legible manner on the bottom one third of the front page of any printed communication, including mailings, yard signs, billboards, bumper stickers and~~

~~campaign buttons 10 inches in diameter or larger, paid for by the committee that mentions a candidate or the election: “Ad p~~ Paid for by [name of committee]. ~~Major funding by~~ Ad Committee’s Top Funders: [name and occupation of ~~two-three~~ largest contributors ~~of \$5,000 or more~~ to the committee within the prior 12 months].”

(b) The requirements of this paragraph shall not apply to any communication distributed by an organization solely to its own members, employees, shareholders, or families of members, employees, or shareholders.

2. Independent Expenditure Reports

~~In addition to the reporting requirements of the Political Reform Act of 1974, a~~ Any committee ~~primarily formed to support or oppose a District candidate that makes independent expenditures totaling five hundred dollars~~ \$1,000 ~~(\$500) or more within 90 days of a District election in a calendar year to support or oppose a candidate for election to the District Board of Directors shall file a copy of their Form 496 24-Hour Independent Expenditure Report with the Secretary of the District. a copy of all campaign statements required to be filed under the California Political Reform Act of 1974. The deadline for filing such campaign statements with the Secretary shall be the same deadline for filing campaign statements with the California Secretary of State or any county clerk as set forth in the California Political Reform Act of 1974.~~

VIII. ENFORCEMENT

1. Campaign Statement Review

- (a) The Secretary of the District shall monitor all campaign forms and statements filed by candidates for the District Board and shall notify the candidate of any of the following apparent violations of this Ordinance:
 - (1) The non-filing or late filing of any required campaign forms or statements.
 - (2) A statement that does not conform on its face with the requirements of this Ordinance.
 - (3) Any reported contributions that exceed the allowable maximums established under this Ordinance.
- (b) The Secretary of the District shall also investigate any report or information received indicating that a candidate may have failed to file a statement required under this Ordinance, if the Secretary has sufficient information to reasonably conduct such investigation.

- (c) The candidate shall be allowed to correct any reports within five days after receipt of notice of an apparent violation by the Secretary of the District.
- (d) The Secretary of the District shall refer to the ~~Fair Political Practices Commission~~FPPC any complaint alleging a violation of the Political Reform Act ~~of 1974~~ (Government Code Section 81000 *et seq.*) by any candidate or committee and shall cooperate in any investigation conducted by the ~~Commission~~FPPC as a result of such referral.

2. Violations

- (a) In addition to any other remedies provided in this Ordinance, the East Bay Municipal Utility District and any person residing in the District may bring a civil action against any person or committee who intentionally or negligently violates the reporting requirements or the contribution and expenditure limitations set forth herein, and may also sue for injunctive relief to enjoin violations or to compel compliance with the provisions of this Ordinance. Any such action must be brought within 4 (four) years of the date of the violation.
- (b) In any legal action brought under this Ordinance for injunctive relief or civil liability, the court may award to a plaintiff or defendant who prevails ~~his or her~~their costs of litigation, including reasonable attorney's fees.
- (c) In any legal action brought under this Ordinance for injunctive relief or civil liability, where it is determined that the candidate has accepted a contribution or contributions in excess of the applicable limit set forth herein, the full amount of said contribution(s) shall be forfeited to the District general fund. If funds are not available in the candidate's designated committee account for this purpose, the candidate shall be personally liable to pay said amount to the District general fund.

3. Enforcement by Other Agencies

Nothing in Paragraph VII shall be construed as limiting the authority of any law enforcement agency, prosecuting attorney or other person to enforce the provisions of this Ordinance, under any circumstances where such law enforcement agency, prosecuting attorney or other person has lawful authority to do so.

IX. APPLICABILITY OF OTHER LAWS

Nothing in this Ordinance shall exempt any person or committee from applicable provisions of any other laws of this State.

X. SEVERABILITY

If any provision of this Ordinance shall be held invalid, the remainder of this Ordinance to the extent it can be given effect, shall not be affected thereby, and to this extent the provisions of this Ordinance are severable.

THE EFFECTIVE DATE of this Ordinance shall be May 26, 1992; the amendments adopted on February 8, 1994 shall take effect on May 11, 1994 provided however that the contribution limits specified in Paragraphs IV.1(a) and IV.2(a) shall take effect on, January 25, 1994; the amendments adopted on March 12, 1996 shall take effect on April 11, 1996; the amendments adopted on June 9, 1998 shall take effect on July 9, 1998; the amendments adopted on August 11, 1998 shall take effect on September 10, 1998; the amendments adopted on January 8, 2002 shall take effect on February 7, 2002; the amendments adopted on January 12, 2010 shall take effect on February 12, 2010; the amendments adopted on _____, 2024 shall take effect on _____, 2024.



BOARD ACTION

Agenda Number:	9.	Meeting Date:	March 12, 2024
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TITLE **APPOINT AD HOC COMMITTEE TO ADVISE ON BAY-DELTA WATER QUALITY CONTROL PLAN AND VOLUNTARY AGREEMENTS**

ACTION ☒ Motion: ☐ Resolution: ☐ Ordinance:

RECOMMENDED ACTION Appoint an ad hoc committee comprised of members of the Board of Directors to advise staff on issues arising from the Bay-Delta Water Quality Control Plan (WQCP) update process, including the development and implementation of the proposed Voluntary Agreements (VAs) and other alternatives under consideration by the State Water Resources Control Board (SWRCB).

SUMMARY Staff recommends appointing two members of the Board to serve on an ad hoc committee to advise staff in negotiations of the VA agreements and the Bay-Delta WQCP update process. Ad hoc committee meetings are not subject to Brown Act requirements, but the appointment must not include a quorum of the membership of the Planning Committee, the Legislative/Human Resources Committee, or the Finance/Administration Committee.

The first meeting of the ad hoc committee would be in March with additional meetings scheduled as necessary. The committee's work would conclude upon the completion of the Bay-Delta WQCP update process and any related process to implement the updated Bay-Delta Plan on specific water users.

DISCUSSION The SWRCB is responsible for updating the WQCP for the San Francisco Bay and San Joaquin/Sacramento River Delta that identifies and protects beneficial uses of the watershed. The SWRCB began its current update of the Bay-Delta WQCP in 2009, splitting the process into two phases: Phase 1 covered the San Joaquin River and Southern Delta salinity standards, and Phase 2 is focused on the Sacramento River and east-side tributaries, including the Mokelumne River.

After several water agencies signed the VA Memorandum of Understanding (MOU) in 2022, on September 28, 2023, the SWRCB issued the Draft Staff Report, which functions as the Substitute Environmental Document for Phase 2. The main alternative evaluated was the Proposed Plan Amendments, which included: 55 percent unimpaired flow within a range of 45-65 percent; a cold water habitat narrative objective; Delta outflow provision; and Delta interior flow provisions. EBMUD staff provided oral comments at a December 1, 2023 hearing and submitted a detailed comment letter on January 18, 2024.

Originating Department: Water and Natural Resources	Department Director or Manager: Michael T. Tognolini	CEP Forms? N/A	Board Action Type: Administrative
Funds Available: N/A	Budget Coding: N/A		Approved: 
Attachment(s): N/A			

Title:	Appoint Ad Hoc Committee to Advise on Bay-Delta Water Quality Control Plan Update and Voluntary Agreements	Meeting Date:	March 12, 2024
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EBMUD is pursuing the VAs as an alternative to the Proposed Plan Amendments. EBMUD signed the VA Memorandum of Understanding (MOU) in August 2022. The Mokelumne River VA proposal includes an increase in flows above the current requirements set forth in the 1998 Joint Settlement Agreement, as well as non-flow measures such as habitat restoration and a financial contribution towards the VA water purchase program.

Since EBMUD signed the MOU, staff have been working with the other VA parties and the State to develop the suite of agreements that would be needed to implement the VAs. The VA parties have developed a draft Strategic Plan, Science Plan, and Governance Document and are working to finalize these documents. EBMUD is working with SWRCB staff to develop a Mokelumne River Implementing Agreement that identifies specific obligations for EBMUD and other Mokelumne stakeholders, and Enforcement Agreements which would be signed by the SWRCB and responsible agencies on the Mokelumne River, and which would spell out specific regulatory protections as well as enforcement mechanisms if VA commitments are not met. Other Bay-Delta tributaries have proposed similar arrangements for their watersheds.

The SWRCB is planning a three-day workshop in late April focused on the VAs. This workshop will provide the VA parties an opportunity to provide more detail to the SWRCB and the public on the VA flow and non-flow commitments, accounting protocols, science program, governance, enforcement, and transparency. Later this year, the SWRCB is expected to release a draft Program of Implementation for Phase 2 that specifies an implementation pathway for both the “percent of unimpaired flow” approach and the separate VA alternative. A decision from the SWRCB on how to update the WQCP is expected in early 2025.

ALTERNATIVE

Do not authorize the appointment of an ad hoc committee. This alternative is not recommended because staff seeks Board direction in negotiation of the VA agreements and the Bay-Delta WQCP update process.



BOARD ACTION

Agenda Number:	10.1. – 10.2.	Meeting Date:	March 12, 2024
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TITLE OAKPORT DEVELOPMENT LEASE

ACTION ☐ Motion: ☒ Resolution: ☐ Ordinance:

RECOMMENDED ACTION

- Adopt findings and a Mitigation Monitoring Program, as a Responsible Agency under the California Environmental Quality Act (CEQA), for the lease of 4.52 acres of property to K to College, d.b.a. SupplyBank.org (SBO) and associated actions at the District's Oakport property in Oakland.
- Authorize a 65-year lease with SBO for 4.52 acres of property, located at the District's Oakport property in Oakland, to allow SBO to develop an office building and a warehouse for its charitable organization and construct for the District a new warehouse and service yard at the District's Oakport property as consideration for the lease term.

SUMMARY

The project involves a lease of 4.52 acres within a property owned by the District along Oakport Street in the City of Oakland (City). In 2018, the District and SBO entered into an Exclusive Negotiating Agreement (ENA) to allow SBO to complete the environmental review and entitlement process for a project proposed by SBO to construct a new office and warehouse to consolidate the headquarters for their non-profit operations on the District's Oakport property under a 65-year lease. As consideration for the lease, SBO will construct a new warehouse and service yard for the District. SBO has completed its environmental review, obtained conditional use permits, and other approvals from the City for its project. The Board is being asked to review and consider approving the negotiated lease with SBO.

The lease will provide the District with a \$30,532,637 rent stream in present value. The anticipated rent over the length of the lease will be applied by SBO to construct a 63,000 square-foot warehouse, a 10,000 square-foot workshop building, and a service yard for the District.

Pursuant to CEQA, as a Responsible Agency, the Board is required to consider the environmental effects of the project as shown in the CEQA documents prepared by the City of Oakland, as the lead agency, and reach its own conclusions to approve the action that it is taking under the lease. The Board must make findings related to the impacts of approving the lease, in particular the facilities to be constructed under the terms of the lease, prior to approving the lease and the accompanying resolution outlining these findings.

DISCUSSION

The District entered into the ENA with SBO for SBO's potential lease of District property at Oakport. The ENA was extended until March 24, 2024. The lease would allow SBO to use 4.52 acres of the leased property to build a 60,000 square-foot warehouse and a 160,000 square-

Originating Department: Customer and Community Services	Department Director or Manager: Andrew L. Lee	CEP Forms? N/A	Board Action Type: Real Estate
Funds Available: N/A	Budget Coding: N/A		Approved: 
Attachment(s): Map of Lease Property; Resolution			

Title:	Oakport Development Lease	Meeting Date:	March 12, 2024
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foot office building. These structures would serve SBO and other charities and non-profits in need of affordable office and warehouse space.

As consideration for the lease, SBO will design and construct for the District a 63,000 square-foot warehouse, a 10,000 square-foot workshop building, and a service yard on the Oakport property on 9.8 acres of District property adjacent to the leased premises. The new warehouse and workshop building would provide the District with needed office, training, and warehouse storage in support of District programs such as Pipeline Rebuild. Additionally, SBO will provide approximately one acre of paved area for District truck and heavy equipment parking. As a part of the overall development, SBO will construct and maintain a shared 2.3 acres of surface parking on adjacent property for the length of the lease. SBO will also develop and maintain on District property a nearby wetland/marsh area, which is a required mitigation for the project's potential impacts to wetlands and identified Waters of the State.

SBO has expended approximately \$515,000 for the entitlement process, planning, and design for the District's portion of the project. This amount, along with all future expenses associated with development of the District's portion of the project will be offset against the established rent value of \$30,532,637. With the approval of this lease, SBO will finalize the design of the project and advertise the project for bid. It is unknown if the established rent value will cover the District's portion of the project in its entirety without the final construction bids.

If the construction costs exceed the established total rent value, the District would pay the difference in one lump sum payment upon completion and acceptance of the District's portion of the project. In the event the costs of the project exceed the established rent value of \$30,532,637, the Board will be required to appropriate funding for those costs. Current cost estimates indicate the District could pay \$10 million to \$20 million above the established rent value. These costs are not in the FY 2024 and FY 2025 budget. These costs will be considered in the FY 2026 and FY 2027 Biennial Budget, though these costs must be appropriated to fulfill the contract obligation once the building is ready for occupancy. The District will monitor the project and ensure that costs are managed very closely.

This development supports the District's Long-Term Infrastructure Investment Strategic Plan goal.

Environmental Documentation

Prior to the initiation of the ENA, the City developed and certified an Environmental Impact Report (EIR) for the Coliseum Area Specific Plan (CASP). The project property is within Sub-Area E in the Specific Plan area. During the term of the ENA, and pursuant to its terms, SBO applied to the City's Planning Commission for a Conditional Use Permit for its project and completed all necessary environmental review in support of its application.

On July 12, 2023, among other actions, the Commission voted to 1) affirm staff's environmental determination that, based on the information and analysis contained in the CEQA Analysis/Addendum and accompanying CEQA Checklist prepared for the SBO development project and the requirements for the project to comply with all applicable standard conditions of approval, regulatory requirements, and mitigation measures cited in the CASP EIR, SBO's project would not result in a substantial increase in the severity of any

Title:	Oakport Development Lease	Meeting Date:	March 12, 2024
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significant impacts and would not result in any new significant impacts that were not previously identified in the prior CASP EIR; and 2) approve the Conditional Use Permit and Design Review for SBO's project, subject to CEQA findings and conditions. District staff have determined that the facilities to be constructed by SBO under the terms of the proposed lease have been adequately addressed in the environmental review documents considered by the Commission. These include the 2015 CASP and its EIR, certified by the City in 2015, and a project-specific addendum to the EIR and the applicable measures in the Standard Condition of Approval / Mitigation Monitoring Program, which is included in the Commission's Conditions of Approval for the SBO project.

Based on review of the environmental documents approved by the City and the Planning Commission, District staff have concluded that all potential environmental impacts related to leasing the land to SBO and the construction of the facilities by SBO under the lease will be mitigated to a level of less than significant and no other environmental documentation or mitigations other than those identified in the environmental documents and approvals are required.

SUSTAINABILITY

Economic

The proposed lease would provide the District with significant economic value with direct and considerable improvements of District's operations.

Social

The lease would allow the construction of a warehouse and office building for use by SBO and other charitable organizations in northern California.

Environmental

The facilities to be constructed by SBO under the terms of the lease have been addressed in the environmental review documents prepared by the City for the SBO project. Acting as responsible agency, prior to approving the lease and in compliance with CEQA, the Board will make the findings set forth in Exhibit A and adopt the Mitigation Monitoring Program identifying all mitigation measures applicable to the District's action.

ALTERNATIVE

Do not approve this lease. This alternative is not recommended because the District will miss an opportunity to develop strategically located facilities that would add significant efficiencies to its operations.



RESOLUTION NO. _____

ADOPTING FINDINGS AND A MITIGATION MONITORING PROGRAM AS A
RESPONSIBLE AGENCY UNDER CEQA AND AUTHORIZING EXECUTION OF A
LEASE AGREEMENT WITH K TO COLLEGE, DOING BUSINESS AS
SUPPLYBANK.ORG

Introduced by Director _____ ; Seconded by Director _____

WHEREAS, the East Bay Municipal Utility District (District) owns an approximately 16-acre property adjacent to District facilities on Oakport Road in the City of Oakland (Oakport Property); and

WHEREAS, in April 2015, the City of Oakland (City) approved the Coliseum Area Specific Plan (CASP) to provide the guiding framework for the Coliseum Area; and

WHEREAS, the project area for the CASP was divided into five sub-areas, including Sub-Area E, consisting of undeveloped open space north of Oakland Airport Edgewater Business Park and including the Oakport property owned by the District; and

WHEREAS, prior to approving the CASP, the City released a Draft Environmental Impact Report (DEIR) for public comment in August 2014, and released a Final Environmental Impact Report (FEIR) in February 2015, and in April 2015, the Oakland City Council certified the CASP FEIR and adopted the CASP; and

WHEREAS, K to College, doing business as SupplyBank.Org (SBO), is a non-profit charity organization that provides provisions such as diapers and school supplies to families in need throughout the San Francisco Bay Area and other parts of California; and

WHEREAS, SBO is in need of office and warehouse space from which to run its charity operations and store and transport its supplies; and

WHEREAS, on July 24, 2018, the District entered into an Exclusive Negotiating Agreement (ENA) with SBO, authorized by the Board of Directors (Board), to facilitate SBO's potential lease of a portion of the Oakport Property, and the term of the ENA was extended until March 24, 2024; and

WHEREAS, the ENA required SBO to complete environmental analysis and the negotiation of a lease agreement and obtain all permits and entitlements necessary for SBO's project, and specified that the lease agreement would be presented to the Board at a regularly-scheduled Board meeting to determine whether to approve the lease agreement, reject the lease agreement, or require modification to the lease agreement as may be necessary to comply with the California Environmental Quality Act (CEQA); and

WHEREAS, in June 2023, a CEQA Analysis/Addendum, which included a CEQA Checklist, was prepared for the proposed SBO project to evaluate the potential impacts of the Project, and

the CEQA Analysis/Addendum concluded that the impacts of the SBO project were thoroughly addressed in the CASP EIR and no project-specific effects peculiar to the SBO project or the site would occur and that none of the conditions described in CEQA Guidelines sections 15162 or 15163, calling for preparation of a subsequent or supplement were met, and it further concluded that any potentially significant effects of the project would be substantially mitigated by implementation of the mitigation identified in the CASP EIR, including implementation of specified City of Oakland Standard Conditions of Approval (SCAs) and mitigation measures set forth in the CASP EIR and/or the imposition of regulatory requirements and plans prepared pursuant to the SCAs and regulatory requirements and mitigations; and

WHEREAS, the CEQA Analysis/Addendum also determined that the SBO project meets the requirements for the CEQA streamlining community plan consistency provisions in CEQA section 21083.3 and CEQA Guidelines section 15183, which provide that projects which are consistent with the development density established by existing zoning, community plans, or general plan policies for which an EIR was certified shall not require additional environmental review, except as might be necessary to examine whether there are project-specific significant effects which are particular to the project or its site; and

WHEREAS, on July 12, 2023, the City of Oakland Planning Commission, acting as lead agency, voted to affirm City staff's environmental determination that an Addendum to the CASP EIR is the appropriate CEQA document to address the more detailed information specific to the SBO project and approve a conditional use permit and design review for the SBO project and recommend approval of a tree permit and creek permit, and as part of the approval decision, the Commission included and incorporated by reference all of the mitigation measures identified in the CEQA Analysis/Addendum; and

WHEREAS, SBO and the District have now completed negotiation of a Lease Agreement; and

WHEREAS, under the terms of the Lease Agreement, SBO will have the right to occupy 4.52 acres of the Oakport Property for a term of sixty-five (65) years to build a 60,000 square foot warehouse and a 10,000 square foot office building, which would serve SBO and other charities and non-profits in need of affordable office and warehouse space; and

WHEREAS, as consideration for the Lease Agreement, SBO will design and construct (at its own expense) for the District a 63,000 square foot warehouse, a 10,000 square foot workshop building, a service yard and heavy equipment parking on a separate portion of the Oakport Property, which will provide the District with needed office, training, and warehouse storage in support of District programs such as the Pipeline Rebuild; and

WHEREAS, as part of the overall development, SBO will construct and maintain a shared 2.5-acre parking facility for the term of the Lease Agreement; and

WHEREAS, SBO will also develop and maintain a nearby wetland/marsh area on District property northwest of the SBO development to mitigate for impacts to wetlands and wetland features at the site, and

WHEREAS, the potential environmental impacts of the facilities to be constructed by SBO under the terms of the Lease Agreement have been adequately addressed in the environmental review documents considered by the Commission, which include the 2015 CASP EIR, and the project-specific Addendum to the EIR that analyzes the City of Oakland Standard Conditions of Approval and CASP EIR Mitigation Measures and includes a Standard Condition of Approval/Mitigation Monitoring Program (SCAMMP) which includes all of these measures and incorporates them into the project; and

WHEREAS, based on review of the environmental documents approved by the City of Oakland and the Oakland Planning Commission, District staff have concluded that all potential environmental impacts related to the construction and operation of the facilities by SBO under the Lease Agreement will be mitigated to a level of less than significant and no other mitigations are required; and

WHEREAS, all applicable mitigation measures associated with SBO's construction and operation of facilities under the Lease Agreement will be incorporated into the design and construction of the facilities; and

WHEREAS, because the District is a responsible agency under CEQA, the Board has considered the CASP EIR, the CEQA Analysis/Addendum, and SCAMMP as those environmental documents relate to the construction and operation of the facilities under the Lease Agreement, and has reached its own conclusion on whether and how to approve the Lease Agreement;

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the East Bay Municipal Utility District does hereby find, determine, and certify that:

1. The Board hereby finds and determines that the above recitals are true and correct and are incorporated herein.
2. In deciding whether to approve the Lease Agreement, the District is acting as responsible agency under CEQA. The Board has reviewed and considered the information in the City's certified EIR for the Coliseum Area Specific Plan, the subsequent CEQA Analysis/Addendum for the SupplyBank.org Project at Oakport and the adopted SCAMMP as those environmental documents relate to the construction and operation of facilities under the Lease Agreement, including the environmental effects and mitigation measures applicable to those facilities.
4. The Board hereby makes Findings under CEQA as to those impacts that would result from approving the Lease Agreement which will facilitate construction and operation of the facilities under the Lease Agreement. Said findings determining that impacts have been mitigated to levels that are less than significant are attached hereto as Exhibit A and incorporated herein by this reference.
5. Acting as a responsible agency under CEQA, the District is responsible for ensuring compliance with the mitigation measures identified in said Findings. The Board hereby approves, adopts, and imposes as conditions of the Lease Agreement the SCAMMP described in Exhibit B and incorporated herein by this reference.

6. The Board finds that the mitigation measures identified in the CASP EIR and described in the Addendum will reduce the potentially significant environmental impacts of the facilities to be constructed and operated under the Lease Agreement to a level of insignificance.
7. The Board finds and determines that approval of the Lease Agreement does not trigger the need for subsequent environmental review under CEQA Guidelines section 15162.

BE IT FURTHER RESOLVED that based on the information contained in the City's certified CASP EIR, the Addendum, and SCAMMP as those environmental documents relate to the construction and operation of facilities under the Lease Agreement, there is no substantial evidence that the construction and operation of the facilities under the Lease Agreement will have a significant effect on the environment.

BE IT FURTHER RESOLVED that the execution of the Lease Agreement is hereby approved, and the General Manager or the General Manager's designee is hereby directed and authorized to execute the Lease Agreement and any and all further documents and perform any and all further acts reasonably necessary in effectuating the District's obligations under the Lease Agreement, subject to compliance with all mitigation measures in the SCAMMP.

BE IT FURTHER RESOLVED that the Secretary of the District is hereby directed to file a Notice of Determination, in accordance with the law, with the County Clerk of Alameda County.

ADOPTED this 12th day of March, 2024 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

President

ATTEST:

Secretary

APPROVED AS TO FORM AND PROCEDURE:

General Counsel

Exhibit A

EBMUD Board of Directors Findings Regarding SupplyBank.org at Oakport Project

1.0 Introduction

This is the findings document adopted by the East Bay Municipal Utility District (EBMUD) Board of Directors for the proposed Lease Agreement with SupplyBank.org (SBO) to facilitate the Oakport Project (Project). As approved by the Board, the project includes a lease agreement between EBMUD and SBO for a 4.5-acre portion of the EBMUD property at Oakport in Oakland, California. The lease agreement includes an agreement to allow for SBO to build office buildings, a warehouse to serve as SBO storage and provide space for EBMUD storage and materials, a workshop, a parking lot, and truck loading space for their operations.

1.1 Project Description

The Project undertaken by EBMUD involves a lease agreement between EBMUD and SBO for approximately 4.5 acres of property that EBMUD owns at Oakport. As part of the consideration for the lease, SBO will also design and construct for EBMUD on an adjacent property a 63,000 square-foot warehouse, a 10,000 square-foot workshop building, and a service yard. In addition, the lease grants SBO a license providing the right to develop, construct, and operate a 2.2 acre parcel which will be used as shared parking with priority for SBO's office building tenants, visitors, vendors, and delivery drivers and SBO's employees, with unobstructed access for EBMUD's employees. SBO shall also be responsible for planning, implementing, and maintaining a Wetland Marsh Mitigation and Marsh Land Development Area on separate EBMUD-owned land to the north. All of these activities are referred to herein as the project.

To accommodate the site conditions, pavement, a rammed aggregate pier system, and steel piles will be placed to support all the buildings. The office buildings will be five stories high at the southern end of the total area to be leased to SBO and to be developed with new and relocated EBMUD facilities (Development Area). The office building will be headquarters for SBO as well as office rental space. A new 123,000 square foot warehouse would be constructed in the middle portion of the Development Area and be split by both SBO and EBMUD. A relatively small (approximately 10,000 square foot) workshop would be constructed on the north-central portion of the Development Area to serve as EBMUD's weld workshop. An additional structure is to be added that would be an approximately 26,000 square-foot pipe and materials storage rack structure. This storage shed would be located on the northerly portion of the Development Area. The project would also include an approximately 12,000 square-foot storage bin used to store and source a variety of building materials, such as sorted sands and gravels. This storage bin facility would be placed along the northwestern portion of the Development Area. The development plans also include landscaping designed to be approved by the City of Oakland (City). SBO will construct a parking/turnaround area for large trucks and delivery vehicles. Two parking lots will be constructed. Finally, the plan for development also includes the installation of a new curb, improvement to the gutters, installation of water meters, building connections to the water system, installation of new fire hydrants, a sanitary sewer system, and a storm drain system.

1.2 Relevant Environmental Documentation

EBMUD has reviewed the Environmental Impact Report for a Special Area Plan for the Coliseum Area, which was certified by the City in 2015 (CASP EIR) and the CEQA Analysis/Addendum prepared in 2023 for the SupplyBank.org Project at Oakport (Addendum) and has determined that the potential environmental impacts of the Project have been adequately analyzed in those documents. The CASP EIR analyzes the potential impact resulting from Coliseum Atea Specific Plan, which includes Sub-Area E, which includes the Project area. The CASP EIR established a land use and development framework, identified needed transportation and infrastructure improvements and recommended implementation strategies. However, the CASP project was never completed. The CEQA Analysis/Addendum provides an environmental review of the Project and determines that the Project is consistent with the land use assumption adopted as part of the CASP EIR and its subsequent zoning actions. The Project qualifies for CEQA streamlining pursuant to CEQA Guidelines Section 15183 because the Project is consistent with the development density established by existing zoning, community plan, and general plan policies for which an EIR was certified. The CEQA Analysis/Addendum established the Project is within the impact envelope of the reasonably foreseeable development program as analyzed in the CASP EIR, providing the basis for use of an Addendum to document the minor changes to the prior CASP EIR attributed to the Project's details, per CEQA Guidelines Section 15164. Finally, the lease agreement articulates the specific contract and land use requirements between EBMUD and SBO.

2.0 Findings Regarding the Project

Having reviewed and considered the information contained in the CASP EIR, and the City of Oakland's Standard Conditions of Approval/Mitigation Monitoring Program (SCAMMP), which includes specific mitigation measures set forth in the CASP EIR, as described in the attached Exhibit B, the EBMUD Board of Directors hereby adopts the following findings regarding impacts of the project and measures that would mitigate those impacts to less-than-significant levels.

2.1 Findings Regarding Significant and Unavoidable Effects

The Board of Directors finds that there are no significant and unavoidable impacts that would result from the Project. All potentially significant impacts would be mitigated to less-than-significant levels, as detailed below.

2.2 Findings Regarding Potentially Significant Effects Mitigated to Less-Than-Significant Levels

It has been determined that implementation of the mitigation measures set forth in the SCAMMP adopted by the City, as well as compliance with regulations and permit terms and the terms of the lease, will avoid or mitigate the following effects to a less-than-significant level.

A. Aesthetic Impacts

The SBO development on the leased land could generate light and glare from structures and outdoor lighting, including streetlights and parking lot lights, as well as safety lighting at the buildings and lighting for the materials bins and pipe storage facilities.

The following City of Oakland Standard Conditions of Approval (SCA) is cited in the CASP EIR and included in the SCAMMP as a means for addressing light and glare and would apply to the Project.

SCA Aesthetics-1, Lighting Plan, which requires that proposed new exterior lighting features shall be adequately shielded to a point below the light bulb and reflector to prevent unnecessary glare onto adjacent properties.

EBMUD finds that implementation of this mitigation, which requires shielding of lighting features to prevent unnecessary glare, would reduce aesthetic impacts associated with light and glare to less-than-significant levels.

Facts in Support of Findings: The mitigation measure specified above would apply to the project in accordance with the terms of the permits and City approvals and the lease agreement and will be implemented as part of SBO's development.

B. Air Quality Impacts

1. Construction impacts

i. Construction-Period Fugitive Dust

Construction of the SBO development could generate fugitive dust from demolition, grading, hauling and construction activities. In order to be protective of health of nearby residents, as well as to reduce dust emissions that could affect regional air quality, all development would implement BAAQMD-recommended construction period dust control measures pursuant to the City's CSAs and comply with the requirements found in the City Municipal Code (Section 15.36.100; Dust Control Measures).

The following City of Oakland SCA would apply to the project and has been determined to be an effective means for reducing fugitive dust:

SCA Air-1, Dust Controls

With implementation of "Basic" and "Enhanced" measures required by the SCA, the project would not result in significant impacts related to construction period dust emissions, and temporary construction-period fugitive dust emissions would be controlled to a less-than-significant level.

Facts in Support of Findings: The measures, which include watering exposed surfaces and covering trucks hauling soil, sand, and other loose materials are expected to control dust

emissions (both PM10 and PM2.5) and would be enforceable through regulations, permit terms, the terms of the lease.

ii. Construction Period Criteria Pollutant Emissions

Construction would not be expected to result in an exceedance of threshold levels for criteria pollutants and impacts related to criteria pollutant emissions during construction would be less than significant. Notwithstanding this, SBO will also be required to implement certain City SCA measures, including idling times for diesel-fueled commercial vehicles over 10,000 pounds, minimizing idling times for diesel-fueled off-road vehicles over 25 horsepower, maintaining and properly tuning construction equipment, and powering portable equipment with grid electricity, if available.

While construction activities would also generate construction-related toxic air contaminants, particularly diesel particulate matter and PM2.5 from equipment exhaust, due to the variable and temporary nature of construction activity and the substantial distance between the SBO development and any sensitive residential receptors, and due to the implementation of the SCA measures described above, the SBO development is not expected to result in the exposure of any sensitive residential receptors, and the impacts related to toxic air contaminants would be less than significant.

The following City of Oakland SCA would apply to the project:

SCA Air-2, Criteria Air Pollutant Controls – Construction Related

Implementation of the City of Oakland SCA requiring either a Health Risk Assessment (HRA) in accordance with current guidance from the California Air Resources Board (CARB) prior to construction and implementation of diesel emission reductions identified in the HRA, or implementation of Verified Diesel Emission Control Strategies to control construction-related toxic air contaminant emissions would further control construction-related toxic air contaminant emissions to a level of less than significance.

Facts in Support of Finding: The project will be required to implement measures to reduce criteria air pollutants as a result of permitting conditions and application of City SCAs.

iii. Construction Period Toxic Air Contaminant Emissions

The CASP EIR analyzed the potential for construction activities to generate construction-related toxic air emissions. As noted in the Addendum, the project's construction activities would produce diesel particulate matter and PM2.5 emissions from equipment exhaust as well as haul truck trips.

Based on the temporary nature of construction activity, the substantial distance between the project site and any sensitive receptors, and the requirements to minimize toxic air contaminant emissions from diesel-powered construction equipment and vehicles, the impact would be less than significant.

The project will also implement the following City of Oakland SCA:

SCA Air-3, Diesel Particulate Matter Controls-Construction Related/Diesel Particulate Matter Reduction Measures

With the implementation of this SCA, which requires the project to either conduct a Health Risk Assessment prior to construction and implement the reductions identified in the HRA, or to implement Verified Diesel Emission Control Strategies for control of construction-related toxic air contaminant emissions, impacts from construction related toxic air contaminant emissions would be reduced to less than significant.

Facts in Support of Finding: The project will be required to implement measures to reduce toxic air contaminant emissions as a result of permitting conditions and application of City SCAs.

2. Operational impacts

The SBO development's operational air quality impacts related to cumulatively considerable net increase if non-attainment criteria pollutants would be less than significant, and applicable SCAs requiring a Transportation Demand Management plan capable of reducing single-occupant vehicle use, energy efficiency, water conservation, and waste generation would further reduce the operational criteria pollutant emissions.

The small increment of traffic and associated toxic air contaminant emissions would be less than significant. Also, while the SBO development involves stationary pollutant sources, including backup diesel generators, requiring a permit from the Bay Area Air Quality Management District (BAAQMD), the following SCAs will be implemented:

SCA Air-4 Stationary Sources of Air Pollution (Toxic Air Contaminants)

SCA Air-5, Truck Risk Reduction Measures (Toxic Air Contaminants)

Compliance with CARB's verification procedures for In-Use Strategies to Control Emissions from Diesel Engines will ensure that diesel emissions attributed to on-site operational mobile source toxic air contaminant emissions would be reduced to levels consistent with CARB standards, and therefore would be less than significant.

Traffic generated by the SBO development would not make a substantial contribution to carbon monoxide (CO) concentrations, and impacts related to CO emissions would be less than significant.

Facts in Support of Findings: The mitigation measure specified above would apply to the project in accordance with the terms of the lease and will be implemented as part of SBO's development.

C. Biological Resources Impacts

1. Special Status Species

The project would affect a highly disturbed area that has little potential for the presence of any special-status species. While special-status species may occur in the nearby tidal marsh and aquatic areas of the Bay, the project site is not directly adjacent to these habitats and does not provide suitable habitat for any special-status species due to past and current land use.

The project site's proximity to Damon Marsh could result in indirect impacts on known occurrences of Ridgeway's rail, California black rail, and other special-status birds and mammals.

The City of Oakland SCAs require erosion and sedimentation control plans, Best Management Practices (BMP) for soil and groundwater hazards and creek protection plans that address any potential indirect effects of construction on water quality and aquatic-dependent special-status species associated with the nearby habitat of the Bay and creeks. Potential impacts on nesting birds would generally be addressed through City of Oakland SCAs that call for preconstruction surveys as part of the tree removal requirements during the breeding season and construction controls required as part of operational noise controls, as well as limitation on pile driving, and controls of night-time lighting through preparation of a lighting plan.

Controls would also apply to the building design to limit risks of bird collision and exterior treatment and night lighting issues would be addressed as part of a Bird Collision Reduction Plan required by the City's SCAs.

The following City of Oakland SCAs address direct and indirect impacts to special-status species and their habitats:

SCA General-1, Regulatory Permits and Authorizations from Other Agencies.

SCA Bio-1, Tree Removal During Birding Season

SCA Bio-2, Bird Collision Reduction

SCA Bio-3, Tree Removal Permit

SCA Aesthetics-1, Lighting Plan

SCA Geo-4, Erosion and Sedimentation Control Plan

SCA Haz-2, Hazardous Materials Related to Construction

SCA Hydro-4, Vegetation Management on Creekside Properties

SCA Noise-3, Extreme Construction Noise

SCA Noise-6, Operational Noise

The City also developed the following mitigation measures to further minimize or avoid potential adverse impacts on special-status species associated with Damon Marsh and the

remaining natural habitat in the vicinity of the Project site. These are summarized below, and the full text is included in the CEQA Checklist/Addendum.

CASP EIR MM Bio 1A-1, Pre-construction Nesting Bird Surveys and Buffers. This includes measures to address impacts to special status birds and nesting birds, including having a qualified biologist conduct pre-construction surveys for construction activities between February 15 and September 30 to identify and subsequently avoid nesting areas for special status and migratory bird species. It also requires buffers during nesting season.

CASP EIR MM Bio 1A-3, Salt Marsh Protection. This requires avoidance and protection of all core habitat areas for salt marsh harvest mouse (i.e., pickleweed-dominated salt marsh habitat within Damon Marsh and Arrowhead Marsh). If construction activities are within 100 feet of these areas, site-specific buffers will be established in coordination with a qualified biologist approved by United States Fish and Wildlife Service (USFWS) or California Department of Fish and Wildlife, as appropriate. The measure includes requirements for the design of buffers and for monitoring during construction activities.

CASP EIR MM Bio 1A-4, Public Access Design. This measure requires all new or additional public access to San Francisco Bay, the Bay shoreline, Damon Marsh, and San Leandro Creek to be implemented in a manner consistent with the San Francisco Bay Conservation and Development Commission's Public Access Design Guidelines. The Design Guidelines include measures requiring the preparation of individual site analyses to generate information on wildlife species, as well as appropriate siting, design and management strategies, and planning of public access in a manner that balances the needs of wildlife and people on an areawide scale, where possible.

CASP EIR MM Bio-1A-1. This measure requires that construction activities within 700 feet of Damon Marsh and Arrowhead Marsh be conducted during the period from August 1 to January 31 to protect potentially nesting Ridgeway's rail, California black rail, Alameda song sparrow, and San Francisco saltmarsh common yellowthroat. This was developed in recognition that the USFWS typically considers any disturbance within 700 feet direct line of sight of occupied nesting habitat to be a potential take of federal endangered Ridgeway's rail.

Consistent with the conclusions in the CASP EIR, the project's effects related to special status species and their habitat will be fully addressed through implementation of City SCAs and existing regulations, as well as CASP EIR mitigation measures, and thus this impact would be reduced to less than significant.

Facts in Support of Findings: The mitigation measures specified above would apply to the project in accordance with the terms of the permits and City approvals and the lease and will be implemented as part of SBO's development.

2. Wetlands, Riparian Habitat and Other Sensitive Natural Communities

Several wetland delineations have been conducted, and several wetlands-related documents have been prepared for the project, addressing a study area that include the project area. The overall total potential jurisdictional area of Waters of the State at the project site is 0.511 acre.

Consistent with the CASP EIR requirements and **SCA General-2**, which requires the project applicant to obtain all necessary regulatory permits and authorizations, SBO has sought permits and authorizations from the Regional Water Quality Control Board (RWQCB) pursuant to the State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State. An Alternatives Analysis was prepared to analyze the project's compliance with the *State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State* (Procedures) administered by the RWQCB. One of the alternatives was determined to result in an 18 percent reduction in impacts to Waters of the State as compared to the project as proposed, and this alternative was found to be practicable and capable of reducing impacts to seasonal wetlands. The alternative, however, did not fully contemplate City-required frontage improvements for the entire project site, and these additional frontage improvements would result in an additional increment of approximately 0.021 acres of impacts to Waters of the State. Overall, the project will result in the loss of approximately 0.371 to 0.392 acres of wetlands and other Waters of the State, and SBO is proposing to provide compensation for the loss of permanent impacts and temporary wetland functions, including the previous loss of the estimated 0.24 acre of seasonal wetland features. The proposed wetland mitigation consists of a compensatory mitigation area where a seasonal wetland of higher quality would be established, located northwest of the project site on lands owned by EBMUD.

If the RWQCB accepts the avoidance strategies and the proposed off-site compensatory mitigation of new wetlands creation on adjacent lands owned by EBMUD, as evidenced by approved permits and/or authorizations from the RWQCB (including a potential deed restriction on the compensatory mitigation site), potential impacts of the Project on wetlands and identified Waters of the State would be offset and reduced to a less than significant level.

Facts in Support of Findings: The mitigation measures specified above would apply to the project in accordance with the terms of the permits and City approvals and the lease and will be implemented as part of SBO's development if this is accepted by the RWQCB.

3. Species Movement, Migration, or Nursery Sites

The proposed office building, which would have a height of 85 feet and include considerable glass treatment along the façade facing the marsh and open waters of the Bay, presents the most concern and could obstruct bird movement or cast new light into the nearby marsh.

The following City of Oakland SCAs and additional mitigation measures were cited in the CASP EIR as an effective means for addressing impacts related to migratory movement, migratory corridors, and nursery sites, and would apply to the project.

CASP EIR MM Bio 1A-1, Pre-construction Nesting Bird Surveys and Buffers

CASP EIR MM Bio 1A-3, Salt Marsh Protection

CASP EIR Further Recommendations Pursuant to SCA Aesthetics-1

CASP EIR MM Bio 3-2, Herbicide/Pesticide Control

SCA Bio-1, Tree Removal during Bird Breeding Season

SCA Bio-2, Bird Collision Reduction Measures

Other SCAs would benefit migratory movement, migratory corridors and nursery sites and would apply to the project. These include:

SCA General-1, Regulatory Permits and Authorizations from Other Agencies

SCA Aesthetics-1, Lighting Plan

SCA Bio-3, Tree Removal Permit

SCA Geo-4, Erosion and Sedimentation Control Plan

SCA Haz-2, Hazardous Materials Related to Construction

SCA Hydro-2, Creek Protection Plan

SCA Noise-2, Extreme Construction Noise

SCA Noise-6, Operational Noise

Consistent with the CASP EIR requirements, SBO has prepared a Lighting Plan which demonstrates that light cast by proposed new light fixtures of the project will not exceed 0.5 foot-candles at grade level beyond the westerly property line along the area adjacent to Damon Marsh. SBO has not yet prepared a complete Bird Collision Reduction Plan or a Building Operation and Management Manual that promotes bird safety for City review and approval (which is required prior to approval of construction-related permits). However, certain bird collision reduction is known for the project, including that the project's landscape plans do not suggest use of any mirrors in landscape design, and the project intends to apply bird-friendly glazing treatments to no less than 90 percent of all windows and glass between the ground and 60 feet above ground by using opaque glass in windowpanes instead of reflective glass. Implementation of the SCAs calling for a Lighting Plan and Bird Collision Reduction would address the potential disruption of night lighting and reduce the risk of bird strikes. The Bird Collision Reduction Plan called for in the City's SCA would further define building treatments, exterior lighting, and management activities that would serve to reduce bird strikes and disturbance to nearby marsh habitat. Together with other SCAs and the additional mitigation measures called for in the CASP EIR that serve to protect nesting habitat and minimize disturbance to sensitive habitat, potential impacts on wildlife movement opportunities associated with the proposed project would be less than significant.

Facts in Support of Findings: The mitigation measures specified above would apply to the project implementation in accordance with the terms of the permits and City approvals and the lease and will be implemented as part of SBO's development.

4. Conflicts with Tree Protection Ordinance

The project area includes only six existing trees, five located generally within the central portion of the development area, and one tree along the southerly property line near Oakport Street. **SCA Bio-3, Tree Permit** was found in the CASP EIR to be an effective means for addressing the City's tree permit policies and ordinance, and would apply to the project.

The following SCAs would also apply:

SCA Bio-1, Tree Removal during Breeding Season and Recommendations Pursuant to SCA Bio-3, Landscape Plan Species, which requires, among other measures, that the project's landscape plan provide a greater component of native trees, especially along the project's westerly edge near Damon Marsh and that the selection of Chinese Pistache trees be limited to the male variety.

Also, per the City of Oakland's landscape and screening standards, the project is required to provide street trees along the Oakport Street frontage at the spacing of 25 feet on center. This will result in 58 street trees along Oakport Street.

Consistent with the conclusions of the CASP EIR, the project's effects related to consistency with the City's Tree Protection Ordinance will be fully addressed through implementation of City SCAs and existing regulations, including obtaining a Tree Removal permit prior to grading or construction activities, and planting of new trees and landscape screening. With issuance of a Tree Permit and implementation of the project's proposed landscape plans, including the recommendations pursuant to SCA Bio-3, impacts related to inconsistency with the City's Tree Protection Ordinance would be reduced to less than significant.

Facts in Support of Findings: The mitigation measures specified above would apply to the project in accordance with the terms of the permits and City approvals and the lease and will be implemented prior to the commencement of grading and removal of any trees.

5. Conflicts With Creek Protection Ordinance

All Creekside properties in Oakland must obtain a Creek Protection Permit to perform construction or other work. The provisions of the City Creek Protection Ordinance apply to the entire property, based on the property's relationship to San Leandro Bay, East Creek Slough, Damon Slough, and swales, culverts, rough ditch segments, and a RWQCB-defined drainage channel located along the easterly boundary of the project site adjacent to Oakport Street.

The Creek Permit category that is the best fit for activities at the project site is a Category III Creek Permit and this requires preparation and implementation of a Creek Protection Plan that includes BMPs to be implemented during construction and after construction to protect the waterways. This is consistent with **SCA Hydro-2, Creek Protection Plan**.

With issuance of a Creek Permit and implementation of the conditions of that permit during the Project's grading operations, impacts related to inconsistency with the City's Creek Protection Permit would be reduced to less than significant.

Facts in Support of Findings: The mitigation measures specified above would apply to the project in accordance with the terms of the permits and City approvals and the lease and will be implemented as part of any grading operations or other portions of SBO's development.

D. Cultural Resources Impacts

1. Historic Resources

The CASP EIR found there are currently no historical structures or features within the Project site. There are several sheds and outbuildings on the Project Site outside the Development Area (on the Northerly Area) that are owned and used by EBMUD, but these sheds and outbuildings are not listed in, or formally determined eligible for listing in the California Register of Historic Resources (CRHR), they are not included in the local register of historical resources (the Oakland Cultural Resources Survey), and are not identified as significant in any other identified historic resources survey. Although some of these sheds and outbuildings may have been constructed between 1958 and 1969 and are now more than 50 years old, they do not appear to be associated with any events that have made a significant contribution to the broad patterns of California's history and cultural heritage.

Consistent with the CASP EIR, the project site has been reviewed for the presence of historic resources, and no such resources were identified. EBMUD finds the impact to historic resources is less than significant.

2. Archaeological Resources and Human Remains

The Addendum and CASP EIR describe the records searches that have been conducted. Similar to most of the CASP EIR planning area, archaeological resources are not anticipated at or near the surface of the Project site due to historic development and the amount of artificial fill that covers the site. Although no cultural resources were noted on the ground surface during surveys, the possibility of encountering cultural resources during excavation remains. The discovery of human remains is also a possibility.

The following City of Oakland SCAs are cited in the CASP EIR as an effective means for addressing potential discovery of undiscovered archaeological resources or human remains, and would apply to the Project:

SCA Cultural-1, Archaeological and Paleontological Resources - Discovery during Construction

SCA Cultural-2, Human Remains - Discovery during Construction

The mitigation measures specified above, which require certain measures in the event of a discovery of historic or cultural resources or human remains, would reduce impacts to less than significant.

Facts in Support of Findings: The mitigation measures specified above, which require certain measures in the event of a discovery of historic or cultural resources or human remains, would apply to the project in accordance with the permits and authorizations that have been or will be issued and existing regulations.

3. Paleontological Resources

The CASP EIR (Impact Cultural-2) found that paleontological resources are not anticipated at or near the surface within the CASP planning, due to historic development and the extent of artificial fill that has been placed over the planning area.

The CASP EIR recommended that, given the paleontological sensitivity of the area, any new development project throughout the Project Area that involves excavation be subject to SCAs for archaeological resources at sensitive sites and concluded that, with implementation of applicable SCAs, impacts on paleontological resources would be less than significant.

The following City of Oakland SCAs are cited in the CASP EIR as effective means addressing an event whereby a paleontological resource may be discovered during an excavation, and would apply to the Project:

SCA Cultural-1, Archaeological and Paleontological Resources – Discovery during Construction

Consistent with the findings of the CASP EIR, with full compliance with SCA Cultural-1, which requires certain measures in the event of a discovery of paleontological resources during ground disturbing activities, the Project's potential effects would be reduced to a level of less than significant.

Facts in Support of Findings: The mitigation measure specified above would apply to the project in accordance with the permitting terms and authorizations and existing regulations.

E. Energy Resources

The project will not cause the need for additional natural gas or electrical energy-producing facilities. Consistent with the City's December 2020 Building Electrification Ordinance, the project does not include any new natural gas connections, and each of the buildings are designed as all electric.

The following City of Oakland SCAs will apply to the project:

SCA Energy-1, Green Building Requirements

SCA Transportation-2, TDM

SCA Transportation-4, Plug-In Electric Vehicle (PEV) Charging Infrastructure

SCA Utilities-3, Construction and Demolition Waste Reduction and Recycling

SCA Utilities-4, Recycling Collection and Storage Space

Consistent with the findings of the CASP EIR, the project is required to comply with CALGreen Building Energy Efficiency Standards as applicable at the time of building permit application, is required to provide EV infrastructure, and achieve performance standards to reduce commuter single-occupant vehicle use. These requirements would achieve compliance with local policies and ordinances pertaining to energy use, comply with state and local plans for energy efficiency, and substantially lower overall energy demands of the project such that the project would not result in wasteful, inefficient, or unnecessary consumption of energy. The project's impacts related to energy use would be less than significant.

Facts in support of findings: The lease terms, permit conditions and City approvals require the project to comply with the measures described above.

F. Geology and Soils

1. Seismic Hazards

i. Fault Rupture

The CASP EIR (Impact Geo-1) found that there are no active faults that cross anywhere within the CASP planning area and the nearest active fault is more than two miles away. Therefore, the potential for fault rupture to affect development pursuant to the CASP was found to be very low.

ii. Strong Seismic Ground Shaking and Seismic-Related Ground Failure

The CASP EIR also found that, if development pursuant to the CASP is not properly designed or constructed, it has the potential to increase the exposure of people to injury or harm during a large regional earthquake. The entire CASP planning area could be subject to very strong ground shaking, capable of causing damage to structures and underground utilities.

The CASP EIR concluded that development pursuant to the CASP would be required to comply with the Seismic Hazards Mapping Act (in liquefaction hazard zones) and with the California Building Code. Since the entire CASP planning area is located within a Seismic Hazard Zone for liquefaction, development pursuant to the CASP would be required to comply with California Geologic Survey (CGS) guidelines for evaluating and mitigating seismic hazards (Special Publication 117A) (CGS, 2008).

iii. Landslides

The CASP EIR found that the entire CASP planning area does not contain slopes that are susceptible to landslides or slope failure. The gentle sloping topography of the area puts the potential for landslides or slope failure to affect any of proposed development as very low.

To ensure compliance with the Seismic Hazards Mapping Act and the California Building Code, as well as the seismic requirements of the City of Oakland Building Code, the City requires owners/developers to prepare a soils report (SCA Geo-1) and geotechnical report (SCA Geo-2) for proposed development. The following City of Oakland SCAs would apply to the project:

SCA Geo-1: Construction-Related Permit(s)

SCA Geo-2, Soils Report

SCA Geo-3, Seismic Hazards Zone (Landslide/Liquefaction)

Consistent with the SCAs set forth above, SBO retained a consultant to prepare a soils report and geotechnical report for the project. The recommendations from the report are detailed in the Addendum.

Pursuant to SCA Geo-2, Soils Report and SCA Geo-3, Seismic Hazards Zone (Landslide/Liquefaction), the Project applicant is required to implement the recommendations contained in the approved report during project design and construction. Consistent with the findings of the CASP EIR, with full compliance with the CBC building standards and recommendations of the reports, the effects of strong ground shaking and liquefaction in the event of a likely earthquake scenario would be reduced to levels considered acceptable by professional engineers and therefore seismic hazard impacts would be less than significant.

Facts in Support of Findings: The mitigation found above will apply to the project in accordance with the SCAs and the permitting terms to reduce the potential impacts associated with seismic hazards such as liquefaction and ground shaking to a less than significant level.

2. Soil Settlement and/or Expansive Soil

The CASP EIR (Impact Geo-3) found that new development within the CASP planning area might be located on expansive soil, as defined in the California Building Code, creating substantial risks to life or property. Expansive soils can damage foundations of above-ground structures, paved roads and streets, and concrete slabs. The planning area could be subject to shrink behavior.

The City of Oakland imposes SCAs requiring proposed developments to conduct a soil reports (SCA Geo-1) and geotechnical studies (SCA Geo-2). The CASP EIR determined that these SCAs would provide for construction methods and building designs to address problematic soil (such methods typically involve soil removal and replacement, soil improvement, or special foundation design). SCAs would also provide for design methods to protect structures from expansive soil and settlement concerns.

SCA Geo-2, Soils Report

Pursuant to SCA Geo-1 and SCA Geo-2, the project applicant is required to implement the recommendations contained in the approved report during project design and construction. Consistent with the findings in the CASP EIR, with full compliance with the recommendations of the report, the effects of soil settlement and/or expansive soil would be reduced to levels considered acceptable by professional engineers, and the impacts of soil settlement and/or expansive soil would be less than significant.

Facts in Support of Findings: The project will be required by regulations, permit terms and approvals to comply with the measures above to reduce the potential impacts associated with expansive soils, subsidence, seismically induced settlement, and differential settlement.

3. Soil Erosion

The CASP EIR (Impact Geo-2) found that construction activity within the CASP planning area could result in substantial soil erosion that could create substantial risks to property or creeks/waterways, given the potential for excessive or accelerated erosion to undermine building foundations. The following City of Oakland SCAs are cited in the CASP EIR as effective means for reducing potential erosion concerns during construction, and is a standard condition of approval that would apply to the Project.

SCA Geo-4, Erosion and Sedimentation Control Plan for Construction

Consistent with the CASP EIR requirements and SCA Geo-4, SBO has prepared a preliminary Erosion Control Plan for the project which includes elements described in the Addendum, consistent with City requirements.

The preliminary Erosion Control Plan would be subject to subsequent review and approval by the City prior to issuance of any grading permits for the project, but appears to be consistent with Erosion and Sedimentation Control Plan requirements of SCA Geo-4. Pursuant to Geo-4, the project applicant is required to implement the erosion and sedimentation control plan during construction. Consistent with the findings of the CASP EIR, with full compliance with the required erosion and sedimentation control plan, the effects of soil erosion during construction would be reduced to levels considered acceptable by professional engineers and would be considered to be less than significant.

Facts in Support of Findings: The terms of regulations, permits, and approvals require the submission of a plan for approval by the City and implementation of the plan during construction.

G. Greenhouse Gas Emissions

1. Operation and Construction Emission

The CASP EIR (Impact GHG-2B and Impact GHG-3) determined that new development pursuant to CASP buildout would not directly or indirectly generate greenhouse gas emissions that would have a significant impact on the environment.

CASP buildout would result in a significant GHG impact if it were to produce emissions of more than 6.6 metric tons of CO₂e per service population annually. Both the buildout and operation emission are expected to remain below the threshold.

The Project applicants have completed an Equitable Climate Action Plan (ECAP) Consistency Checklist as required to demonstrate consistency with the 2030 ECAP and reduce its impact to less than significant. In addition, the following City of Oakland SCAs are requirements of the Project and help fulfill the requirements of the City's 2030 ECAP, and apply to the Project:

SCA GHG-1, Project Compliance with the Equitable Climate Action Plan (ECAP) Consistency Checklist

SCA Transportation-2, Transportation and Parking Demand Management

SCA Energy-1, Green Building Requirements

SCA Transportation-4, Plug-In Electric Vehicle (PEV) Charging Infrastructure

SCA Utilities-3: Construction and Demolition Waste Reduction and Recycling

SCA Bio-3, Tree Removal Permit

Based on the measures above and the analysis in the Addendum, the project is considered in compliance with the City's CEQA GHG threshold of significance, and its GHG impacts would be less than significant.

2. Stationary Sources of GHG Emissions

The CASP EIR (Impact GHG-1) found that new development pursuant to the CASP would not generate, either directly or indirectly, greenhouse gas emissions from stationary sources that would produce total emissions of more than 10,000 metric tons of CO₂e annually. California Building Code requires back-up generators, however the CASP EIR finds these will not exceed emission threshold and this impact is less than significant.

The project's architectural drawings indicate that the proposed office building will include a bank of elevators, and back-up emergency power will be required for these elevators. It is currently unknown but possible that the warehouse may also rely on back-up power for hoists or lifts as may be used for stacking material within the warehouse. These generators would be tested periodically, and they would provide back-up power only in the event of a power failure. CARB and BAAQMD requirements limit these engine operations to 50 hours each, per year of non-emergency operation. These engines would be required to meet CARB and EPA emission standards and will consume commercially available California low-sulfur diesel fuel. GHG emissions from the equipment would be well below the BAAQMD threshold of 10,000 MTCO₂e/year, and these GHG emissions would be less than significant.

3. Conflicts with Plans, Policies, or Regulations

The CASP EIR (Impact GHG-3) determined that new development pursuant to the CASP would not fundamentally conflict with an applicable plan, policy or regulation adopted for the purposes of reducing greenhouse gas emissions. Since new development anticipated under CASP buildout did not exceed the numeric service population thresholds, at the plan or at the project level, the CASP was found not in conflict with applicable plans, policies, and regulations adopted to reduce GHG emissions. In addition to meeting the numeric threshold, the CASP includes several site characteristics, design features, and regulatory conformance requirements that were found effective in reducing GHG emissions on an area-wide basis, and as individual development projects are incrementally proposed and developed.

As indicated above and in addition to complying with the City's Equitable Climate Action Plan (ECAP) Consistency Checklist, the Project will also be subject to the following SCAs, which further reduce GHG emissions:

SCA Transportation-2, Transportation and Parking Demand Management

SCA Energy-1, Green Building Requirements

SCA Transportation-4, Plug-In Electric Vehicle (PEV) Charging Infrastructure

SCA Utilities-3: Construction and Demolition Waste Reduction and Recycling

SCA Bio-3, Tree Removal Permit

The CASP EIR concluded that development pursuant to the CASP would not be in conflict with then-current plans or policies adopted for the purpose of reducing GHG emissions, finding that all new development of the Project pursuant to the CASP would be required to comply with applicable plans, policies and regulations adopted for the purpose of reducing GHG emissions as compared to a baseline business-as-usual approach, and the impact was found to be less than significant.

Facts in Support of Findings: Consistent with the CASP EIR, the mitigation measures specified above would apply to the project and be enforceable in accordance with the permits, existing regulations, City of Oakland SCA's, and the ECAP.

H. Hazards and Hazardous Materials

1. Cortese List/Presence of Chemicals of Concern

A current review of the DTSC's EnviroStor database does not identify any sites or facilities at the project site, and a current review of the SWCB GeoTracker database does not identify any current environmental cases located within the development area, or the Westerly Area, at Parcels 1 or 3, but a Case Closure letter was issued for a prior leaking underground storage tank at the Northerly Area in March of 1996. According to the Case Closure Summary, following completion of a site investigation and remedial action, no additional site management actions were applicable. The Northerly Area of the site is no longer considered to be on the list of hazardous materials sites compiled pursuant to Government Code section 65962.5.

A Phase 1 Environmental Site Assessment was prepared in May 2018 for the proposed development area of the project site, and based on the results of the Phase 1, a Phase II was also conducted. The analytical results are described in the Addendum prepared for the City. The Phase II concluded that existing soil at the site does not pose an unacceptable risk to future commercial or industrial receptors and does not pose an unacceptable risk to construction workers. The Phase II also concluded that because concentrations of chromium, lead and mercury were detected above hazardous waste screening criteria, any off-haul or soil export would be required to be further analyzed, evaluated, and characterized to determine the appropriate waste disposal method prior to off-haul and disposal. In addition, the Phase II concluded that based on comparison of groundwater data to vapor-intrusion screening levels, groundwater at the site does not pose an unacceptable vapor-intrusion risk to receptors at the site.

The following City of Oakland SCA would apply to the project:

SCA Haz-1, Hazardous Building Materials and Site Conditions

Consistent with the conclusions of the CASP EIR, the project's effects related to site contamination and the presence of chemicals of concern will be fully addressed through the City's SCAs and existing regulations, and the impact related to contamination and the presence of chemicals of concern will be reduced to less than significant.

2. Routine Transport, Use or Disposal of Hazardous Materials/Upset and Accident Condition

Chemicals that will be used in construction activities, as well as in ongoing operation of buildings, are described in the City's Addendum.

The following City of Oakland SCAs would apply to the project:

SCA Haz-2, Hazardous Materials Related to Construction

SCA Haz-3, Hazardous Materials Business Plan

To the extent that EBMUD operations at the Workshop or Pipe Storage facility will store or use hazardous materials, these materials would be stored according to the specifications of a project-specific Hazardous Material Management Plan and/or Hazardous Materials Business Plan. Hazardous materials would also be handled and used in accordance with applicable regulations by personnel that have been trained in the handling and use of the material and that have received proper hazard-communications training.

Required compliance with applicable regulatory requirements would minimize hazards to workers, visitors, the public, and the environment from waste products. With implementation of these requirements, impacts resulting from hazardous materials and hazardous waste transport, use and disposal would be less than significant.

3. Emit Hazardous Emissions or Handle Hazardous Materials Near Schools or Sensitive Receptors

There are no schools, daycare centers, or other sensitive receptors located within 0.25 mile of the project site, and the project would not involve use of hazardous materials within 0.25 mile of a school, and thus impacts related to emissions or handling of hazardous materials near schools and sensitive receptors would be less than significant.

4. Airport-Related Safety or Excessive Noise Hazards

The project site is within the Airport Land Use Compatibility Plan (ALUCP) Safety Zone 7: Other Airport Environs, and within this safety zone there are no land use restrictions on office buildings or medium size businesses. The project would comply with the land use safety and compatibility criteria of the ALUCP, and no impacts related to airport safety hazards would occur.

5. Interference with Emergency Response Plan or Emergency Evacuation Plan

The project site is directly accessible to I-880 from Oakport Street in the event of emergency evacuation. The project would not interfere with emergency evacuation routes, and this impact is not considered significant.

I. Hydrology and Water Quality

1. Flooding

The project site is not located within the FEMA-designated 100-year flood zone, and consistent with the findings of the CASP EIR, impacts of the project related to flooding hazards would be less than significant.

2. Water Quality During Construction

Grading and excavation for the project would remove protective vegetation and disturb the ground, thereby exposing soil to increased erosion from stormwater runoff, site watering and wind. In addition, the import of new fill soils could introduce the potential for temporary increases in sediment loads and associated construction-related pollutants into waterways in the vicinity.

The City of Oakland's Creek Protection Ordinance is intended to address potential water quality impacts from stormwater and other discharges into identified waterways. The project is required to comply with the provisions of the Creek Protection Ordinance and prepare a Creek Protection Plan.

The following City of Oakland SCAs as cited in the CASP EIR apply to the project:

SCA Geo-4, Erosion and Sedimentation Control Plan for Construction

SCA Hydro-1, State Construction General Permit

SCA Hydro-2, Creek Protection Plan

The project's effects related to water pollution and sedimentation during construction will be fully addressed through implementation of the SCAs cited above and compliance with existing regulations and requirements, and with these measures, impacts to water quality during construction would be reduced to less than significant.

Facts in Support of Findings: The project will be required by regulations, permit terms and approvals to comply with the measures above.

3. Water Quality During Operation

New office employees at the site as a result of the project and the EBMUD operations may generate non-point source pollutants. Non-point source pollutants can be washed by rainwater from roofs, landscape areas, and streets and parking areas into the downstream drainage network

and directly into the Bay. The Addendum discusses the impervious surfaces that will result from the Project and notes that because the project will create more than 10,000 square feet of new impervious surface area, it is considered a Regulated Project under the NPDES C.3 requirements.

The following City of Oakland SCAs will apply to the project.

SCA Hydro-3, NPDES C.3 Stormwater Requirements for Regulated Projects

SCA Hydro-4, Vegetation Management on Creekside Properties

Consistent with the CASO EIR requirements and SCA Hydro-3, SBO has prepared a preliminary Stormwater Control Plan (SWCP) that addresses water quality treatment and hydro-modification measures. This preliminary SWCP addresses an assumed division of management and operations between SBO and EBMUD, and it assumes that SBO will manage the southerly portion of the site and EBMUD will manage the northerly portion of the site.

The project will incorporate integrated bio-retention facilities with underdrains, and these bio-retention facilities appear to be sized appropriately, exceeding the minimum treatment area that would be required pursuant to NPDES c.3 criteria for treatment capacity for each drainage management area. One drainage management area is associated with the truck docks at the EBMUD portion of the warehouse, and is served by a mechanical filtration device located below the adjacent parking lot.

Details of the SWCP and the project facilities are set forth in the Addendum, which notes that the City will review the designs for final storage requirements of the stormwater facilities prior to approval of grading and/or building permits.

Consistent with the conclusions in the CASP EIR, the project's impacts related to post-construction stormwater quality and increased stormwater flows will be fully addressed through implementation of City SCAs and existing regulations and would be reduced to less than significant.

Facts in Support of Findings: The project will be required by regulations, permit terms and approvals and the lease conditions to comply with the measures above to reduce the potential impacts associated with stormwater.

4. Groundwater

Geotechnical investigations were conducted for the project and groundwater was observed in soil borings at depths varying from 3 to 21.5 feet below ground surface. This is described in the CASP EIR and Addendum.

Dewatering is anticipated and planned for and pursuant to **City of Oakland SCA Hydro-1**, State Construction General Permit, SBO will be required to comply with all regulations and requirements of a Construction General Permit issued by the SWRCB. If dewatering discharge is not allowed due to water quality, a statewide low-threat discharge WDR permit or site-specific NPDES permit may be required allowing for various measures to occur on-site.

Consistent with the conclusions in the CASP EIR, the project's impacts to groundwater will be fully addressed through implementation of the City SCAs and existing regulations and impacts to groundwater would be reduced to less than significant.

Facts in Support of Findings: The project will be required by regulations, permit terms, including the terms of the Construction General Permit, and approvals to comply with the measures above to reduce the potential impacts.

5. Waste Discharge Requirements (WDRs)

By applying to the RWQCB for a permit for WDRs, the project will not violate any water quality standards or waste discharge requirements.

6. Conflict with Water Quality or Groundwater Management Plan

The project will not significantly reduce recharge to the aquifer or significantly increase extraction from the aquifer. The project also must comply with National Pollutant Discharge Elimination System requirements of the Municipal Regional Stormwater Permit related to contamination or siltration flows. Consistent with the conclusions of the CASP EIR, the project's impacts related to conflicts with, or obstructions of a water quality control plan or sustainable groundwater management plan will be fully addressed through implementation of City SCAs and existing regulations, and this impact would be reduced to less than significant.

7. Sea Level Rise

The projections of sea level risk and impacts to the site are discussed in the Addendum. As noted in the Addendum, to protect the site from future sea level rise scenarios, the project includes two adaptation strategies. One includes a new four-foot retaining wall on the landward side of the existing levee. The second proposes to raise the elevation of the entire development area by importing new fill.

The following mitigation measures and recommendations are cited in the CASP EIR as an effective means for addressing sea level rise and would apply to the project:

CASP EIR MM Land Use-8A, Bay Conservation and Development Commission (BCDC) Approval

CASP EIR Recommendation Hydro-5

With implementation of the project's sea level rise adaptation strategies and confirmation of these strategies through the BCDC permit process, the effects of sea level rise on the project would be substantially reduced.

J. Land Use and Planning

1. Physically Divide an Established Community

As discussed in the CASP EIR and Addendum, the project site is not located within an established community, and the project would not divide any such community and would have no impact related to physical division of an established community.

2. Fundamental Conflict with Nearby Land Use

The project's proposed office, warehouse and light industrial land uses are not considered sensitive land uses or the types of land uses that might fundamentally conflict with nearby light industrial uses at the EBMUD wet weather facility or the Airport Business Park.

The following SCAs would also serve to further reduce any land use conflict:

SCA Haz-3, Hazardous Materials Business Plan

SCA Noise-6, Operational Noise

With implementation of these SCAs pertaining to operational noise and hazardous materials, and consistent with the conclusions of the CASP EIR, the project would have a less than significant impact related to fundamental land use conflicts.

Facts in support of findings: The mitigation measures specified above would apply to the project to further reduce conflicts in accordance with the permits that have been issued and existing regulations.

3. Conflict with Land Use Plan and Policy – Port of Oakland Land Use Development Code (LUDC)

The project site is not within the Port's Airport Business Park and does not require approval of a development permit from the Port. The project poses no inconsistencies with land use plans and policies of the Port of Oakland or its LUDC, and has no impact related to conflicts with land use plans and policies of the Port.

4. Conflict with Land Use Plans and Policy – Oakland Airport Airport Land Use Compatibility Plan (ALUCP)

Information presented in the CASP EIR indicates that the project site would be consistent with the noise, land use and height limit criteria of the ALUCP.

The project site is within the ALUCP's Airport Aviation Easement Zone, and the following CASP EIR mitigation measure is therefore applicable to the project:

CASP EIR MM Land-7B, Aviation Easement/Disclosure

Consistent with the conclusions of the CASP EIR, the project's effects related to consistency with the ALUCP would be fully addressed through implementation of this mitigation measure requiring disclosures and this impact would be reduced to less than significant.

5. Consistency with Land Use Plans and Policies – Bay Conservation and Development Commission (BCDC) San Francisco Bay Plan and Seaport Plan

The CASP EIR discussed BCDC's Bay Plan and Seaport Plan and found that development within the CASP would not fundamentally conflict with the Bay Plan or Seaport Plan. A portion of the project is located within the 100-foot shoreline band along San Leandro Bay and East Creek, and is therefore under the jurisdiction of BCDC. Generally, development permits may be granted or denied by BCDC only after public hearings, and after the process for review and entitlement by the applicable city or county has been completed. The project is subject to Bay Plan policy and permits pertaining to major development, as stipulated in BCDC regulations.

The following City of Oakland SCA and CASP EIR mitigation measure apply to the project and clarify the project's obligations to comply with applicable policies and regulations of BCDC:

SCA General-1, Regulatory Permits and Authorizations from Other Agencies CASP EIR MM Land-8A, BCDC Issuance of Major Permits

The project must comply with the policy requirements of BCDC, such that it would not fundamentally conflict with BCDC's Bay Plan, and BCDC will act as a responsible agency under CEQA and may require mitigation for direct or indirect effects of the parts of the project that it has authority to address. Based on the implementation of the SCAs listed above the process that will apply, potential conflicts will be reduced to a level that is less than significant.

6. Plans and Policy Consistency – Tidelands Trust

EBMUD owns the property and there is no potential inconsistency with public trust requirements.

7. Conservation Plan Conflict

As described in the CASP EIR and Addendum, the project site is not within or in proximity to an area guided by a Habitat Conservation Plan or Natural Community Conservation Plan, and the project would not conflict with such plans.

K. Mineral Resources

Impacts on mineral resources were not anticipated, and consequently not analyzed in the CASP EIR. As there are no known important mineral deposits or active mineral extraction operations identified by the California Department of Conservation at the Project site. Consistent with the findings of CASP EIR, the Project would not have an adverse effect on important mineral resources or result in the loss of availability of a locally important mineral resource recovery site.

The Project would have no mineral resource impacts that were not previously analyzed in the CASP EIR, would have no off-site or cumulative mineral resource impacts not discussed in the prior CASP EIR, and would not result in any mineral resource impacts that are more severe than as discussed in the prior CASP EIR.

L. Noise and Vibration

1. Temporary Construction Noise

The Oakland Noise Ordinance presents noise level standards that apply to temporary exposure to short-term (less than 10 days) and long-term (more than 10 days) construction noise. Typical noise levels from the project equipment are expected to generate noise levels that range from between 74 to 101 dBA at 50 feet from the source. The loudest construction operations are expected to be pile driving/pile drilling activity, with steel sections driven through the on-site Bay Mud as necessary to provide structural support for the Project's proposed Office, Warehouse and Workshop building.

The Pile driving/drilling will substantially exceed the noise level standards for sensitive land uses at the Damon Marsch open space, the Bay Trail, and the soccer fields. However, the noise will not exceed the ambient condition of the nearby office buildings within Oakland Airport Business Park nor the local residential areas nearest to the project site.

The following City of Oakland SCAs are cited in the CASP EIR as effective measures for reducing the effects of construction noise and are standard conditions of approval that would apply to the Project:

SCA Noise-1, Construction Days/Hours

SCA Noise-2, Construction Noise

SCA Noise-3, Extreme Construction Noise

SCA Noise-4, Public Notification Required

SCA Noise-5, Construction Noise Complaints

SCA General-2, Construction Management Plan

To address the excessive noise levels at these locations during the pile driving/pile drilling activities, and pursuant to **SCA General-2, Construction Management Plan**, the following additional off-site measures are recommended for the lead agency's consideration of Project approvals:

Recommendation #1: Temporary Rerouting of the Bay Trail. The Project applicant shall coordinate with BCDC to identify an acceptable temporary detour of the segment of the Bay Trail that is immediately adjacent to the Development Area during pile driving/pile drilling activities. The options for detour routes in this area are limited, and may best be accomplished by providing a temporary public pathway along the Project site's frontage on Oakport Street, at least as far as the Peppermint Gate Access Road. The segment of the Bay Trail adjacent to the site can be re-opened after conclusion of the temporary pile driving/pile drilling activity.

Recommendation #2: Schedule Coordination with City Sponsored Use of Soccer Fields. The Project applicant shall coordinate with the City Parks and Recreation Department to best avoid pile driving/pile drilling activities of the Project concurrent with scheduled sports activities at the City Soccer fields. Pursuant to SCA Noise-3, no pier drilling or other extreme noise generating activities greater than 90 dBA are allowed on Saturday, and no construction is allowed on Sunday or federal holidays. Accordingly, schedule coordination is only required during intermittent weekday use of the sport field between the hours of 8:00 a.m. and 4:00 p.m.

The project's effects related to construction noise will be fully addressed through implementation of the City SCAs, existing regulations, and the project-specific mitigations and impacts from noise would be reduced to a level that is less than significant.

Facts in support of findings: Through the terms of permits and approvals, as well as the lease terms, the project will be required to comply with City SCAs, existing regulations, and Project-specific recommendations pursuant to SCAs.

2. Permanent Operation Noise

The Project's Office, Warehouse Workshop buildings would include stationary sources of operational noise and the equipment will be standardized for noise reduction. The proposed Warehouse would also generate operational noise from large delivery trucks shipping into and out from the Warehouse. No sensitive residential receptors would be subject to noise levels and any noise generated at the Warehouse, the Pipe Storage Structure and the Materials Bin would be shifted further south into the development area as to not increase the attributable operational noise.

The following City of Oakland SCA is cited in the CASP EIR as effective measures for reducing the effects of operational noise, and is a standard condition of approval that would apply to the Project:

SCA Noise-6, Operational Noise

Consistent with the conclusions in the CASP EIR, the project's operational noise impacts will be fully addressed through implementation of City SCAs and existing regulations and operational noise impacts will be reduced to a level that is less than significant.

Facts in support of findings: The City SCAs and measures to avoid operation noise impacts will be enforceable through existing regulations, permit terms and the lease conditions.

3. Traffic Noise

The Project generates only about 2.7 percent of the trips as analyzed in the CASP EIR. Since the full amount of vehicle trips was found not to increase ambient noise on the road, the noise levels of the project will also not increase the ambient noise.

4. Groundborne Vibration

The Project is proposed in a location identified as a liquefaction hazard zone, having a very high susceptibility to earthquake-induced liquefaction. To address this condition, the Project proposes that steel piles be driven into firm native soil as to support the Project's proposed Office, Warehouse, and Workshop buildings and retaining walls. A RAP system will also be used to support these buildings. Both will create groundborne vibrations.

The distance between the pile driving location and the nearest building means the vibration will be well below the criteria for even the most sensitive buildings. Further, the **SCA Noise-3, Extreme Construction Noise** (see above) contains attenuative measures to address extreme noise as to lessen the impact of the pile driving.

Consistent with the mitigation measures in the CASP EIR and with the requirements of SCA Noise-3 for more quiet pile driving technology such as pre-drilling of piles, the Project's effects related to damage to nearby buildings from construction vibrations would be a less than significant impact.

Facts in support of findings: The City SCAs and measures to avoid operation groundborne vibration impacts will be enforceable existing regulations, permit terms and the lease conditions.

5. Aviation Noise

As is true for the entire CASP planning area, the Project site is not subject to excessive noise from private airstrips, public airports, or overhead aircraft. Consistent with the findings of the CASP EIR, the Project would not be adversely affected by aviation noise.

M. Population, Employment and Housing

The project does not include any proposed new housing or residential development. This non-residential project does not take away any planned housing development site pursuant to the CASP, the General Plan LUTE, or the City's General Plan Housing Element. The project has no direct effect related to population growth.

The following City of Oakland SCA is cited in the CASP EIR as an effective means for addressing indirect population and housing growth attributed to employment uses, and would apply to the project:

SCA Population-1, Jobs/Housing Impact Fee

Consistent with the conclusions in the CASP EIR, the project's effects related to indirect population growth and housing demands will be fully addressed through implementation of City SCAs and existing regulations, and the impact of population growth would be reduced to less than significant.

The project also would not induce substantial employment growth in the area, and this impact would be less than significant.

In addition, because the project area is a vacant site owned by EBMUD without any homes, the project would not result in the displacement of persons or housing.

N. Public Services and Recreation

1. New Government Facilities

The City of Oakland has adopted a Capital Improvements Impact Fee, and has found that there is a reasonable relationship between the type of development project paying the fees and the need for capital improvements and infrastructure. Through the payment of these fees, the Project will address its portion of these cumulative effects on public services and capital improvement infrastructure and fully mitigate its contribution to these impacts.

2. Parks and Recreation

The project's development area is located adjacent to a segment of the Bay Trail. The project does not include any on-site parks or recreational space improvements, but employees at the project facilities will have direct access to adjacent public recreational amenities.

The following City of Oakland SCA applies to all projects involving new construction adjacent to an existing open space:

SCA Public-2, Access to Parks and Open Space

The project will also be required to obtain a permit from BCDC before proceeding with development, and as part of this BCDC will examine whether the project provides for maximum feasible public access.

O. Transportation

1. Vehicle Miles Traveled (VMT)

The City of Oakland's CEQA Thresholds of Significance related to transportation impacts are described in the Addendum.

As shown in the Addendum, the estimated average daily VMT per worker for the project is less than the regional averages minus 15 percent for both year 2000 and year 2040 conditions. The project satisfies the City of Oakland VMT screening criterion for projects located in a low VMT area and thus has been determined to have a less than significant impact on VMT.

2. Conflict with Transit, Bicycle or Pedestrian Facility Policies

Consistent with the Oakland General Plan's Land Use and Transportation Element, City Public Transit and Alternative Mode Policy and the Complete Streets Policy, the CASP EIR states a strong preference for encouraging the use of non-automobile transportation modes. The Project's required Transportation Demand Management Plan, and other project characteristics such as limited parking supply and direct access to the Bay Trail, are consistent with the CASP and other City policies to improve and encourage use of non-automobile transportation modes. The project would not make any major modifications to the public right-of-way, including existing

pedestrian and bicycle facilities in the surrounding areas and would not adversely affect installation of future facilities.

Overall, the project would not conflict with adopted plans, ordinances, or policies addressing the safety and performance of the circulation system and would have a less than significant impact on transit, bicycle or pedestrian facilities.

The following City of Oakland SCAs would apply to the project:

SCA Transp-1, Bicycle Parking

SCA Transp-2, Transportation and Parking Demand Management

SCA Transp-3, Transportation Impact Fee

SCA Transp-4, Plug-In Electric Vehicle (PEV) Charging Infrastructure

These are described in in the Addendum, and the Addendum discusses the Transportation Demand Management Plan strategies that are part of City Guidelines.

Consistent with the CASP EIR and with implementation of applicable SCAs, the project would not conflict with adopted plans, ordinances or policies addressing the safety and performance of the circulation system, and this impact would be less than significant.

3. Emergency Access and Transportation Design

The project would provide four new driveways on Oakport Street, complete the sidewalk along the project frontage on Oakport Street, and connect the Bay Trail on the west side of the project.

As analyzed in the Hazards section of the Addendum, the project site is directly accessible to I-880 from Oakport Street, providing adequate access in the event of an emergency. The project would not interfere with emergency evacuation routes on Hegenberger Road, San Leandro Street, Edgewater Drive, International Boulevard, or Seminary Avenue and impacts related to emergency access would be less than significant.

The project would be subject to the following City of Oakland SCAs to reduce transportation hazards:

SCA Transp-5, Construction Activities in the Public Right-of-Way

SCA Transp-6, Transportation Improvements

The Addendum also discusses the Transportation Impact Review prepared for the project and the non-CEQA transportation improvements recommended both on-site and off-site.

Consistent with the CASP EIR and with implementation of applicable SCAs, the project would not directly or indirectly cause or expose roadway users to a permanent and substantial transportation hazard and the transportation hazard impacts would be less than significant.

P. Tribal Cultural Resources

While formal consultation was not required as part of the preparation of the Addendum, the preparers of the document did conduct outreach to those Native American tribes that requested notification.

The following City of Oakland SCAs would apply to the project:

SCA Cultural-1, Archaeological and Paleontological Resources – Discovery During Construction

In the unlikely event that human remains or funerary objects are discovered during project excavation, the following additional regulatory requirements would also apply, addressing the potential discovery of tribal cultural resources and/or human remains of Native American origin:

Project Requirement Tribal Cultural Resources-1, Discovery of Tribal Cultural Resources

These SCAs and state law and regulations will ensure that the Project's construction does not cause a substantial adverse change in the significance of a tribal cultural resource.

Q. Utilities and Service Systems

1. Water Supplies

EBMUD previously found the full water demands of the CASP to be within EBMUD's long-range water supply planning for future growth in Oakland, and the total water demands of the project, which would be approximately one percent of the total water demands generated by the CASP development, are well within EBMUD's water supply planning.

The following SCAs cited in the CASP EIR as an effective means for addressing cumulative water demands and offsetting water restrictions during periods of multiple dry years and would apply to the project:

SCA Energy-1, Green Building Requirements

SCA Utility-3, Water Efficient Landscape Ordinance

Consistent with the conclusions of the CASP EIR and the correspondence provided by EBMUD as part of the development of the CASP EIR, including the Water Supply Assessment issued by EBMUD, project effects related to water demand will be fully addressed through implementation of City SCAs and existing regulations, and the impact related to water supplies would be less than significant.

2. Wastewater Treatment

The CASP EIR identified that wet weather flows at the Main Wastewater Treatment Plant (MWWTP) are a concern, and the Addendum described EBMUD's efforts in working with the satellite agencies to reduce discharge from the wet weather facilities and reduce bypass flow events at the MWWTP.

The following City of Oakland SCAs are cited in the CASP EIR as an effective means for addressing cumulative wastewater demands and reducing wet weather flows to the MWWTP and would apply to the project:

SCA Energy-1, Green Building Requirements

SCA Utility-2, Sanitary Sewer System

SCA General-1, Regulatory Permits and Authorizations From Other Agencies

Consistent with the conclusions of the CASP EIR, the Project's effects related to increased wastewater demands will be fully addressed through implementation of the City SCAs and existing regulations, and impacts related to sanitary sewer service and treatment would be reduced to less than significant.

Facts in support of findings: SBO will obtain all necessary regulatory permits and authorizations and permit conditions and authorizations will be enforceable and ensure measures to prevent I&I and control wastewater flow are undertaken.

3. Stormwater/Drainage

The calculated stormwater drainage is discussed in the CASP EIR and the Addendum. The project will implement the following City of Oakland SCA:

SCA Hydro-3, NPDES C.3 Stormwater Requirements for Regulated Projects

Pursuant to SCA Hydro-3, the Project will need to implement stormwater treatment and hydromodification management to control the flow and duration of post-project stormwater runoff to match pre-project runoff conditions.

The project also includes a preliminary Storm Water Control Plan (SWCP) which is described in the Addendum.

Consistent with the conclusions of the CASP EIR, and with implementation of the project's required SWCP, the project's impacts related to stormwater drainage will be fully addressed, and impacts related to stormwater will be reduced to less than significant.

R. Wildfire

The project site is not located within any designated fire hazard severity zone, and is approximately 2.8 miles from the nearest Very High Fire Hazard Severity Zones, which are identified throughout the East Bay Hills. The project poses no potential to exacerbate wildfire risk, and has no potential effects related to wildfire risks.

S. Mandatory Findings of Significance

1. Degrade the Quality of the Environment

As addressed in the sections above, and as detailed in the Addendum, with implementation of all applicable City of Oakland SCAs and other regulatory requirements the project would not degrade the quality of the environment, substantially reduce the habitat of fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, or reduce the number or restrict the range of a rare or endangered plant or animal.

2. Cumulative Impacts

The CASP EIR examined the potential cumulative effects of new development pursuant to the CASP. The project's contribution to cumulative effects was fully evaluated and disclosed in the 2015 CASP EIR, and uniformly applied development policies and standards would apply to the project.

Exhibit B – Mitigation Measures

The City of Oakland adopted the following Standard Conditions of Approval and CASP EIR Mitigation Measures / Mitigation Monitoring and Reporting Program (SCAMMP) and included these in the approvals of the SupplyBank.org Project at Oakport. These measures shall apply to the SBO project that will be developed pursuant to the Lease Agreement, and the Lease Agreement also includes provisions regarding compliance with applicable laws, regulations, requirements, and permit conditions. To the extent that there are any additional mitigation conditions set forth in the Lease Agreement or other City or agency approvals, the more restrictive conditions shall govern.

<u>Standard Conditions of Approval/Mitigation Measures</u>	<u>Mitigation Implementation/Monitoring</u>		
	<u>When Required</u>	<u>Initial Approval</u>	<u>Monitoring/ Inspection</u>
General			
SCA General-1, Regulatory Permits and Authorizations from Other Agencies: The project applicant shall obtain all necessary regulatory permits and authorizations from applicable resource/regulatory agencies including, but not limited to, the Regional Water Quality Control Board, Bay Area Air Quality Management District, Bay Conservation and Development Commission, California Department of Fish and Wildlife, U. S. Fish and Wildlife Service, and Army Corps of Engineers and shall comply with all requirements and conditions of the permits/authorizations. The project applicant shall submit evidence of the approved permits/authorizations to the City, along with evidence demonstrating compliance with any regulatory permit/authorization conditions of approval.	Prior to activity requiring permit/authorization from regulatory agency	Approval by applicable regulatory agency with jurisdiction; evidence of approval submitted to Bureau of Planning	Applicable regulatory agency with jurisdiction
SCA General-2, Construction Management Plan: Prior to the issuance of the first construction-related permit, the project applicant and his/her general contractor shall submit a Construction Management Plan (CMP) for review and approval by the Bureau of Planning, Bureau of Building, and other relevant City departments such as the Fire Department, Department of Transportation, and the Public Works Department as directed. The CMP shall contain measures to minimize potential construction impacts including measures to comply with all construction-related Conditions of Approval (and mitigation measures if applicable) such as dust control, construction emissions, hazardous materials, construction days/hours, construction traffic control, waste reduction and recycling, stormwater pollution prevention, noise control, complaint management, and cultural resource management (see applicable Conditions below). The CMP shall provide project-specific information including descriptive procedures, approval documentation, and drawings (such as a site logistics plan, fire safety plan, construction phasing plan, proposed truck routes, traffic control plan, complaint management plan, construction worker parking plan, and litter/debris clean-up plan) that specify how potential construction impacts will be minimized and how each construction-related requirement will be satisfied throughout construction of the project.	Prior to the issuance of the first construction-related permit	Bureau of Planning, Bureau of Building, and other relevant City departments	Bureau of Planning, Bureau of Building, and other relevant City departments
Aesthetics			
SCA Aesthetics-1, Lighting: Proposed new exterior lighting fixtures shall be adequately shielded to a point below the light bulb and reflector to prevent unnecessary glare onto adjacent properties.	Prior to building permit final	N/A	Bureau of Building
SCA Aesthetics-2: Trash and Blight Removal: The project applicant and his/her successors shall maintain the property free of blight, as defined in chapter 8.24 of the Oakland Municipal Code. For nonresidential and multifamily residential projects, the project applicant shall install and maintain trash receptacles near public entryways as needed to provide sufficient capacity for building users.	Ongoing	N/A	Bureau of Building

<u>Standard Conditions of Approval/Mitigation Measures</u>	<u>Mitigation Implementation/Monitoring</u>		
	<u>When Required</u>	<u>Initial Approval</u>	<u>Monitoring/ Inspection</u>
SCA Aesthetics-3: Graffiti Control	Ongoing	N/A	Bureau of Building
a) During construction and operation of the project, the project applicant shall incorporate best management practices reasonably related to the control of graffiti and/or the mitigation of the impacts of graffiti. Such best management practices may include, without limitation: i. Installation and maintenance of landscaping to discourage defacement of and/or protect likely graffiti-attracting surfaces ii. Installation and maintenance of lighting to protect likely graffiti-attracting surfaces iii. Use of paint with anti-graffiti coating iv. Incorporation of architectural or design elements or features to discourage graffiti defacement in accordance with the principles of Crime Prevention Through Environmental Design (CPTED). v. Other practices approved by the City to deter, protect, or reduce the potential for graffiti defacement b) The project applicant shall remove graffiti by appropriate means within seventy-two (72) hours. Appropriate means include the following: i. Removal through scrubbing, washing, sanding, and/or scraping (or similar method) without damaging the surface and without discharging wash water or cleaning detergents into the City storm drain system ii. Covering with new paint to match the color of the surrounding surface iii. Replacing with new surfacing (with City permits if required)			
SCA Aesthetics-4: Landscape Plan	Prior to approval of construction-related permit	Bureau of Planning	N/A
a) Landscape Plan Required: The project applicant shall submit a final Landscape Plan for City review and approval that is consistent with the approved Landscape Plan. The Landscape Plan shall be included with the set of drawings submitted for the construction-related permit and shall comply with the landscape requirements of chapter 17.124 of the Planning Code. Proposed plants shall be predominantly drought-tolerant. Specification of any street trees shall comply with the Master Street Tree List and Tree Planting Guidelines (which can be viewed at http://www2.oaklandnet.com/oakca1/groups/pwa/documents/report/oak042662.pdf and http://www2.oaklandnet.com/oakca1/groups/pwa/documents/form/oak025595.pdf , respectively), and with any applicable streetscape plan.			
b) Landscape Installation: The project applicant shall implement the approved Landscape Plan unless a bond, cash deposit, letter of credit, or other equivalent instrument acceptable to the Director of City Planning, is provided. The financial instrument shall equal the greater of \$2,500 or the estimated cost of implementing the Landscape Plan based on a licensed contractor's bid.	Prior to building permit final	Bureau of Planning	Bureau of Building
c) Landscape Maintenance: All required planting shall be permanently maintained in good growing condition and, whenever necessary, replaced with new plant materials to ensure continued compliance with applicable landscaping requirements. The property owner shall be responsible for maintaining planting in adjacent public rights-of-way. All required fences, walls, and irrigation	Ongoing	N/A	Bureau of Building

<u>Standard Conditions of Approval/Mitigation Measures</u>	<u>Mitigation Implementation/Monitoring</u>		
	<u>When Required</u>	<u>Initial Approval</u>	<u>Monitoring/ Inspection</u>
systems shall be permanently maintained in good condition and, whenever necessary, repaired or replaced.			
Air Quality			
SCA Air-1, Dust Controls – Construction Related: The project applicant shall implement all of the following applicable dust control measures during construction of the project:	During construction	Bureau of Building	Bureau of Building
a) Water all exposed surfaces of active construction areas at least twice daily. Watering should be sufficient to prevent airborne dust from leaving the site. Increased watering frequency may be necessary whenever wind speeds exceed 15 miles per hour. Reclaimed water should be used whenever feasible. b) Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard (i.e., the minimum required space between the top of the load and the top of the trailer). - c). All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited. d) Limit vehicle speeds on unpaved roads to 15 miles per hour. e) All demolition activities (if any) shall be suspended when average wind speeds exceed 20 miles per hour (mph). f) All trucks and equipment, including tires, shall be washed off prior to leaving the site. g) Site accesses to a distance of 100 feet from the paved road shall be treated with a 6 to 12 inch compacted layer of wood chips, mulch, or gravel.			
Because the Project involves extensive site preparation (the construction site more than four acres in size) and involves extensive soil transport (more than 10,000 CY of soil import), the following additional Enhanced dust control measures during construction of the project:			
h) Apply and maintain vegetative ground cover (e.g., hydro-seed) or non-toxic soil stabilizers to disturbed areas of soil that will be inactive for more than one month. Enclose, cover, water twice daily, or apply (non-toxic) soil stabilizers to exposed stockpiles (dirt, sand, etc.). i) Designate a person or persons to monitor the dust control program and to order increased watering, as necessary, to prevent transport of dust offsite. Their duties shall include holidays and weekend periods when work may not be in progress. j) When working at a site, install appropriate windbreaks (e.g., trees, fences) on the windward side(s) of the site, to minimize wind-blown dust. Windbreaks must have a maximum 50 percent air porosity. k) Post a publicly visible large on-site sign that includes the contact name and phone number for the project complaint manager responsible for responding to dust complaints and the telephone numbers of the City's Code Enforcement unit and the Bay Area Air Quality Management District.			

<u>Standard Conditions of Approval/Mitigation Measures</u>	<u>Mitigation Implementation/Monitoring</u>		
	<u>When Required</u>	<u>Initial Approval</u>	<u>Monitoring/ Inspection</u>
When contacted, the project complaint manager shall respond and take corrective action within 48 hours.			
l) All exposed surfaces shall be watered at a frequency adequate to maintain minimum soil moisture of 12 percent. Moisture content can be verified by lab samples or moisture probe.			
SCA Air-2, Criteria Air Pollutant Controls - Construction Related: The project applicant shall implement all of the following applicable basic control measures for criteria air pollutants during construction of the project as applicable:	During construction	Bureau of Building	Bureau of Building
a) Idling times on all diesel-fueled commercial vehicles over 10,000 lbs. shall be minimized by shutting equipment off when not in use, or reducing the maximum idling time to two minutes (as required by the California airborne toxics control measure Title 13, Section 2485, of the California Code of Regulations). Clear signage to this effect shall be provided for construction workers at all access points.			
b) Idling times on all diesel-fueled off-road vehicles over 25 horsepower shall be minimized by shutting equipment off when not in use, or reducing the maximum idling time to two minutes. Fleet operators must develop a written policy as required by Title 23, Section 2449, of the California Code of Regulations ("California Air Resources Board Off- Road Diesel Regulations").			
c) All construction equipment shall be maintained and properly tuned in accordance with the manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation. Equipment check documentation should be kept at the construction site and be available for review by the City and the Bay Area Air Quality District as needed.			
d) Portable equipment shall be powered by grid electricity if available. If electricity is not available, propane or natural gas generators shall be used if feasible. Diesel engines shall only be used if grid electricity is not available and propane or natural gas generators cannot meet the electrical demand.			
e) Low VOC (i.e., ROG) coatings shall be used that comply with BAAQMD Regulation 8, Rule 3: Architectural Coatings.			
f) All equipment to be used on the construction site shall comply with the requirements of Title 13, Section 2449, of the California Code of Regulations ("California Air Resources Board Off-Road Diesel Regulations") and upon request by the City (and the Air District if specifically requested), the project applicant shall provide written documentation that fleet requirements have been met.			
SCA Air-3, Diesel Particulate Matter Controls-Construction Related:	During construction	Bureau of Building	Bureau of Building
a) The project applicant shall implement appropriate measures during construction to reduce potential health risks to sensitive receptors due to exposure to diesel particulate matter (DPM) from construction emissions. The project applicant shall choose one of the following methods:			
i) The project applicant shall retain a qualified air quality consultant to prepare a Health Risk Assessment (HRA) in accordance with current guidance from the California Air Resources Board			

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(CARB) and Office of Environmental Health and Hazard Assessment to determine the health risk to sensitive receptors exposed to DPM from project construction emissions. The HRA shall be submitted to the City (and the Air District if specifically requested) for review and approval. If the HRA concludes that the health risk is at or below acceptable levels, then DPM reduction measures are not required. If the HRA concludes that the health risk exceeds acceptable levels, DPM reduction measures shall be identified to reduce the health risk to acceptable levels as set forth under subsection b below. Identified DPM reduction measures shall be submitted to the City for review and approval prior to the issuance of building permits and the approved DPM reduction measures shall be implemented during construction.			
-or-			
ii) All off-road diesel equipment shall be equipped with the most effective Verified Diesel Emission Control Strategies (VDECS) available for the engine type (Tier 4 engines automatically meet this requirement) as certified by CARB. The equipment shall be properly maintained and tuned in accordance with manufacturer specifications. This shall be verified through an equipment inventory submittal and Certification Statement that the Contractor agrees to compliance and acknowledges that a significant violation of this requirement shall constitute a material breach of contract.			
b) <i>Construction Emissions Minimization Plan</i> (if required by a) above): The project applicant shall prepare a Construction Emissions Minimization Plan (Emissions Plan) for all identified DPM reduction measures (if any). The Emissions Plan shall be submitted to the City (and the Bay Area Air Quality District if specifically requested) for review and approval prior to the issuance of building permits. The Emissions Plan shall include the following:	Prior to issuance of a construction related permit	Bureau of Planning	Bureau of Building
i) An equipment inventory summarizing the type of off-road equipment required for each phase of construction, including the equipment manufacturer, equipment identification number, engine model year, engine certification (tier rating), horsepower, and engine serial number. For all VDECS, the equipment inventory shall also include the technology type, serial number, make, model, manufacturer, CARB verification number level, and installation date.			
ii. A Certification Statement that the Contractor agrees to comply fully with the Emissions Plan and acknowledges that a significant violation of the Emissions Plan shall constitute a material breach of contract			
SCA Air-4, Stationary Sources of Air Pollution (Toxic Air Contaminants): The project applicant shall incorporate appropriate measures into the project design in order to reduce the potential health risk due to on-site stationary sources of toxic air contaminants. The project applicant shall choose one of the following methods:	During construction	Bureau of Building	Bureau of Building
a) The project applicant shall retain a qualified air quality consultant to prepare a Health Risk Assessment (HRA) in accordance with California Air Resources Board (CARB) and Office of Environmental Health and Hazard Assessment requirements to determine the health risk associated			

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with proposed stationary sources of pollution in the project. The HRA shall be submitted to the City for review and approval. If the HRA concludes that the health risk is at or below acceptable levels, then health risk reduction measures are not required. If the HRA concludes the health risk exceeds acceptable levels, health risk reduction measures shall be identified to reduce the health risk to acceptable levels. Identified risk reduction measures shall be submitted to the City for review and approval and be included on the project drawings submitted for the construction-related permit or on other documentation submitted to the City. The approved risk reduction measures shall be implemented during construction and/or operations as applicable. - or - b) The project applicant shall incorporate the following health risk reduction measures into the project. These features shall be submitted to the City for review and approval and be included on the project drawings submitted for the construction-related permit or on other documentation submitted to the City: - Installation of non-diesel fueled generators, if feasible, or; - Installation of diesel generators with an EPA-certified Tier 4 engine or engines that are retrofitted with a CARB Level 3 Verified Diesel Emissions Control Strategy, if feasible			
SCA Air-5, Truck-Related Risk Reduction Measures (Toxic Air Contaminants) a) <i>Truck Loading Dock</i>: The project applicant shall locate proposed truck loading docks as far from nearby sensitive receptors as feasible. b) <i>Truck Fleet Emission Standards</i>: The project applicant shall comply with all applicable California Air Resources Board (CARB) requirements to control emissions from diesel engines and demonstrate compliance to the satisfaction of the City. Methods to comply include, but are not limited to new clean diesel trucks, higher-tier diesel engine trucks with added Particulate Matter (PM) filters, hybrid trucks, alternative energy trucks, or other methods that achieve the applicable CARB emission standard. Compliance with this requirement shall be verified through CARB's Verification Procedures for In-Use Strategies to Control Emissions from Diesel Engines.	Prior to building permit final; ongoing	Bureau of Planning	Bureau of Building
SCA Air-6, Asbestos in Structures: The project applicant shall comply with all applicable laws and regulations regarding demolition and renovation of Asbestos Containing Materials (ACM), including but not limited to California Code of Regulations, Title 8; California Business and Professions Code, Division 3; California Health and Safety Code sections 25915-25919.7; and Bay Area Air Quality Management District, Regulation 11, Rule 2, as may be amended. Evidence of compliance shall be submitted to the City upon request.	Prior to approval of construction-related permit	Applicable regulatory agency with jurisdiction	Applicable regulatory agency with jurisdiction

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	<u>When Required</u>	<u>Initial Approval</u>	<u>Monitoring/ Inspection</u>
Biological Resources			
CASP EIR MM Bio 1A-1, Pre-construction Nesting Bird Surveys and Buffers: The following mitigation measures are recommended to address potential impacts to special status birds and nesting birds: a) A qualified biologist shall conduct pre-construction surveys for construction activities between February 15 and September 30 to identify and subsequently avoid nesting areas for special status and migratory bird species. Surveys shall be designed and be of sufficient intensity to document rail and raptor nesting within 500 feet of planned work activities and within 50 feet for passerine nesting activity. b) Construction activities within 500 feet of Damon Marsh and Arrowhead Marsh shall be conducted during the period from August 1 to January 31 to protect potentially nesting Ridgeway rail, California black rail, Alameda song sparrow and San Francisco saltmarsh common yellowthroat. c) If Ridgeway rails, California black rails or raptors are found to be nesting within or adjacent to the planned work area, a minimum 100-foot wide buffer shall be maintained between construction activities and the nest location. d) For Alameda song sparrow, San Francisco saltmarsh common yellowthroat and all other protected birds, a 50-foot buffer shall be maintained. e) Buffer zones may be reduced in consultation with a qualified biologist. f) Buffers shall be maintained until the young have fledged and are capable of flight, or by September 30.	Pre-construction surveys conducted between February 15 and September 30 During construction	Bureau of Planning	Bureau of Building
Project Recommendation related to CASP EIR MM Bio-1A-1: The USFWS typically considers any disturbance within 700 feet direct line of sight of occupied nesting habitat to be a potential take of the federally endangered Ridgeway's rail. The 500-foot distance specified in CASP EIR MM Bio 1A-1 could be determined insufficient, and an increased construction-period buffer is recommended, as indicated below: a) Construction activities within ~~500~~ <u>700</u> feet of Damon Marsh and Arrowhead Marsh shall be conducted during the period from August 1 to January 31 to protect potentially nesting Ridgeway's rail, California black rail, Alameda song sparrow and San Francisco saltmarsh common yellowthroat	During construction	Bureau of Planning	Bureau of Building
CASP EIR MM Bio 1A-3, Salt Marsh Protection: All core habitat areas for salt marsh harvest mouse (i.e., pickleweed-dominated salt marsh habitat within Damon Marsh and Arrowhead Marsh) shall be avoided and protected. If construction activities are within 100 feet of these areas, site-specific buffers shall be established in coordination with a qualified biologist, approved by USFWS or CDFW as appropriate. a) Buffers shall be designed to preclude changes to water and soil salinity and flooding/inundation regime. The buffers shall be at least 100 feet wide or extend to the current boundary of existing roads or development (includes vacant but graded lots and filled building pads). The qualified biologist may modify these buffers depending on site conditions. b) The construction work area shall be fenced on the side closest to salt marsh habitat to delineate the extent of construction, preclude construction personnel and equipment from entering non-work	During construction	Bureau of Planning	Bureau of Building

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	<u>When Required</u>	<u>Initial Approval</u>	<u>Monitoring/ Inspection</u>
areas, and prevent debris from entering avoided habitats. The construction boundary fencing may also inhibit movement of species such as the salt marsh harvest mouse and salt marsh wandering shrew into the construction area. c) The qualified biologist shall be present during work on-site until the construction barrier fencing is installed, instruction of workers has been conducted, and any direct habitat disturbance has been completed. After that time, the contractor or permittee shall designate a person to monitor on-site compliance with all minimization measures. d) The monitor and qualified biologist shall have the authority to halt construction that might result in impacts that exceed anticipated levels			
CASP EIR MM Bio 1A-4, Public Access Design: All new or additional public access to San Francisco Bay, the Bay shoreline, Damon Marsh and San Leandro Creek shall be implemented in a manner consistent with the San Francisco Bay Conservation and Development Commission's Public Access Design Guidelines for the San Francisco Bay, in particular its recommendations for avoiding adverse effects on wildlife. These Design Guidelines include the following: a) Preparation of individual site analyses to generate information on wildlife species and habitats existing at the site, and the likely human use of the site b) Employing appropriate siting, design and management strategies (such as buffers or use restrictions) to reduce or prevent adverse human and wildlife interactions c) Planning public access in a way that balances the needs of wildlife and people on an areawide scale, where possible d) Providing visitors with diverse and satisfying public access opportunities to focus activities in designated areas and avoid habitat fragmentation, vegetation trampling and erosion e) Evaluating wildlife predator access and control in site design f) Retaining existing marsh and tidal flats and restoring or enhancing wildlife habitat, wherever possible	Prior to approval of construction-related permit	Bureau of Planning	Bureau of Building
CASP EIR's Further Recommendations Pursuant to SCA Aesthetics-1: In addition to the standard provisions of the City SCA Lighting Plan requirements, lighting plans for properties within the CASP planning area and near the Bay include the following: a) Acorn-style lights that are International Dark Sky Association approved "Dark Sky Friendly" will be installed. This type of lighting ensures 0 percent light above 90 degrees, directs light downward and minimizes the amount of backward and side lighting, thereby reducing light pollution on habitat and animals in the surrounding area. b) Use only the lowest luminaire wattage that still provides safe conditions for vehicular traffic, bicyclists, and pedestrians. c) If possible, correlated color temperature (an indication of how "warm" or "cool" the light source appears) ranges of the light source to be between 3800 and 4000 Kelvins. This range corresponds to "warm" light that would be less disturbing to animals.	Prior to building permit final	N/A	Bureau of Building

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	<u>When Required</u>	<u>Initial Approval</u>	<u>Monitoring/ Inspection</u>
d) Lights shall be directed away from and/or screened from Damon Marsh and Arrowhead Marsh.			
CASP EIR MM Bio 3-2, Herbicide / Pesticide Control: Maintenance shall require preparation and implementation of a drift control plan for herbicide/pesticide use.	On going	N/A	Bureau of Building
SCA Biology-1, Tree Removal during Bird Breeding Season: To the extent feasible, removal of any tree and/or other vegetation suitable for nesting of birds shall not occur during the bird-breeding season of February 1 to August 15 (or during December 15 to August 15 for trees located in or near marsh, wetland, or aquatic habitats). If tree removal must occur during the bird breeding season, all trees to be removed shall be surveyed by a qualified biologist to verify the presence or absence of nesting raptors or other birds. Pre-removal surveys shall be conducted within 15 days prior to the start of work and shall be submitted to the City for review and approval. If the survey indicates the potential presence of nesting raptors or other birds, the biologist shall determine an appropriately sized buffer around the nest in which no work will be allowed until the young have successfully fledged. The size of the nest buffer will be determined by the biologist in consultation with the California Department of Fish and Wildlife, and will be based on the nesting species and its sensitivity to disturbance. In general, buffer sizes of 200 feet for raptors and 50 feet for other birds should suffice to prevent disturbance to birds nesting in the urban environment, but these buffers may be increased or decreased, as appropriate, depending on the bird species and the level of disturbance anticipated near the nest.	Prior to removal of trees	Bureau of Planning	Bureau of Building
SCA Bio-2, Bird Collision Reduction Measures: The project applicant shall submit a Bird Collision Reduction Plan for City review and approval to reduce potential bird collisions to the maximum feasible extent. The Plan shall include all of the following mandatory measures, as well as applicable Project-specific Best Management Practice (BMP) strategies to reduce bird strike impacts to the maximum feasible extent. The project applicant shall implement the approved Plan. Mandatory measures include all of the following: a) For large buildings subject to federal aviation safety regulations, install minimum intensity white strobe lighting with three-second flash instead of solid red or rotating lights. b) Minimize the number of and co-locate rooftop-antennas and other rooftop structures. c) Monopole structures or antennas shall not include guywires. d) Avoid the use of mirrors in landscape design. e) Avoid placement of bird-friendly attractants (i.e., landscaped areas, vegetated roofs, water features) near glass unless shielded by architectural features taller than the attractant that incorporate bird friendly treatments no more than two inches horizontally, four inches vertically, or both (the “two-by-four” rule). f) Apply bird-friendly glazing treatments to no less than 90 percent of all windows and glass between the ground and 60 feet above ground or to the height of existing adjacent landscape or the height of the proposed landscape. Examples of bird-friendly glazing treatments include the following: i. Use opaque glass in windowpanes instead of reflective glass.	Prior to approval of construction-related permit	Bureau of Planning	Bureau of Building

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	<u>When Required</u>	<u>Initial Approval</u> <u>Monitoring/ Inspection</u>
ii. Uniformly cover the interior or exterior of clear glass surface with patterns (e.g., dots, stripes, decals, images, abstract patterns). Patterns can be etched, fritted, or on films and shall have a density of no more than two inches horizontally, four inches vertically, or both (the “two-by-four” rule). iii. Install paned glass with fenestration patterns with vertical and horizontal mullions no more than two inches horizontally, four inches vertically, or both (the “two-by-four” rule). iv. Install external screens over non-reflective glass (as close to the glass as possible) for birds to perceive windows as solid objects. v. Install UV-pattern reflective glass, laminated glass with a patterned UV-reflective coating, or UV-absorbing and UV-reflecting film on the glass since most birds can see ultraviolet light, which is invisible to humans. vi. Install decorative grilles, screens, netting, or louvers, with openings no more than two inches horizontally, four inches vertically, or both (the “two-by-four” rule). vii. Install awnings, overhangs, sunshades, or light shelves directly adjacent to clear glass which is recessed on all sides. viii. Install opaque window film or window film with a pattern/design which also adheres to the “two-by-four” rule for coverage. g) Reduce light pollution. Examples include the following: i. Extinguish nighttime architectural illumination treatments during bird migration season (February 15 to May 15 and August 15 to November 30). ii. Install time switch control devices or occupancy sensors on non-emergency interior lights that can be programmed to turn off during non-work hours and between 11:00 p.m. and sunrise. iii. Reduce perimeter lighting whenever possible. iv. Install full cut-off, shielded, or directional lighting to minimize light spillage, glare, or light trespass. v. Do not use beams of lights during the spring (February 15 to May 15) or fall (August 15 to November 30) migration. h) Develop and implement a building operation and management manual that promotes bird safety. Example measures in the manual include the following: i. Donation of discovered dead bird specimens to an authorized bird conservation organization or museums (e.g., UC Berkeley Museum of Vertebrate Zoology) to aid in species identification and to benefit scientific study, as per all federal, state and local laws. ii. Distribute educational materials on bird-safe practices for the building occupants. Contact Golden Gate Audubon Society or American Bird Conservancy for materials. iii. Asking employees to turn off task lighting at their workstations and draw office blinds, shades, curtains, or other window coverings at end of workday.		

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iv. Install interior blinds, shades, or other window coverings in windows above the ground floor visible from the exterior as part of the construction contract, lease agreement, or CC&Rs.			
v. Schedule nightly maintenance during the day, or so that it concludes before 11 p.m., if possible.			
SCA Biology-3, Tree Permit:			
1. <i>Tree Permit Required:</i> Pursuant to the City's Tree Protection Ordinance (OMC chapter 12.36), the project applicant shall obtain a tree permit and abide by the conditions of that permit.	Prior to approval of construction-related permit	Permit approval by Public Works Department, Tree Division; evidence of approval submitted to Bureau of Building	Bureau of Building
2. <i>Tree Protection during Construction:</i> Adequate protection shall be provided during the construction period for any trees that are to remain standing, including the following, plus any recommendations of an arborist:	During construction	Public Works Department, Tree Division	Bureau of Building
a. Before the start of any clearing, excavation, construction or other work on the site, every protected tree deemed potentially endangered by said site work shall be securely fenced off at a distance from the base of the tree, to be determined by the project's consulting arborist. Such fences shall remain in place for duration of all such work. All trees to be removed shall be clearly marked. A scheme shall be established for the removal and disposal of logs, brush, earth and other debris that will avoid injury to any protected tree.			
b. Where proposed development or other site work is to encroach upon the protected perimeter of any protected tree, special measures shall be incorporated to allow the roots to breathe and obtain water and nutrients. Any excavation, cutting, filling, or compaction of the existing ground surface within the protected perimeter shall be minimized. No change in existing ground level shall occur within a distance to be determined by the project's consulting arborist from the base of any protected tree at any time. No burning or use of equipment with an open flame shall occur near or within the protected perimeter of any protected tree.			
c. No storage or dumping of oil, gas, chemicals, or other substances that may be harmful to trees shall occur within the distance to be determined by the project's consulting arborist from the base of any protected trees, or any other location on the site from which such substances might enter the protected perimeter. No heavy construction equipment or construction materials shall be operated or stored within a distance from the base of any protected trees to be determined by the project's consulting arborist. Wires, ropes, or other devices shall not be attached to any protected tree, except as needed for support of the tree. No sign, other than a tag showing the botanical classification, shall be attached to any protected tree.			

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	<u>When Required</u>	<u>Initial Approval</u>	<u>Monitoring/ Inspection</u>
d. Periodically during construction, the leaves of protected trees shall be thoroughly sprayed with water to prevent buildup of dust and other pollution that would inhibit leaf transpiration. e. If any damage to a protected tree should occur during or from work on the site, the project applicant shall immediately notify the Public Works Department and the project's consulting arborist shall make a recommendation to the City Tree Reviewer as to whether the damaged tree can be preserved. If, in the professional opinion of the Tree Reviewer, such tree cannot be preserved in a healthy state, the Tree Reviewer shall require replacement of any tree removed with another tree or trees on the same site deemed adequate by the Tree Reviewer to compensate for the loss of the tree that is removed. f. All debris created from any tree removal work shall be removed by the project applicant from the property within two weeks of debris creation, and such debris shall be properly disposed of by the project applicant in accordance with all applicable laws, ordinances, and regulations. 3. <i>Tree Replacement Plantings:</i> Replacement plantings shall be required for tree removals for the purposes of erosion control, groundwater replenishment, visual screening, wildlife habitat, and preventing excessive loss of shade, in accordance with the following criteria: a. No tree replacement shall be required for the removal of nonnative species, for the removal of trees which is required for the benefit of remaining trees, or where insufficient planting area exists for a mature tree of the species being considered. b. Replacement tree species shall consist of Sequoia sempervirens (Coast Redwood), Quercus agrifolia (Coast Live Oak), Arbutus menziesii (Madrone), Aesculus californica (California Buckeye), Umbellularia californica (California Bay Laurel), or other tree species acceptable to the Tree Division. c. Replacement trees shall be at least twenty-four (24) inch box size, unless a smaller size is recommended by the arborist, except that three fifteen (15) gallon size trees may be substituted for each twenty-four (24) inch box size tree where appropriate. d. Minimum planting areas must be available on site as follows: for Sequoia sempervirens, three hundred fifteen (315) square feet per tree, for other species listed, seven hundred (700) square feet per tree e. In the event that replacement trees are required but cannot be planted due to site constraints, an in lieu fee in accordance with the City's Master Fee Schedule may be substituted for required replacement plantings, with all such revenues applied toward tree planting in city parks, streets and medians. f. The project applicant shall install the plantings and maintain the plantings until established. The Tree Reviewer of the Tree Division of the Public Works Department may require a landscape plan showing the replacement plantings and the method of irrigation. Any replacement plantings that fail to become established within one year of planting shall be replanted at the project applicant's expense.	Prior to building permit final	Public Works Department, Tree Division	Bureau of Building

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	<u>When Required</u>	<u>Initial Approval</u>	<u>Monitoring/ Inspection</u>
Recommendation Pursuant to SCA Bio-3: Landscape Plan Species: Pursuant to the Project's Tree permit and/or Creek permit, the Project applicant shall reconsider the proposed plant palette to incorporate the following recommendations: a) The Project's landscape plan should provide for a greater component of native trees, especially along the Project's westerly edge near Damon Marsh. b) The selection of Chinese Pistache trees within the landscape should be limited to male variety of this species, as the female variety produces berries that are attractive to birds.	Prior to building permit final	Public Works Department, Tree Division	Bureau of Building
Cultural Resources			
SCA Cultural-1: Archaeological and Paleontological Resources – Discovery during Construction: Pursuant to CEQA Guidelines section 15064.5(f), in the event that any historic or prehistoric subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and the project applicant shall notify the City and consult with a qualified archaeologist or paleontologist, as applicable, to assess the significance of the find. In the case of discovery of paleontological resources, the assessment shall be done in accordance with the Society of Vertebrate Paleontology standards. a) If any find is determined to be significant, appropriate avoidance measures recommended by the consultant and approved by the City must be followed unless avoidance is determined unnecessary or infeasible by the City. Feasibility of avoidance shall be determined with consideration of factors such as the nature of the find, project design, costs, and other considerations. If avoidance is unnecessary or infeasible, other appropriate measures (e.g., data recovery, excavation) shall be instituted. Work may proceed on other parts of the project site while measures for the cultural resources are implemented. b) In the event of data recovery of archaeological resources, the project applicant shall submit an Archaeological Research Design and Treatment Plan (ARDTP) prepared by a qualified archaeologist for review and approval by the City. The ARDTP is required to identify how the proposed data recovery program would preserve the significant information the archaeological resource is expected to contain. The ARDTP shall identify the scientific/historic research questions applicable to the expected resource, the data classes the resource is expected to possess, and how the expected data classes would address the applicable research questions. The ARDTP shall include the analysis and specify the curation and storage methods. c) Data recovery, in general, shall be limited to the portions of the archaeological resource that could be impacted by the proposed project. Destructive data recovery methods shall not be applied to portions of the archaeological resources if nondestructive methods are practicable. Because the intent of the ARDTP is to save as much of the archaeological resource as possible, including moving the resource, if feasible, preparation and implementation of the ARDTP would reduce the potential	During construction	N/A	Bureau of Building

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adverse impact to less than significant. The project applicant shall implement the ARDTP at his/her expense.			
d) In the event of excavation of paleontological resources, the project applicant shall submit an excavation plan prepared by a qualified paleontologist to the City for review and approval. All significant cultural materials recovered shall be subject to scientific analysis, professional museum curation, and/or a report prepared by a qualified paleontologist, as appropriate, according to current professional standards and at the expense of the project applicant.			
SCA Cultural-2: Human Remains – Discovery during Construction: Pursuant to CEQA Guidelines section 15064.5(e) (1), in the event that human skeletal remains are uncovered at the project site during construction activities, all work shall immediately halt, and the project applicant shall notify the City and the Alameda County Coroner.	During construction	N/A	Bureau of Building
a) If the County Coroner determines that an investigation of the cause of death is required, or that the remains are Native American, all work shall cease within 50 feet of the remains until appropriate arrangements are made.			
b) In the event that the remains are Native American, the City shall contact the California Native American Heritage Commission (NAHC), pursuant to subdivision (c) of section 7050.5 of the California Health and Safety Code. If the agencies determine that avoidance is not feasible, then an alternative plan shall be prepared with specific steps and timeframe required to resume construction activities. Monitoring, data recovery, determination of significance, and avoidance measures (if applicable) shall be completed expeditiously and at the expense of the project applicant.			
Energy			
SCA Energy-1, Green Building Requirements: The project applicant shall comply with the requirements of the California Green Building Standards (CALGreen) mandatory measures and the applicable requirements of the City of Oakland Green Building Ordinance (chapter 18.02 of the Oakland Municipal Code).	Prior to approval of construction-related permit	Bureau of Building	N/A
a) The following information shall be submitted to the City for review and approval with the application for a building permit:			
i. Documentation showing compliance with Title 24 of the current version of the California Building Energy Efficiency Standards			
ii. Completed copy of the final green building checklist approved during the review of the Planning and Zoning permit			
iii. Copy of the Unreasonable Hardship Exemption, if granted, during the review of the Planning and Zoning permit			
iv. Permit plans that show, in general notes, detailed design drawings, and specifications as necessary, compliance with the items listed in subsection (b) below			

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v. Copy of the signed statement by the Green Building Certifier approved during the review of the Planning and Zoning permit that the project complied with the requirements of the Green Building Ordinance vi. Signed statement by the Green Building Certifier that the project still complies with the requirements of the Green Building Ordinance, unless an Unreasonable Hardship Exemption was granted during the review of the Planning and Zoning permit vii. Other documentation as deemed necessary by the City to demonstrate compliance with the Green Building Ordinance			
b) The set of plans in subsection (i) shall demonstrate compliance with the following: i. CALGreen mandatory measures ii. Green building point level/certification requirements per the appropriate checklist approved during the Planning entitlement process iii. All green building points identified on the checklist approved during review of the Planning and Zoning permit, unless a Request for Revision Plan-check application is submitted and approved by the Bureau of Planning that shows the previously approved points that will be eliminated or substituted. iv. The required green building point minimums in the appropriate credit categories			
c) The project applicant shall comply with the applicable requirements of CALGreen and the Oakland Green Building Ordinance during construction of the project. The following information shall be submitted to the City for review and approval: i. Completed copies of the green building checklists approved during the review of the Planning and Zoning permit and during the review of the building permit ii. Signed statement(s) by the Green Building Certifier during all relevant phases of construction that the project complies with the requirements of the Green Building Ordinance iii. Other documentation as deemed necessary by the City to demonstrate compliance with the Green Building Ordinance	During construction	N/A	Bureau of Building
d) Compliance with Green Building Requirements after Construction Requirement: Prior to the finalizing the Building Permit, the Green Building Certifier shall submit the appropriate documentation to City staff and attain the minimum required point level.	Prior to Final Approval	Bureau of Planning	Bureau of Building
Geology and Soils			
SCA Geo-1: Construction-Related Permit(s): The project applicant shall obtain all required construction-related permits/approvals from the City. The project shall comply with all standards, requirements and conditions contained in construction-related codes, including but not limited to the Oakland Building Code and the Oakland Grading Regulations, to ensure structural integrity and safe construction.	Prior to approval of construction-related permit	Bureau of Building	Bureau of Building

<u>Standard Conditions of Approval/Mitigation Measures</u>	<u>Mitigation Implementation/Monitoring</u>		
	<u>When Required</u>	<u>Initial Approval</u>	<u>Monitoring/ Inspection</u>
SCA Geo-2: Soils Report: The project applicant shall submit a soils report prepared by a registered geotechnical engineer for City review and approval. The soils report shall contain, at a minimum, field test results and observations regarding the nature, distribution and strength of existing soils, and recommendations for appropriate grading practices and project design. The project applicant shall implement the recommendations contained in the approved report during project design and construction.	Prior to approval of construction-related permit	Bureau of Building	Bureau of Building
SCA Geo-3, Seismic Hazards Zone (Landslide/Liquefaction): The project applicant shall submit a site-specific geotechnical report, consistent with California Geological Survey Special Publication 117 (as amended). The geotechnical report shall be prepared by a registered geotechnical engineer for City review and approval, and shall contain, at a minimum, a description of the geological and geotechnical conditions at the site, an evaluation of site-specific seismic hazards based on geological and geotechnical conditions, and recommended measures to reduce potential impacts related to liquefaction and/or slope stability hazards. The project applicant shall implement the recommendations contained in the approved report during project design and construction.	Prior to approval of construction-related permit	Bureau of Building	Bureau of Building
Detailed Recommendations in Furtherance of SCAs – Seismic Hazards: The project sponsor retained Terracon to prepare a soils report and geotechnical report for the Project. This report provides the following recommendations to address seismic hazards through design: • <i>Seismic Considerations:</i> The seismic design requirements for buildings and other structures of the Project are based on the site's Seismic Design Category. Site Classification is required to determine the Seismic Design Category for a structure, and the Site Classification is based on the upper 100 feet of the site profile, in accordance with Section 20.4 of ASCE 7-10. Site Classes range from A to F based on the average conditions present within 100 feet of the ground surface, with hard rock considered an 'A', down to potentially collapsible soils which get an 'F'. The Project site qualifies as a Site Class F due to the presence of liquefiable soils. The Site Classification at the Project site could be improved from a Site Class F to a Site Class D by performing ground improvements (see below) that improve the stiffness/density and strength of the very-soft to soft Bay Mud and loose, potentially liquefiable sands. • <i>Ground Improvement Option:</i> The 2018 Terracon Report identifies ground improvements (known as Deep Soil Mixing, or DSM) as an appropriate option to mitigate the combined effects associated with the liquefaction, undocumented fill and compressible Bay Mud concerns at this site. DSM is achieved through a process of in-situ mixing of the subsurface soils with cement or a lime-cement combination. This results in physiochemical stabilization of the soils to increase the compressive and shear strength of the material, and to decrease settlement. DSM is accomplished by either a wet mixing method using primarily cement, or a dry mixing method using lime-cement. The wet mixing method should be used for the Project site based on the subgrade soils and groundwater conditions. This method would significantly improve the stiffness/density and strength of the very soft, to soft Bay Mud and loose sands that underlay the site. By improving the stiffness/density and strength of the very soft, to soft Bay Mud and loose sands, DSM would also help improve the	Prior to approval of construction-related permit	Bureau of Building	Bureau of Building

<u>Standard Conditions of Approval/Mitigation Measures</u>	<u>Mitigation Implementation/Monitoring</u>		
	<u>When Required</u>	<u>Initial Approval</u>	<u>Monitoring/ Inspection</u>
Seismic Site Class required for design at the site, and would provide an added assurance against lateral spreading to occur by stabilizing potentially liquefiable soils. • <i>Deep Foundations:</i> As an alternative to the DSM option, steel piles driven to into firm native soil below the Bay Mud and liquefiable soil layers can be used to support the Project's proposed Office, Warehouse and Workshop buildings and retaining walls. This would involve steel sections driven through the very soft Bay Mud and liquefiable soils to their design capacity. The preliminary design capacities for individual steel pipe piles to provide an adequate factor of safety for the load carrying capacity requires that steel piles be driven to a depth of 65 to 100 feet (with a preliminary recommendation of 70 to 80 feet below existing grade). Driven piles should be spaced at least three pile widths apart (center-to-center) if side friction is used for compressive loads. If desired, pre-drilling of oversized holes could be conducted prior to pile driving (with filling the resulting annular space with bentonite slurry), casing sleeves could be provided around the piles to separate the piles from direct contact with settling soils, and/or the piles could be coated with bitumen to allow slippage. • <i>Rammed Aggregate Piers:</i> As an alternative to the DSM option, the existing undocumented fill and compressible Bay Mud under these areas could be reinforced with a Rammed Aggregate Pier (RAP) system installed on a grid pattern. This option would allow for the placement of stockpiled materials and retaining wall foundations directly atop the RAP-reinforced subgrade. The RAP system would serve to stiffen the existing undocumented fill and Bay Mud. Piers would be constructed by advancing a drill or mandrel to design depths, then building a bottom bulb of clean, open-graded stone. The pier is built on top of the bottom bulb, using graded aggregate placed in thin lifts (12 to 24 inches compacted thickness). We anticipate shafts would extend to depths of 20 feet or less for this site. The result of construction is a reinforced zone of soils directly under the stockpiled materials and footings, which allows of the construction of shallow spread footings sized for relatively higher bearing pressures and with lower anticipated settlements. □ <i>Floor Slabs:</i> Due to anticipated settlements from liquefaction and consolidation settlement, the building floor slabs should be entirely structurally supported by deep foundations, or alternative floor slab options may be considered if the subgrade in the area of the buildings is improved by DSM. • <i>Vapor Barrier:</i> The use of a vapor retarder should be considered beneath those concrete slabs on grade that are to be covered with moisture sensitive or impervious coverings, or when the slab will support equipment sensitive to moisture.			
Detailed Recommendations in Furtherance of SCAs - Earthwork: The project sponsor retained Terracon to prepare a soils report and geotechnical report for the Project. This report provides the following recommendations to address earthwork (clearing and grubbing, excavations and fill placement) as necessary to render the site ready for foundations, floor slabs and pavement.	Prior to approval of construction-related permit	Bureau of Building	Bureau of Building

<u>Standard Conditions of Approval/Mitigation Measures</u>	<u>Mitigation Implementation/Monitoring</u>	
	<u>When Required</u>	<u>Initial Approval</u> <u>Monitoring/ Inspection</u>
• <i>Site Preparation:</i> Prior to placing fill, existing vegetation and root mat, debris, stockpiled soil and any otherwise unsuitable material should be removed. Complete stripping of the topsoil should be performed in proposed building and parking/driveway areas. The subgrade should be proof-rolled with an adequately loaded vehicle such as a fully loaded tandem axle dump truck. Any areas excessively deflecting under the proof-roll should be delineated and separately addressed by either further soil removal or stabilization (see below). Excessively wet or dry materials should be removed or moisture conditioned and re-compacted. Exposed surfaces should be free of mounds and depressions which could prevent uniform compaction. • <i>Subgrade Preparation:</i> After clearing, any required cuts should be made. The undocumented fill below pavement and hardscape areas should be over-excavated to a minimum depth of 2 feet. The presence of over-sized debris or a high volume of organic material may warrant additional over-excavation at the time of grading operations. If needed, a geotextile fabric may be utilized as a separator between the undocumented fill and engineered fill. This over-excavation requirement is not required in areas improved by ground improvement methods (see above) or below slabs in buildings supported by deep foundations (also, see above). • <i>Scarification and Compaction:</i> After any required cuts have been made but prior to placement of any engineered fill, the subgrade soil should be scarified and compacted. If construction occurs during the winter or spring when the subgrade soils are typically already in a moist condition, scarification and compaction may only be 12 inches. If construction occurs during the summer or fall when the subgrade soils have been allowed to dry out, deeper depth of scarification and moisture conditioning (as much as 18 inches) may be needed. Due to the shallow groundwater, the sub-grade soil at the over-excavated depth is likely to be in an elevated moisture condition, and will likely require some drying before it can be compacted. • <i>Backfill/Fill:</i> Following scarification and compaction of the subgrade, the over-excavated areas may be backfilled with compacted structural fill and any additional fill may be placed and compacted. The moisture content and compaction of subgrade soils should be maintained until foundation slab or pavement construction. Very soft Bay Mud conditions may be encountered in the bottom of excavations. Dry crushed rock or clean granular fill material placed over a geotextile may be needed to stabilize wet subgrade materials in the bottom of excavations prior to backfill. Fill placed on Bay Mud or in areas where Bay Mud is covered with less than 3 feet of soil can cause failure within the mud if large amounts of fill are placed too quickly. In order to help reduce the potential for mud waves during fill placement, the first layer of fill should be placed slowly and in as thin a layer as possible without allowing the grading equipment to sink into the mud. In these areas, lightweight equipment should be used to help minimize the required thickness of the first layer. The amount of the fill placed on a daily basis may need to be limited to help minimize pore pressure build up and subsurface failure.		

<u>Standard Conditions of Approval/Mitigation Measures</u>	<u>Mitigation Implementation/Monitoring</u>		
	<u>When Required</u>	<u>Initial Approval</u>	<u>Monitoring/ Inspection</u>
<i>Fill Material Types:</i> Fill required to achieve design grade should be classified as structural fill and general fill. Structural fill is material used below, or within 5 feet of structures or pavements. General fill is material used to achieve grade outside of these areas. Earthen materials used for structural and general fill should meet the material property requirements as specified in the 2018 Terracon Report. <i>Exterior Hardscape:</i> In order to address the effects of the moderate to high volume change soils, exterior hardscapes should be underlain by a minimum of 24 inches of low volume change (LVC) material. The LVC zone would help to reduce the potential for subgrade volume changes. <i>Utility Design:</i> In addition, special design details should be considered for underground utility lines, for hardscape, entrances and pavement adjacent to pile or DSM-supported structures, and site drainage. It is recommended that utilities and piping be designed with flexible connections and/or other means to accommodate soil movement and to reduce the potential for damage. Utility and drain lines designed for gravity flow should consider and account for anticipated settlements.			
SCA Geo-4, Erosion and Sedimentation Control Plan for Construction	During construction	N/A	Bureau of Building
a) <i>Erosion and Sedimentation Control Plan Required:</i> The project applicant shall submit an Erosion and Sedimentation Control Plan to the City for review and approval. The Erosion and Sedimentation Control Plan shall include all necessary measures to be taken to prevent excessive stormwater runoff or carrying by stormwater runoff of solid materials on to lands of adjacent property owners, public streets, or to creeks as a result of conditions created by grading and/or construction operations. The Plan shall include, but not be limited to, such measures as short-term erosion control planting, waterproof slope covering, check dams, interceptor ditches, benches, storm drains, dissipation structures, diversion dikes, retarding berms and barriers, devices to trap, store and filter out sediment, and stormwater retention basins. Off-site work by the project applicant may be necessary. The project applicant shall obtain permission or easements necessary for off-site work. There shall be a clear notation that the plan is subject to changes as changing conditions occur. Calculations of anticipated stormwater runoff and sediment volumes shall be included, if required by the City. The Plan shall specify that, after construction is complete, the project applicant shall ensure that the storm drain system shall be inspected and that the project applicant shall clear the system of any debris or sediment. b) <i>Erosion and Sedimentation Control during Construction:</i> The project applicant shall implement the approved Erosion and Sedimentation Control Plan. No grading shall occur during the wet weather season (October 15 through April 15) unless specifically authorized in writing by the Bureau of Building.			

<u>Standard Conditions of Approval/Mitigation Measures</u>	<u>Mitigation Implementation/Monitoring</u>		
	<u>When Required</u>	<u>Initial Approval</u>	<u>Monitoring/ Inspection</u>
Greenhouse Gas Emissions/Climate Change			
SCA GHG-1, Project Compliance with the Equitable Climate Action Plan (ECAP) Consistency Checklist: The project applicant shall implement all the measures in the Equitable Climate Action Plan (ECAP) Consistency Checklist that was submitted during the Planning entitlement phase. a) For physical ECAP Consistency Checklist measures to be incorporated into the design of the project, the measures shall be included on the drawings submitted for construction- related permits. b) For physical ECAP Consistency Checklist measures to be incorporated into the design of the project, the measures shall be implemented during construction. c) For ECAP Consistency Checklist measures that are operational but not otherwise covered by these SCAs, including but not limited to the requirement for transit passes or additional Transportation Demand Management measures, the applicant shall provide notice of these measures to employees and/or residents and post these requirements in a public place such as a lobby or work area accessible to the employees and/or residents	Prior to approval of construction-related permit	Bureau of Planning	N/A
Hazards and Hazardous Materials			
SCA Hazards-1, Hazardous Building Materials and Site Contamination a) <i>Hazardous Building Materials Assessment:</i> The project applicant shall submit a comprehensive assessment report to the Bureau of Building, signed by a qualified environmental professional, documenting the presence or lack thereof of asbestos-containing materials (ACMs), lead-based paint, polychlorinated biphenyls (PCBs), and any other building materials or stored materials classified as hazardous materials by State or federal law. If lead-based paint, ACMs, PCBs, or any other building materials or stored materials classified as hazardous materials are present, the project applicant shall submit specifications prepared and signed by a qualified environmental professional, for the stabilization and/or removal of the identified hazardous materials in accordance with all applicable laws and regulations. The project applicant shall implement the approved recommendations and submit to the City evidence of approval for any proposed remedial action and required clearances by the applicable local, state, or federal regulatory agency.	Prior to approval of demolition, grading, or building permits	Bureau of Building	Bureau of Building
b) <i>Environmental Site Assessment Required:</i> The project applicant shall submit a Phase I Environmental Site Assessment report, and Phase II Environmental Site Assessment report if warranted by the Phase 1 report, for the project site for review and approval by the City. The report(s) shall be prepared by a qualified environmental assessment professional and include recommendations for remedial action, as appropriate, for hazardous materials. The project applicant shall implement the approved recommendations and submit to the City evidence of approval for any proposed remedial action and required clearances by the applicable local, state, or federal regulatory agency	Prior to approval of construction-related permit	Applicable regulatory agency with jurisdiction	Applicable regulatory agency with jurisdiction

<u>Standard Conditions of Approval/Mitigation Measures</u>	<u>Mitigation Implementation/Monitoring</u>		
	<u>When Required</u>	<u>Initial Approval</u>	<u>Monitoring/ Inspection</u>
c) <i>Health and Safety Plan Required:</i> The project applicant shall submit a Health and Safety Plan for the review and approval by the City in order to protect project construction workers from risks associated with hazardous materials. The project applicant shall implement the approved Plan.	Prior to approval of construction-related permit	Bureau of Building	Bureau of Building
d) Best Management Practices (BMPs) Required for Contaminated Sites (Item 4 text omitted because it is not applicable to the project, which is not on a contaminated site)	During construction	N/A	Bureau of Building
SCA Hazards-2: Hazardous Materials Related to Construction: The project applicant shall ensure that Best Management Practices (BMPs) are implemented by the contractor during construction to minimize potential negative effects on groundwater, soils, and human health. These shall include, at a minimum, the following: a) Follow manufacture's recommendations for use, storage, and disposal of chemical products used in construction b) Avoid overtopping construction equipment fuel gas tanks c) During routine maintenance of construction equipment, properly contain and remove grease and oils d) Properly dispose of discarded containers of fuels and other chemicals e) Implement lead-safe work practices and comply with all local, regional, state, and federal requirements concerning lead (for more information refer to the Alameda County Lead Poisoning Prevention Program), and f) If soil, groundwater, or other environmental medium with suspected contamination is encountered unexpectedly during construction activities (e.g., identified by odor or visual staining, or if any underground storage tanks, abandoned drums or other hazardous materials or wastes are encountered), the project applicant shall cease work in the vicinity of the suspect material, the area shall be secured as necessary, and the applicant shall take all appropriate measures to protect human health and the environment. Appropriate measures shall include notifying the City Fire Prevention Bureau, Alameda County Environmental Health, and other applicable regulatory agencies, and implementation of the actions described in these agencies' conditions of approval, as necessary, to identify the nature and extent of contamination. Work shall not resume in the area(s) affected until the measures have been implemented under the oversight of the City or regulatory agency, as appropriate.	During construction	N/A	Bureau of Building
SCA Haz-3, Hazardous Materials Business Plan: The project applicant shall submit a Hazardous Materials Business Plan (HMBP) for review and approval by the City, and shall implement the approved Plan. The approved Plan shall be kept on file with the City and the project applicant shall update the Plan as applicable. The purpose of the Hazardous Materials Business Plan is to ensure that employees are adequately trained to handle hazardous materials and provides information to the Fire Department should emergency response be required. Hazardous materials shall be handled in accordance with all applicable local, state, and federal requirements. The Hazardous Materials Business Plan shall include the following:	Prior to building permit final	Oakland Fire Department	Oakland Fire Department

<u>Standard Conditions of Approval/Mitigation Measures</u>	<u>Mitigation Implementation/Monitoring</u>		
	<u>When Required</u>	<u>Initial Approval</u>	<u>Monitoring/ Inspection</u>
a) The types of hazardous materials or chemicals stored and/or used on-site, such as petroleum fuel products, lubricants, solvents, and cleaning fluids b) The location of such hazardous materials c) An emergency response plan including employee training information d) A plan that describes the manner in which these materials are handled, transported, and disposed.			
Hydrology and Water Quality			
SCA Hydro-1, State Construction General Permit: The project applicant shall comply with the requirements of the Construction General Permit issued by the State Water Resources Control Board (SWRCB). The project applicant shall submit a Notice of Intent (NOI), Stormwater Pollution Prevention Plan (SWPPP), and other required Permit Registration Documents to SWRCB. The project applicant shall submit evidence of compliance with Permit requirements to the City.	Prior to approval of construction-related permit	State Water Resources Control Board; evidence of compliance submitted to Bureau of Building	State Water Resources Control Board
SCA Hydro-2, Creek Protection Plan: a) <i>Creek Protection Plan Required:</i> The project applicant shall submit a Creek Protection Plan for review and approval by the City. The Plan shall be included with the set of project drawings submitted to the City for site improvements and shall incorporate the contents required under section 13.16.150 of the Oakland Municipal Code including Best Management Practices ("BMPs") during construction and after construction to protect the creek. Required BMPs are identified below.	Prior to approval of construction-related permit	Bureau of Planning	N/A
b) <i>Construction BMPs Requirement:</i> The Creek Protection Plan shall incorporate all applicable erosion, sedimentation, debris, and pollution control BMPs to protect the creek during construction. The measures shall include, but are not limited to, the following: - On sloped properties, the downhill end of the construction area must be protected with silt fencing (such as sandbags, filter fabric, silt curtains, etc.) and hay bales oriented parallel to the contours of the slope (at a constant elevation) to prevent erosion into the creek. - The project applicant shall implement mechanical and vegetative measures to reduce erosion and sedimentation, including appropriate seasonal maintenance. One hundred (100) percent biodegradable erosion control fabric shall be installed on all graded slopes to protect and stabilize the slopes during construction and before permanent vegetation gets established. All graded areas shall be temporarily protected from erosion by seeding with fast growing annual species. All bare slopes must be covered with staked tarps when rain is occurring, or expected. - Minimize the removal of natural vegetation or ground cover from the site in order to minimize the potential for erosion and sedimentation problems. Maximize the replanting of the area with native vegetation as soon as possible.	Prior to approval of construction-related permit	Bureau of Planning	N/A

<u>Standard Conditions of Approval/Mitigation Measures</u>	<u>Mitigation Implementation/Monitoring</u>		
	<u>When Required</u>	<u>Initial Approval</u>	<u>Monitoring/ Inspection</u>
iv. All work in or near creek channels must be performed with hand tools and by a minimum number of people. Immediately upon completion of this work, soil must be re-packed and native vegetation planted. v. Install filter materials (such as sandbags, filter fabric, etc.) acceptable to the City at the storm drain inlets nearest to the project site prior to the start of the wet weather season (October 15); site dewatering activities; street washing activities; saw cutting asphalt or concrete; and in order to retain any debris flowing into the City storm drain system. Filter materials shall be maintained and/or replaced as necessary to ensure effectiveness and prevent street flooding. vi. Ensure that concrete/granite supply trucks or concrete/plaster finishing operations do not discharge wash water into the creek, street gutters, or storm drains. vii. Direct and locate tool and equipment cleaning so that wash water does not discharge into the creek. viii. Create a contained and covered area on the site for storage of bags of cement, paints, flammables, oils, fertilizers, pesticides, or any other materials used on the project site that have the potential for being discharged to the creek or storm drain system by the wind or in the event of a material spill. No hazardous waste material shall be stored on site. ix. Gather all construction debris on a regular basis and place it in a dumpster or other container which is emptied or removed at least on a weekly basis. When appropriate, use tarps on the ground to collect fallen debris or splatters that could contribute to stormwater pollution. x. Remove all dirt, gravel, refuse, and green waste from the sidewalk, street pavement, and storm drain system adjoining the project site. During wet weather, avoid driving vehicles off paved areas and other outdoor work. xi. Broom sweep the street pavement adjoining the project site on a daily basis. Caked-on mud or dirt shall be scraped from these areas before sweeping. At the end of each workday, the entire site must be cleaned and secured against potential erosion, dumping, or discharge to the creek, street, gutter, or storm drains. xii. All erosion and sedimentation control measures implemented during construction activities, as well as construction site and materials management shall be in strict accordance with the control standards listed in the latest edition of the Erosion and Sediment Control Field Manual published by the Regional Water Quality Control Board (RWQCB). xii. Temporary fencing is required for sites without existing fencing between the creek and the construction site and shall be placed along the side adjacent to construction (or both sides of the creek if applicable) at the maximum practical distance from the creek centerline. This area shall not be disturbed during construction without prior approval of the City.			
c) <i>Post-Construction BMPs Requirement:</i> The project shall not result in a substantial increase in stormwater runoff volume or velocity to the creek or storm drains. The Creek Protection Plan shall include site design measures to reduce the amount of impervious surface to maximum extent	Prior to approval of construction-related permit	Bureau of Planning	N/A

<u>Standard Conditions of Approval/Mitigation Measures</u>	<u>Mitigation Implementation/Monitoring</u>		
	<u>When Required</u>	<u>Initial Approval</u>	<u>Monitoring/ Inspection</u>
practicable. New drain outfalls shall include energy dissipation to slow the velocity of the water at the point of outflow to maximize infiltration and minimize erosion.			
d) <i>Creek Landscaping Requirement</i> : The project applicant shall include final landscaping details for the site on the Creek Protection Plan, or on a Landscape Plan, for review and approval by the City. Landscaping information shall include a planting schedule, detailing plant types and locations, and a system to ensure adequate irrigation of plantings for at least one growing season. Plant and maintain only drought-tolerant plants on the site where appropriate as well as native and riparian plants in and adjacent to riparian corridors. Along the riparian corridor, native plants shall not be disturbed to the maximum extent feasible. Any areas disturbed along the riparian corridor shall be replanted with mature native riparian vegetation and be maintained to ensure survival.	Prior to approval of construction-related permit	Bureau of Planning	N/A
d) <i>Creek Protection Plan Implementation Requirement</i> : The project applicant shall implement the approved Creek Protection Plan during and after construction. During construction, the project applicant shall regularly monitor all erosion, sedimentation, debris, and pollution control. The City may require that a qualified consultant (paid for by the project applicant) inspect the control measures and submit a written report of the adequacy of the control measures to the City. If measures are deemed inadequate, the project applicant shall develop and implement additional and more effective measures immediately.	During construction; ongoing	N/A	Bureau of Building
SCA Hydro-3, NPDES C.3 Stormwater Requirements for Regulated Projects			
a) <i>Post-Construction Stormwater Management Plan Required</i> : The project applicant shall comply with the requirements of Provision C.3 of the Municipal Regional Stormwater Permit issued under the National Pollutant Discharge Elimination System (NPDES). The project applicant shall submit a Post-Construction Stormwater Management Plan to the City for review and approval with the project drawings submitted for site improvements, and shall implement the approved Plan during construction. The Post-Construction Stormwater Management Plan shall include and identify the following:	Prior to approval of construction-related permit	Bureau of Building	Bureau of Building
i. location and size of new and replaced impervious surface ii. directional surface flow of stormwater runoff iii. location of proposed on-site storm drain lines iv. site design measures to reduce the amount of impervious surface area v. source control measures to limit stormwater pollution vi. stormwater treatment measures to remove pollutants from stormwater runoff, including the method used to hydraulically size the treatment measures; and hydro-modification management measures, if required by Provision C.3, so that post-project stormwater runoff flow and duration match pre-project runoff.			

<u>Standard Conditions of Approval/Mitigation Measures</u>	<u>Mitigation Implementation/Monitoring</u>		
	<u>When Required</u>	<u>Initial Approval</u>	<u>Monitoring/ Inspection</u>
b) <i>Maintenance Agreement Required:</i> The project applicant shall enter into a maintenance agreement with the City, based on the Standard City of Oakland Stormwater Treatment Measures Maintenance Agreement, in accordance with Provision C.3, which provides, in part, for the following: i. The project applicant accepting responsibility for the adequate installation/construction, operation, maintenance, inspection, and reporting of any on-site stormwater treatment measures being incorporated into the project until the responsibility is legally transferred to another entity, and ii. Legal access to the on-site stormwater treatment measures for representatives of the City, the local vector control district, and staff of the Regional Water Quality Control Board, San Francisco Region. Access is for purposes of verifying implementation, operation and maintenance of the on-site stormwater treatment measures, taking corrective action if necessary. The maintenance agreement shall be recorded at the County Recorder's Office at the applicant's expense.	Prior to building permit final	Bureau of Building	Bureau of Building
SCA Hydro-4, Vegetation Management on Creekside Properties: The project applicant shall comply with the following requirements when managing vegetation prior to, during, and after construction of the project: a) Identify and leave "islands" of vegetation in order to prevent erosion and landslides and protect habitat; b) Trim tree branches from the ground up (limbing up) and leave tree canopy intact; c) Leave stumps and roots from cut down trees to prevent erosion; d) Plant fire-appropriate, drought-tolerant, preferably native vegetation; e) Provide erosion and sediment control protection if cutting vegetation on a steep slope; f) Fence off sensitive plant habitats and creek areas if implementing goat grazing for vegetation management; g) Obtain a Tree Permit before removing a Protected Tree (any tree 9 inches diameter at breast height or dbh or greater and any oak tree 4 inches dbh or greater, except eucalyptus and Monterey pine); h) Do not clear-cut vegetation, as this can lead to erosion and severe water quality problems and destroy important habitat; i) Do not remove vegetation within 20 feet of the top of the creek bank. If the top of bank cannot be identified, do not cut within 50 feet of the centerline of the creek or as wide a buffer as possible between the creek centerline and the development; j) Do not trim/prune branches that are larger than 4 inches in diameter; k) Do not remove tree canopy; l) Do not dump cut vegetation in the creek; m) Do not cut tall shrubbery to less than 3 feet high; and n) Do not cut short vegetation (e.g., grasses, groundcover) to less than 6 inches high.	Ongoing	N/A	Bureau of Building

<u>Standard Conditions of Approval/Mitigation Measures</u>	<u>Mitigation Implementation/Monitoring</u>		
	<u>When Required</u>	<u>Initial Approval</u>	<u>Monitoring/ Inspection</u>
CASP EIR Recommendation Hydro-5: The following additional recommendations are suggested to provide an adaptive approach to addressing a 16-inch sea level rise above current Base Flood Elevation (BFE) for mid-term (2050) planning and design: 1. Design gravity-based storm drain systems for 16 inches of sea level rise 2. Design and construct habitable space above at-grade parking structures to allow sea level rise to affect uninhabited parking structures rather than dwelling units 3. Design buildings to withstand periodic inundation 4. Prohibit below grade habitable space in inundation zones 5. Require that all critical infrastructure sensitive to inundation be located above the SLR base flood elevation 6. Consider means for implementing an adaptive management strategy to protect against long-term sea level rise of as much as 55", potentially including constructing levees or seawalls and providing space for future storm water lift stations near outfall structures into the Bay and Estuary	Prior to approval of grading and other construction-related permits	Bureau of Building	Bureau of Building
Land Use			
CASP EIR MM Land-7B, Avigation Easement / Disclosure: Sellers or leasers of real property located within the Oakland Airport Influence Area shall disclose within an aviation easement included as part of all real estate transactions within the AIA that their property is situated within the AIA, and may be subject to some of the annoyances or inconveniences associated with proximity to airport operations.	Prior to issuance of building permit	Bureau of Building	N/A
CASP EIR MM Land-8A, BCDC Issuance of Major Permit(s): Prior to implementation of the proposed Damon Slough enhancements, the Elmhurst Creek realignment, new development within 100 feet of the San Leandro Bay shoreline, and the proposed Bay Cut (and potentially other project elements found to be within BCDC jurisdiction), the project applicants for those projects shall apply for and obtain through an application review process (which may include additional public hearings and review boards) issuance of necessary BCDC permits.	Prior to activity requiring permit/authorization from BCDC	Approval by BCDC; evidence of approval submitted to Bureau of Planning	BCDC, per agency jurisdiction
Noise and Vibration			
SCA Noise-1, Construction Days/Hours: The project applicant shall comply with the following restrictions concerning construction days and hours: a) Construction activities are limited to between 7:00 a.m. and 7:00 p.m. Monday through Friday, except that pier drilling and/or other extreme noise generating activities greater than 90 dBA shall be limited to between 8:00 a.m. and 4:00 p.m. b) Construction activities are limited to between 9:00 a.m. and 5:00 p.m. on Saturday. In residential zones and within 300 feet of a residential zone, construction activities are allowed from 9:00 a.m. to 5:00 p.m. only within the interior of the building with the doors and windows closed. No pier drilling or other extreme noise generating activities greater than 90 dBA are allowed on Saturday.	During construction	N/A	Bureau of Building

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	<u>When Required</u>	<u>Initial Approval</u>	<u>Monitoring/ Inspection</u>
c) No construction is allowed on Sunday or federal holidays. Construction activities include, but are not limited to, truck idling, moving equipment (including trucks, elevators, etc.) or materials, deliveries, and construction meetings held on-site in a non-enclosed area. Any construction activity proposed outside of the above days and hours for special activities (such as concrete pouring which may require more continuous amounts of time) shall be evaluated on a case-by-case basis by the City, with criteria including the urgency/emergency nature of the work, the proximity of residential or other sensitive uses, and a consideration of nearby residents'/occupants' preferences. The project applicant shall notify property owners and occupants located within 300 feet at least 14 calendar days prior to construction activity proposed outside of the above days/hours. When submitting a request to the City to allow construction activity outside of the above days/hours, the project applicant shall submit information concerning the type and duration of proposed construction activity and the draft public notice for City review and approval prior to distribution of the public notice.			
SCA Noise-2, Construction Noise: The project applicant shall implement noise reduction measures to reduce noise impacts due to construction. Noise reduction measures include, but are not limited to, the following: a) Equipment and trucks used for project construction shall utilize the best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures and acoustically attenuating shields or shrouds) wherever feasible. b) Except as provided herein, impact tools (e.g., jackhammers, pavement breakers, and rock drills) used for project construction shall be hydraulically or electrically powered to avoid noise associated with compressed air exhaust from pneumatically powered tools. However, where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed air exhaust shall be used; this muffler can lower noise levels from the exhaust by up to about 10 dBA. External jackets on the tools themselves shall be used, if such jackets are commercially available, and this could achieve a reduction of 5 dBA. Quieter procedures shall be used, such as drills rather than impact equipment, whenever such procedures are available and consistent with construction procedures. c) Applicant shall use temporary power poles instead of generators where feasible d) Stationary noise sources shall be located as far from adjacent properties as possible, and they shall be muffled and enclosed within temporary sheds, incorporate insulation barriers, or use other measures as determined by the City to provide equivalent noise reduction. e) The noisiest phases of construction shall be limited to less than 10 days at a time. Exceptions may be allowed if the City determines an extension is necessary and all available noise reduction controls are implemented.	During construction	N/A	Bureau of Building
SCA Noise-3, Extreme Construction Noise Prior to any extreme noise generating construction activities (e.g., pier drilling, pile driving and other activities generating greater than 90dBA), the project applicant shall submit a Construction Noise Management Plan. This Plan shall be prepared by a qualified acoustical consultant for City review and approval that contains a set of site-specific noise attenuation measures to	Prior to approval of construction-related permit	Bureau of Building	Bureau of Building

<u>Standard Conditions of Approval/Mitigation Measures</u>	<u>Mitigation Implementation/Monitoring</u>		
	<u>When Required</u>	<u>Initial Approval</u>	<u>Monitoring/ Inspection</u>
further reduce construction impacts associated with extreme noise generating activities. The project applicant shall implement the approved Plan during construction. Potential attenuation measures include, but are not limited to, the following: a) Erect temporary plywood noise barriers around the construction site, particularly along on sites adjacent to residential buildings; b) Implement “quiet” pile driving technology (such as pre-drilling of piles, the use of more than one pile driver to shorten the total pile driving duration), where feasible, in consideration of geotechnical and structural requirements and conditions; - c). Utilize noise control blankets on the building structure as the building is erected to reduce noise emission from the site; d) Evaluate the feasibility of noise control at the receivers by temporarily improving the noise reduction capability of adjacent buildings by the use of sound blankets for example and implement such measure if such measures are feasible and would noticeably reduce noise impacts; and e) Monitor the effectiveness of noise attenuation measures by taking noise measurements.			
SCA Noise-4, Public Notification Required: The project applicant shall notify property owners and occupants located within 300 feet of the construction activities at least 14 calendar days prior to commencing extreme noise generating activities. Prior to providing the notice, the project applicant shall submit to the City for review and approval the proposed type and duration of extreme noise generating activities and the proposed public notice. The public notice shall provide the estimated start and end dates of the extreme noise-generating activities, and describe noise attenuation measures to be implemented.	During construction	Bureau of Building	Bureau of Building
SCA Noise-5, Construction Noise Complaints: The project applicant shall submit to the City for review and approval a set of procedures for responding to and tracking complaints received pertaining to construction noise, and shall implement the procedures during construction. At a minimum, the procedures shall include: a) Designation of an on-site construction complaint and enforcement manager for the project; b) A large on-site sign near the public right-of-way containing permitted construction days/hours, complaint procedures, and phone numbers for the project complaint manager and City Code Enforcement unit; c) Protocols for receiving, responding to, and tracking received complaints; and d) Maintenance of a complaint log that records received complaints and how complaints were addressed, which shall be submitted to the City for review upon the City’s request.	Prior to approval of construction-related permit	Bureau of Building	Bureau of Building
Recommendation #1 Pursuant to the Construction Management Plan - Temporary Rerouting of the Bay Trail: The Project applicant shall coordinate with BCDC to identify an acceptable temporary detour of the segment of the Bay Tail that is immediately adjacent to the Project site during pile driving/pile drilling activities. The options for detour routes in this area are limited, and may best be accomplished by providing a temporary public pathway along the Project site’s frontage on Oakport Street, at least as far as the	Prior to the issuance of the first construction-related permit	Bureau of Planning, Bureau of Building, and other relevant	Bureau of Planning, Bureau of Building, and other relevant City departments

<u>Standard Conditions of Approval/Mitigation Measures</u>	<u>Mitigation Implementation/Monitoring</u>		
	<u>When Required</u>	<u>Initial Approval</u>	<u>Monitoring/ Inspection</u>
Peppermint Gate Access Road through the EBMUD Parcel #2. The segment of the Bay Trail adjacent to the site can be re-opened after conclusion of the temporary pile driving/pile drilling activity.		City departments	
Recommendation #2 Pursuant to the Construction Management Plan – Schedule Coordination with City-Sponsored Use of Soccer Fields: The Project applicant shall coordinate with the City Parks and Recreation Department to best avoid pile driving/pile drilling activities of the Project concurrent with scheduled sports activities at the City Soccer fields. Pursuant to SCA Noise-3, no pier drilling or other extreme noise generating activities greater than 90 dBA are allowed on Saturday, and no construction is allowed on Sunday or federal holidays. Accordingly, schedule coordination is only required during intermittent weekday use of the sport field between the hours of 8:00 a.m. and 4:00 p.m	Prior to the issuance of the first construction-related permit	Bureau of Planning, Planning, Bureau of Building, and other relevant City departments	Bureau of Planning, Bureau of Building, and other relevant City departments
SCA Noise-6, Operational Noise: Noise levels from the project site after completion of the project (i.e., during project operation) shall comply with the performance standards of chapter 17.120 of the Oakland Planning Code and chapter 8.18 of the Oakland Municipal Code. If noise levels exceed these standards, the activity causing the noise shall be abated until appropriate noise reduction measures have been installed and compliance verified by the City.	Ongoing	N/A	Bureau of Building
Population and Housing			
SCA Population-1, Jobs/Housing Impact Fee: The project applicant shall comply with the requirements of the City of Oakland Jobs/Housing Impact Fee Ordinance (chapter 15.68 of the Oakland Municipal Code).	Prior to issuance of building permit	Bureau of Building	N/A
Public Services			
SCA Pubic-1, Capital Improvements Impact Fee: The Project applicant shall comply with the requirements of the City of Oakland Capital Improvements Fee Ordinance (chapter 15.74 of the Oakland Municipal Code).	Prior to issuance of building permit	Bureau of Building	N/A
As authorized by California Government Code Sections 65995, 65996(a) and 65996(b) , the OUSD will collect school impact fees from the Project, and payment of the required school impact fees will address the impact of the Project on school services to the furthest extent permitted by law. School impact fees are collected when building permits are issued. Payment of these fees will constitute full and complete mitigation, and the impact of the Project related to schools would be less than significant.	Prior to issuance of building permit	Bureau of Building	N/A
SCA Public-2, Access to Parks and Open Space: The project applicant shall submit a plan for City review and approval to enhance bicycle and pedestrian access from the Project site and adjacent areas to the Bay Trail. Examples of enhancements may include, but are not limited to new or improved bikeways, bike parking, traffic control devices, sidewalks, pathways, bulb-outs and signage. The project sponsor shall install the approved enhancements during construction and prior to completion of the project.	Prior to approval of construction-related permit	Bureau of Planning, Department of Transportation	Department of Transportation

<u>Standard Conditions of Approval/Mitigation Measures</u>	<u>Mitigation Implementation/Monitoring</u>		
	<u>When Required</u>	<u>Initial Approval</u>	<u>Monitoring/ Inspection</u>
Transportation and Circulation			
SCA Transportation-1, Bicycle Parking: The project applicant shall comply with the City of Oakland Bicycle Parking: Requirements (chapter 17.118 of the Oakland Planning Code). The project drawings submitted for construction-related permits shall demonstrate compliance with the requirements.	Prior to approval of construction-related permit	Bureau of Planning	Bureau of Building
SCA Transportation-2: Transportation and Parking Demand Management:	Prior to approval of planning application	Bureau of Planning	N/A
a) <i>Transportation and Parking Demand Management (TDM) Plan Required:</i> The project applicant shall submit a Transportation and Parking Demand Management (TDM) Plan for review and approval by the City. 1. The goals of the TDM Plan shall be the following: i. Reduce vehicle traffic and parking demand generated by the project to the maximum extent practicable. ii. For Projects generating 50-99 net new a.m. or p.m. peak hour vehicle trips, achieve a project vehicle trip reduction (VTR of 10%. For Projects generating 100 or more net new a.m. or p.m. peak hour vehicle trips, achieve a project vehicle trip reduction (VTR of 20% iii. Increase pedestrian, bicycle, transit, and carpool/vanpool modes of travel. All four modes of travel shall be considered, as appropriate. iv. Enhance the City's transportation system, consistent with City policies and programs. 2. The TDM Plan should include the following: i. Baseline existing conditions of parking and curbside regulations within the surrounding neighborhood that could affect the effectiveness of TDM strategies, including inventory of parking spaces and occupancy if applicable. ii. Proposed TDM strategies to achieve VTR goals (see below). iii. For employers with 100 or more employees at the subject site, the TDM Plan shall also comply with the requirements of Oakland Municipal Code Chapter 10.68 Employer-Based Trip Reduction Program. 3. The following TDM strategies must be incorporated into a TDM Plan based on a project location or other characteristics. When required by Code or when described below, these mandatory strategies should be identified as a credit toward a project's VTR. i. Bus boarding bulbs or islands, when a bus boarding bulb or island does not already exist and a bus stop is located along the project frontage; and/or a bus stop along the project frontage serves a route with 15 minutes or better peak hour service and has a shared bus-bike lane curb ii. Bus shelter, when a stop with no shelter is located within the project frontage, or the project is located within 0.10 miles of a flag stop with 25 or more boardings per day iii. Concrete bus pad, where a bus stop is located along the project frontage and a concrete bus pad does not already exist			

<u>Standard Conditions of Approval/Mitigation Measures</u>	<u>Mitigation Implementation/Monitoring</u>	
	<u>When Required</u>	<u>Initial Approval</u> <u>Monitoring/ Inspection</u>
iv. Curb extensions or bulb-outs, where identified as an improvement within site analysis v. Implementation of a corridor-level bikeway improvement, where a buffered Class II or Class IV bikeway facility is in a local or county adopted plan within 0.10 miles of the project location, and ☐ The project would generate 500 or more daily bicycle trips vi. Implementation of a corridor-level transit capital improvement, where a high-quality transit facility is in a local or county adopted plan within 0.25 miles of the project location; and the project would generate 400 or more peak period transit trips vii. Installation of amenities such as lighting; pedestrian-oriented green infrastructure, trees, or other greening landscape; and trash receptacles per the Pedestrian Master Plan and any applicable streetscape plan - always required viii. Installation of safety improvements identified in the Pedestrian Master Plan (such as crosswalk striping, curb ramps, count down signals, bulb outs, etc.), when improvements are identified in the Pedestrian Master Plan along project frontage or at an adjacent intersection ix. In-street bicycle corral, when a project includes more than 10,000 square feet of ground floor retail, is located along a Tier 1 bikeway, and onstreet where vehicle parking is provided along the project frontages. x. Intersection improvements, when identified as an improvement within site analysis xi. New sidewalk, curb ramps, curb and gutter meeting current City and ADA standards, always required xii. No monthly permits and establish minimum price floor for public parking, if proposed parking ratio exceeds 1:1000 sf. (commercial) xiii. Parking garage is designed with retrofit capability, optional if proposed parking ratio exceeds 1:1.25 (residential), or 1:1000 sf. (commercial) xiv. Parking space reserved for car share, if a project is providing parking and a project is located within downtown. One car share space reserved for buildings between 50 – 200 units, then one car share space per 200 units. xv. Paving, lane striping or restriping (vehicle and bicycle), and signs to midpoint of street section, typically required xvi. Pedestrian crossing improvements, when identified as an improvement within site analysis xvii. Pedestrian-supportive signal changes, when identified as an improvement within operations analysis - xviii. Real-time transit information system, when a project frontage block includes a bus stop or BART station and is along a Tier 1 transit route with 2 or more routes or peak period frequency of 15 minutes or better xix. Relocating bus stops to far side, when a project is located within 0.10 mile of any active bus stop that is currently near-side		

<u>Standard Conditions of Approval/Mitigation Measures</u>	<u>Mitigation Implementation/Monitoring</u>	
	<u>When Required</u>	<u>Initial Approval</u> <u>Monitoring/ Inspection</u>
xx. Signal upgrades, when project size exceeds 100 residential units, 80,000 sf. of retail, or 100,000 sf. Of commercial; and Project frontage abuts an intersection with signal infrastructure older than 15 years xxi. Transit queue jumps , when identified as a needed improvement within operations analysis of a project with frontage along a Tier 1 transit route with 2 or more routes or peak period frequency of 15 minutes or better - xxii Trenching and placement of conduit for providing traffic signal interconnect, when a Project size exceeds 100 units, 80,000 sf. Of retail, or 100,000 sf. of commercial; and Project frontage block is identified for signal interconnect improvements as part of a planned ITS improvement; and a major transit improvement is identified within operations analysis requiring traffic signal interconnect - xxiii Unbundled parking, if proposed parking ratio exceeds 1:1.25 (residential) 4. Other TDM strategies to consider include, but are not limited to, the following: i. Inclusion of additional long-term and short-term bicycle parking that meets the design standards set forth in chapter five of the Bicycle Master Plan and the Bicycle Parking Ordinance (chapter 17.117 of the Oakland Planning Code), and shower and locker facilities in commercial developments that exceed the requirement. ii. Construction of and/or access to bikeways per the Bicycle Master Plan; construction of priority bikeways, on-site signage and bike lane striping iii. Installation of safety elements per the Pedestrian Master Plan (such as crosswalk striping, curb ramps, count down signals, bulb outs, etc.) to encourage convenient and safe crossing at arterials, in addition to safety elements required to address safety impacts of the project. iv. Installation of amenities such as lighting, street trees, and trash receptacles per the Pedestrian Master Plan, the Master Street Tree List and Tree Planting Guidelines and any applicable streetscape plan. v. Construction and development of transit stops/shelters, pedestrian access, way finding signage, and lighting around transit stops per transit agency plans or negotiated improvements. vi. Direct on-site sales of transit passes purchased and sold at a bulk group rate (through programs such as AC Transit Easy Pass or a similar program through another transit agency). vii. Provision of a transit subsidy to employees or residents, determined by the project applicant and subject to review by the City, if employees or residents use transit or commute by other alternative modes. - viii Provision of an ongoing contribution to transit service to the area between the project and nearest mass transit station prioritized as follows: 1) Contribution to AC Transit bus service; 2) Contribution to an existing area shuttle service; and 3) Establishment of new shuttle		

<u>Standard Conditions of Approval/Mitigation Measures</u>	<u>Mitigation Implementation/Monitoring</u>		
	<u>When Required</u>	<u>Initial Approval</u>	<u>Monitoring/ Inspection</u>
service. The amount of contribution (for any of the above scenarios) would be based upon the cost of establishing new shuttle service (Scenario 3). ix. Guaranteed ride home program for employees, either through 511.org or through separate program. x. Pre-tax commuter benefits (commuter checks) for employees xi. Free designated parking spaces for on-site car-sharing program (such as City Car Share, Zip Car, etc.), and/or car-share membership for employees or tenants. xii. On-site carpooling and/or vanpool program that includes preferential (discounted or free) parking for carpools and vanpools xiii. Distribution of information concerning alternative transportation options xiv. Parking spaces sold/leased separately for residential units. Charge employees for parking, or provide a cash incentive or transit pass alternative to a free parking space in commercial properties. xv. Parking management strategies, including attendant/valet parking and shared parking spaces xvi. Requiring tenants to provide opportunities and the ability to work off-site xvii Allow employees or residents to adjust their work schedule in order to complete the basic work requirement of five eight-hour workdays by adjusting their schedule to reduce vehicle trips to the worksite (e.g., working four, ten-hour days; allowing employees to work from home two days per week). xviii Provide or require tenants to provide employees with staggered work hours involving a shift in the set work hours of all employees at the workplace or flexible work hours involving individually determined work hours. 5. The TDM Plan shall indicate the estimated VTR for each strategy, based on published research or guidelines where feasible. For TDM Plans containing ongoing operational VTR strategies, the Plan shall include an ongoing monitoring and enforcement program to ensure the Plan is implemented on an ongoing basis during project operation. If an annual compliance report is required, as explained below, the TDM Plan shall also specify the topics to be addressed in the annual report.			
b) <i>TDM Implementation – Physical Improvements Requirement:</i> For VTR strategies involving physical improvements, the project applicant shall obtain the necessary permits/approvals from the City and install the improvements prior to the completion of the project.	Prior to building permit final	Bureau of Building	Bureau of Building
c) <i>TDM Implementation – Operational Strategies:</i> For projects that generate 100 or more net new a.m. or p.m. peak hour vehicle trips and contain ongoing operational VTR strategies, the project applicant shall submit an annual compliance report for the first five years following completion of the project (or completion of each phase for phased projects) for review and approval by the City. The annual report shall document the status and effectiveness of the TDM program, including the actual VTR achieved by the project during operation. If deemed necessary, the City may elect to have a peer	Ongoing	Department of Transportation	Department of Transportation

<u>Standard Conditions of Approval/Mitigation Measures</u>	<u>Mitigation Implementation/Monitoring</u>		
	<u>When Required</u>	<u>Initial Approval</u>	<u>Monitoring/ Inspection</u>
review consultant, paid for by the project applicant, review the annual report. If timely reports are not submitted and/or the annual reports indicate that the project applicant has failed to implement the TDM Plan, the project will be considered in violation of the Conditions of Approval and the City may initiate enforcement action as provided for in these Conditions of Approval. The project shall not be considered in violation of this Condition if the TDM Plan is implemented but the VTR goal is not achieved.			
SCA Transportation-3, Transportation Impact Fee: The project applicant shall comply with the requirements of the City of Oakland Transportation Impact Fee Ordinance (chapter 15.74 of the Oakland Municipal Code).	Prior to issuance of building permit	Bureau of Building	N/A
SCA Transportation-4, Plug-In Electric Vehicle (PEV) Charging Infrastructure	Prior to Issuance of Building Permit	Bureau of Building	Bureau of Building
a) <i>PEV-Ready Parking Spaces:</i> The applicant shall submit, for review and approval of the Building Official and the Zoning Manager, plans that show the location of parking spaces equipped with full electrical circuits designated for future PEV charging (i.e. "PEV-Ready") per the requirements of Chapter 15.04 of the Oakland Municipal Code. Building electrical plans shall indicate sufficient electrical capacity to supply the required PEV-Ready parking spaces.			
b) <i>PEV-Capable Parking Spaces:</i> The applicant shall submit, for review and approval of the Building Official, plans that show the location of inaccessible conduit to supply PEV-capable parking spaces per the requirements of Chapter 15.04 of the Oakland Municipal Code. Building electrical plans shall indicate sufficient electrical capacity to supply the required PEV-capable parking spaces.			
c) <i>ADA-Accessible Spaces:</i> The applicant shall submit, for review and approval of the Building Official, plans that show the location of future accessible EV parking spaces as required under Title 24 Chapter 11B Table 11B-228.3.2.1, and specify plans to construct all future accessible EV parking spaces with appropriate grade, vertical clearance, and accessible path of travel to allow installation of accessible EV charging station(s).			
SCA Transportation-5, Construction Activity in the Public Right-of-Way	Prior to approval of construction-related permit	Department of Transportation	Department of Transportation
a) <i>Obstruction Permit Required:</i> The project applicant shall obtain an obstruction permit from the City prior to placing any temporary construction-related obstruction in the public right-of-way, including City streets, sidewalks, bicycle facilities, and bus stops.			
b) <i>Traffic Control Plan Required:</i> In the event of obstructions to vehicle or bicycle travel lanes, bus stops, or sidewalks, the project applicant shall submit a Traffic Control Plan to the City for review and approval prior to obtaining an obstruction permit. The project applicant shall submit evidence of City approval of the Traffic Control Plan with the application for an obstruction permit. The Traffic Control Plan shall contain a set of comprehensive traffic control measures for auto, transit, bicycle, and pedestrian accommodations (or detours, if accommodations are not feasible), including detour signs if required, lane closure procedures, signs, cones for drivers, and designated construction	The project applicant shall implement the approved Plan during construction	Department of Transportation	Department of Transportation

<u>Standard Conditions of Approval/Mitigation Measures</u>	<u>Mitigation Implementation/Monitoring</u>		
	<u>When Required</u>	<u>Initial Approval</u>	<u>Monitoring/ Inspection</u>
access routes. The Traffic Control Plan shall be in conformance with the City's Supplemental Design Guidance for Accommodating Pedestrians, Bicyclists, and Bus Facilities in Construction Zones.			
c) <i>Repair of City Streets</i> : The project applicant shall repair any damage to the public right-of way, including streets and sidewalks, caused by project construction at his/her expense within one week of the occurrence of the damage (or excessive wear), unless further damage/excessive wear may continue; in such case, repair shall occur prior to approval of the final inspection of the construction-related permit. All damage that is a threat to public health or safety shall be repaired immediately.	Prior to building permit final	N/A	Department of Transportation
SCA Transportation-6, Transportation Improvements : The project applicant shall implement the recommended on- and off-site transportation-related improvements contained within the Transportation Impact Review for the project (e.g., signal timing adjustments, restriping, signalization, traffic control devices, roadway reconfigurations, transportation demand management measures, and transit, pedestrian, and bicyclist amenities). The project applicant is responsible for funding and installing the improvements, and shall obtain all necessary permits and approvals from the City and/or other applicable regulatory agencies such as, but not limited to, Caltrans (for improvements related to Caltrans facilities) and the California Public Utilities Commission (for improvements related to railroad crossings), prior to installing the improvements. To implement this measure for intersection modifications, the project applicant shall submit Plans, Specifications, and Estimates (PS&E) to the City for review and approval. All elements shall be designed to applicable City standards in effect at the time of construction and all new or upgraded signals shall include these enhancements as required by the City. All other facilities supporting vehicle travel and alternative modes through the intersection shall be brought up to both City standards and ADA standards (according to Federal and State Access Board guidelines) at the time of construction. Current City Standards call for, among other items, the elements listed below: a) 2070L Type Controller with cabinet accessory b) GPS communication (clock) c) Accessible pedestrian crosswalks according to Federal and State Access Board guidelines with signals (audible and tactile) d) Countdown pedestrian head module switch out e) City Standard ADA wheelchair ramps f) Video detection on existing (or new, if required) g) Mast arm poles, full activation (where applicable) h) Polara Push buttons (full activation) i) Bicycle detection (full activation) j) Pull boxes k) Signal interconnect and communication with trenching (where applicable), or through existing conduit (where applicable), 600 feet maximum l) Conduit replacement contingency	Prior to building permit final or as otherwise specified	Bureau of Building; Department of Transportation	Bureau of Building

<u>Standard Conditions of Approval/Mitigation Measures</u>	<u>Mitigation Implementation/Monitoring</u>		
	<u>When Required</u>	<u>Initial Approval</u>	<u>Monitoring/ Inspection</u>
m) Fiber switch n) PTZ camera (where applicable) o) Transit Signal Priority (TSP) equipment consistent with other signals along corridor p) Signal timing plans for the signals in the coordination group q) Bi-directional curb ramps (where feasible, and if project is on a street corner) r) Upgrade ramps on receiving curb (where feasible, and if project is on a street corner)			
Tribal Cultural Resources			
SCA Cultural-1, Archaeological and Paleontological Resources - Discovery during Construction: Pursuant to CEQA Guidelines section 15064.5(f), in the event that any historic or prehistoric subsurface cultural resources, including tribal cultural resources, are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and the project applicant shall notify the City and consult with a qualified archaeologist or paleontologist, as applicable, to assess the significance of the find. a) If any find is determined to be significant, appropriate avoidance measures recommended by the consultant and approved by the City must be followed unless avoidance is determined unnecessary or infeasible by the City. Feasibility of avoidance shall be determined with consideration of factors such as the nature of the find, project design, costs, and other considerations. If avoidance is unnecessary or infeasible, other appropriate measures (e.g., data recovery, excavation) shall be instituted. Work may proceed on other parts of the project site while measures for the cultural resources are implemented. b) In the event of data recovery of archaeological resources, the project applicant shall submit an Archaeological Research Design and Treatment Plan (ARDTP) prepared by a qualified archaeologist for review and approval by the City. The ARDTP is required to identify how the proposed data recovery program would preserve the significant information the archaeological resource is expected to contain. The ARDTP shall identify the scientific/historic research questions applicable to the expected resource, the data classes the resource is expected to possess, and how the expected data classes would address the applicable research questions. The ARDTP shall include the analysis and specify the curation and storage methods. c) Data recovery, in general, shall be limited to the portions of the archaeological resource that could be impacted by the proposed project. Destructive data recovery methods shall not be applied to portions of the archaeological resources if nondestructive methods are practicable. Because the intent of the ARDTP is to save as much of the archaeological resource as possible, including moving the resource, if feasible, preparation and implementation of the ARDTP would reduce the potential adverse impact to less than significant. The project applicant shall implement the ARDTP at his/her expense.	During construction	N/A	Bureau of Building
Project Requirement Tribal Cultural Resources-1, Discovery of Tribal Cultural Resources: In the event that Native American human remains or funerary objects are discovered, the provisions of Section 7050.5(b) of	During construction	N/A	Bureau of Building

<u>Standard Conditions of Approval/Mitigation Measures</u>	<u>Mitigation Implementation/Monitoring</u>		
	<u>When Required</u>	<u>Initial Approval</u>	<u>Monitoring/ Inspection</u>
the California Health and Safety Code apply. These provisions provide that, the County Coroner, upon recognizing the remains as being of Native American origin, is responsible to contact the Native American Heritage Commission within 24 hours. The Commission has various powers and duties to provide for the ultimate disposition of any Native American remains, as does the assigned Most Likely Descendant. Sections 5097.98 and 5097.99 of the Public Resources Code also call for "protection of Native American human burials and skeletal remains from vandalism and inadvertent destruction.			
Utilities and Service Systems			
SCA Utilities-1, Water Efficient Landscape Ordinance: The project applicant shall comply with California's Water Efficient Landscape Ordinance (WELO) in order to reduce landscape water usage. For any landscape project with an aggregate (total noncontiguous) landscape area over 2,500 sq. ft., the project applicant shall implement the Performance Measures in accordance with the WELO. Prior to construction, the project applicant shall submit the Project Information (detailed below) and documentation showing compliance with Appendix D of California's Model Water Efficient Landscape Ordinance. a) <i>Performance Measures:</i> Prior to construction, the project applicant shall prepare and submit a Landscape Documentation Package for review and approval, including the following: i. Project information (date, applicant and property owner name, project address, total landscape area, project type (new, rehabilitated, cemetery, or home owner installed), water supply type and water purveyor, checklist of documents in the package, project contact information, and applicant signature and date with the statement: "I agree to comply with the requirements of the water efficient landscape ordinance and submit a complete Landscape Documentation Package." ii. Water Efficient Landscape Worksheet, including Hydro-zone Information Table and Water Budget Calculations with Maximum Applied Water Allowance (MAWA) and Estimated Total Water Use iii. Soil Management Report iv. Landscape Design Plan v. Irrigation Design Plan, and vi. Grading Plan b) Upon installation of the landscaping and irrigation systems, and prior to the final of a construction-related permit, the Project applicant shall submit a Certificate of Completion, and landscape and irrigation maintenance schedule, for review and approval by the City. The Certificate of Completion shall also be submitted to the local water purveyor and property owner or his or her designee.	Prior to approval of construction-related permit	Bureau of Planning	Bureau of Building
SCA Utilities-2, Sanitary Sewer System: The project applicant shall prepare and submit a Sanitary Sewer Impact Analysis to the City for review and approval in accordance with the City of Oakland Sanitary Sewer Design Guidelines. The Impact Analysis shall include an estimate of pre-project and post-project wastewater flow from the project site. In the event that the Impact Analysis indicates that the net increase in project wastewater flow exceeds City-projected increases in wastewater flow in the sanitary sewer	Prior to approval of construction-related permit	Public Works Department, Department of Engineering and Construction	N/A

<u>Standard Conditions of Approval/Mitigation Measures</u>	<u>Mitigation Implementation/Monitoring</u>		
	<u>When Required</u>	<u>Initial Approval</u>	<u>Monitoring/ Inspection</u>
system, the project applicant shall pay the Sanitary Sewer Impact Fee in accordance with the City's Master Fee Schedule for funding improvements to the sanitary sewer system.			
SCA General -1, Regulatory Permits and Authorizations from Other Agencies: The project applicant shall obtain all necessary regulatory permits and authorizations from applicable resource/regulatory agencies, and shall comply with all requirements and conditions of the permits/authorizations. The project applicant shall submit evidence of the approved permits/authorizations to the City, along with evidence demonstrating compliance with any regulatory permit/authorization conditions of approval. In accordance with this SCA: a) To ensure that the Project contributes to legally required reductions in I&I, the Project applicant shall comply with EBMUD's Regional Private Sewer Lateral (PSL) Ordinance. Affected property owners must obtain a certificate from EBMUD certifying that all of their PSLs are leak-free. b) The Project shall replace or rehabilitate any existing sanitary sewer collection systems, including sewer lateral lines, to ensure that such systems and lines are free from defects or, alternatively, disconnected from the sanitary sewer system, and c) The Project shall ensure that any new wastewater collection systems, including sewer lateral lines, are constructed to prevent I/I to the maximum extent feasible while meeting all requirements contained in the Regional Private Sewer Lateral Ordinance and applicable municipal codes.	Prior to activity requiring permit/authorization from EBMUD	Approval by EBMUD; evidence of approval submitted to Bureau of Planning	Applicable regulatory agency with jurisdiction
SCA Utilities-3, Construction and Demolition Waste Reduction and Recycling: The project applicant shall comply with the City of Oakland Construction and Demolition Waste Reduction and Recycling Ordinance (chapter 15.34 of the Oakland Municipal Code) by submitting a Construction and Demolition Waste Reduction and Recycling Plan (WRRP) for City review and approval, and shall implement the approved WRRP. Projects subject to these requirements include all new construction, renovations/alterations /modifications with construction values of \$50,000 or more (except R-3 type construction), and all demolition (including soft demolition) except demolition of type R-3 construction. The WRRP must specify the methods by which the project will divert construction and demolition debris waste from landfill disposal in accordance with current City requirements. The WRRP may be submitted electronically at www.greenhalosystems.com or manually at the City's Green Building Resource Center. Current standards, FAQs, and forms are available on the City's website and in the Green Building Resource Center.	Prior to approval of construction-related permit	Public Works Department, Environmental Services Division	Public Works Department, Environmental Services Division
SCA Utilities-4, Recycling Collection and Storage Space: The project applicant shall comply with the City of Oakland Recycling Space Allocation Ordinance (chapter 17.118 of the Oakland Planning Code). The project drawings submitted for construction-related permits shall contain recycling collection and storage areas in compliance with the Ordinance. For residential projects, at least two (2) cubic feet of storage and collection space per residential unit is required, with a minimum of ten (10) cubic feet. For non-residential projects, at least two (2) cubic feet of storage and collection space per 1,000 square feet of building floor area is required, with a minimum of ten (10) cubic feet.	Prior to approval of construction-related permit	Bureau of Planning	Bureau of Building

<u>Standard Conditions of Approval/Mitigation Measures</u>	<u>Mitigation Implementation/Monitoring</u>		
	<u>When Required</u>	<u>Initial Approval</u>	<u>Monitoring/ Inspection</u>
SCA Utilities-5, Underground Utilities: The project applicant shall place underground all new utilities serving the project and under the control of the project applicant and the City, including all new gas, electric, cable, and telephone facilities, fire alarm conduits, street light wiring, and other wiring, conduits, and similar facilities. The new facilities shall be placed underground along the project's street frontage and from the project structures to the point of service. Utilities under the control of other agencies, such as PG&E, shall be placed underground if feasible. All utilities shall be installed in accordance with standard specifications of the serving utilities.	During construction	N/A	Bureau of Building
SCA Utilities-6, Storm Drain System: The project storm drainage system shall be designed in accordance with the City of Oakland's Storm Drainage Design Guidelines. To the maximum extent practicable, peak stormwater runoff from the project site shall be reduced by at least 25 percent compared to the pre-project condition.	Prior to approval of construction-related permit	Bureau of Building	Bureau of Building

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EAST BAY MUNICIPAL UTILITY DISTRICT

DATE: March 12, 2024

MEMO TO: Board of Directors

THROUGH: Clifford C. Chan, General Manager 

FROM: David A. Briggs, Director of Operations and Maintenance 

SUBJECT: Water Supply Update – March 12, 2024

The attached presentation outlines water production, precipitation to date, reservoir storage, and forecasted supply conditions for the remainder of the water year under various hydrology scenarios. A water supply update will be presented at the March 12, 2024 Board meeting.

CCC:DAB:sd

Attachment: Water Supply Update Presentation

I:\SEC\2024 Board Related Items\031224 Board\OMD – Water Supply Update.docx

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Water Supply Update

Board of Directors
March 12, 2024

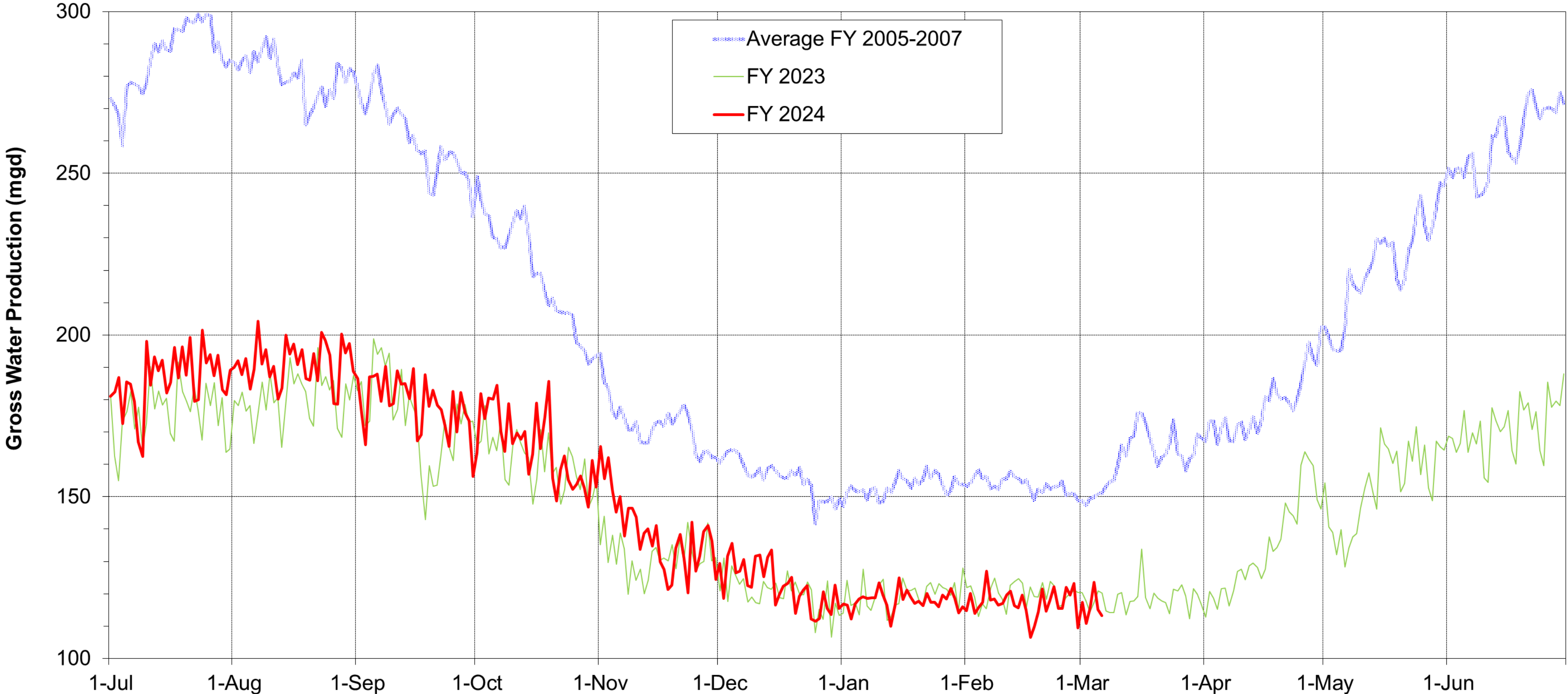
Water Supply Briefing

- Current Water Supply
- California Water Supply
- Water Supply Projections



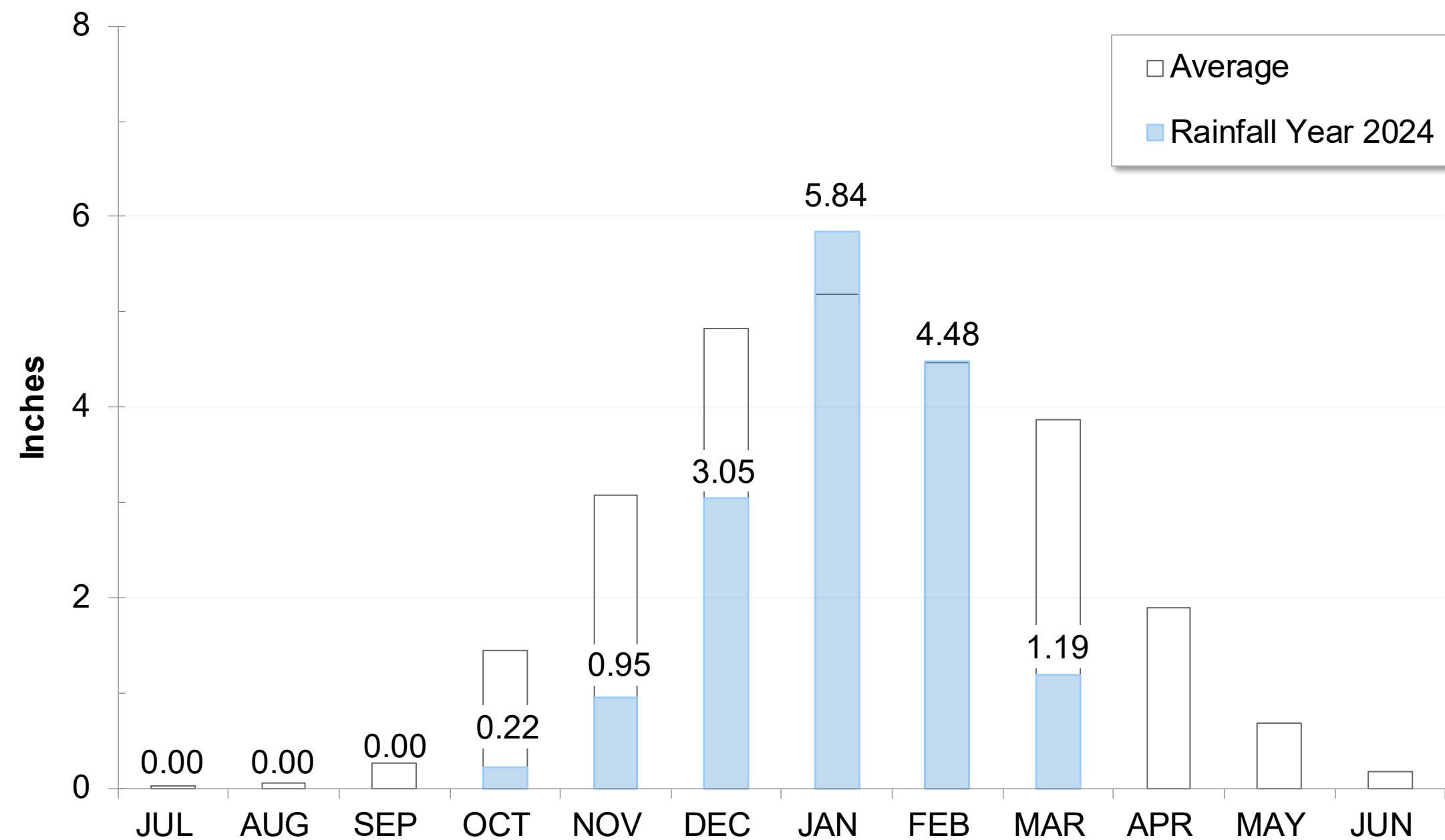
Current Water Supply

Gross Water Production



Precipitation as of March 6

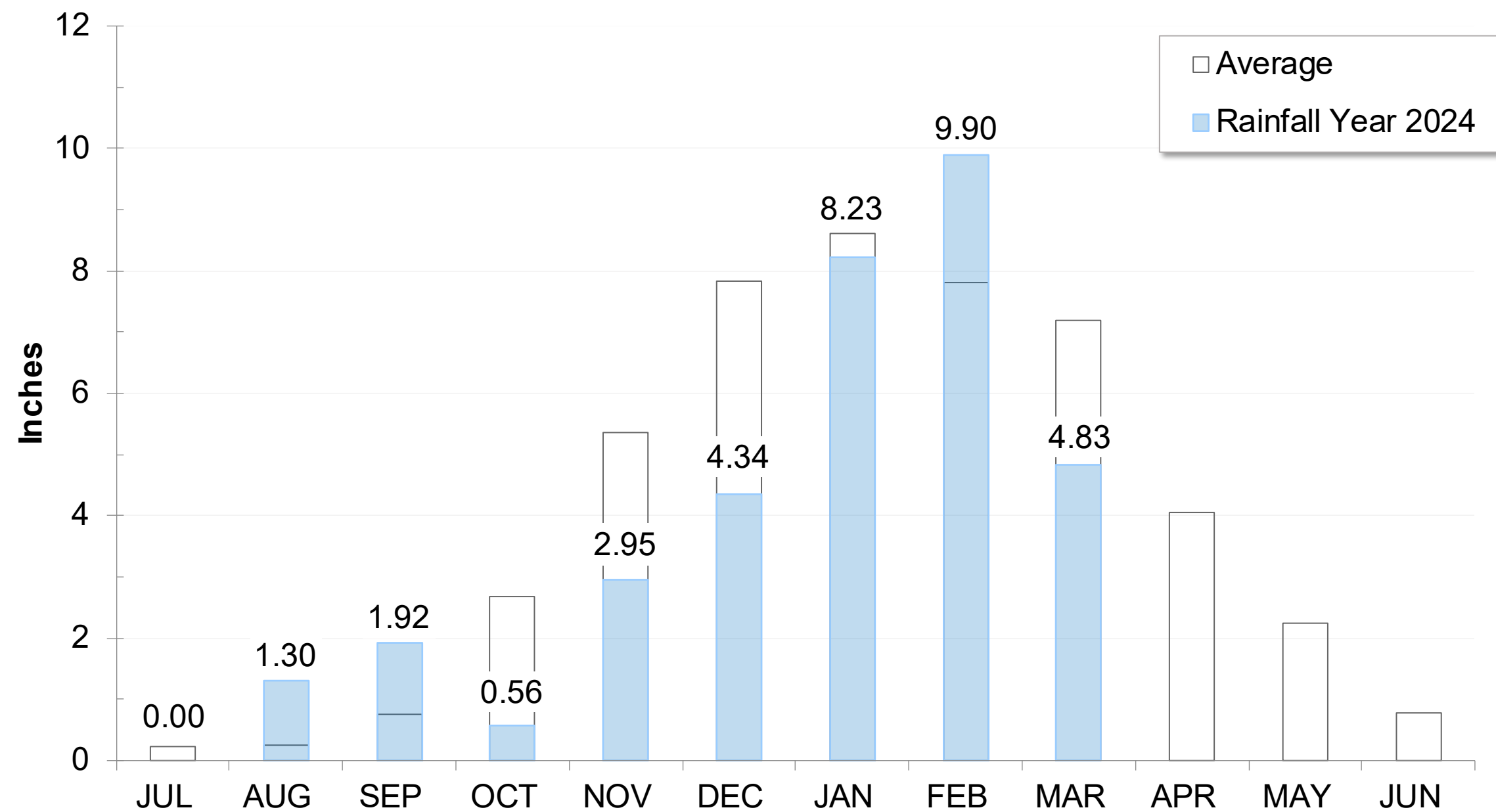
East Bay: 15.73" (76% of average)



San Pablo Reservoir Weather Station, D. Hansen, February 2024

Precipitation as of March 6

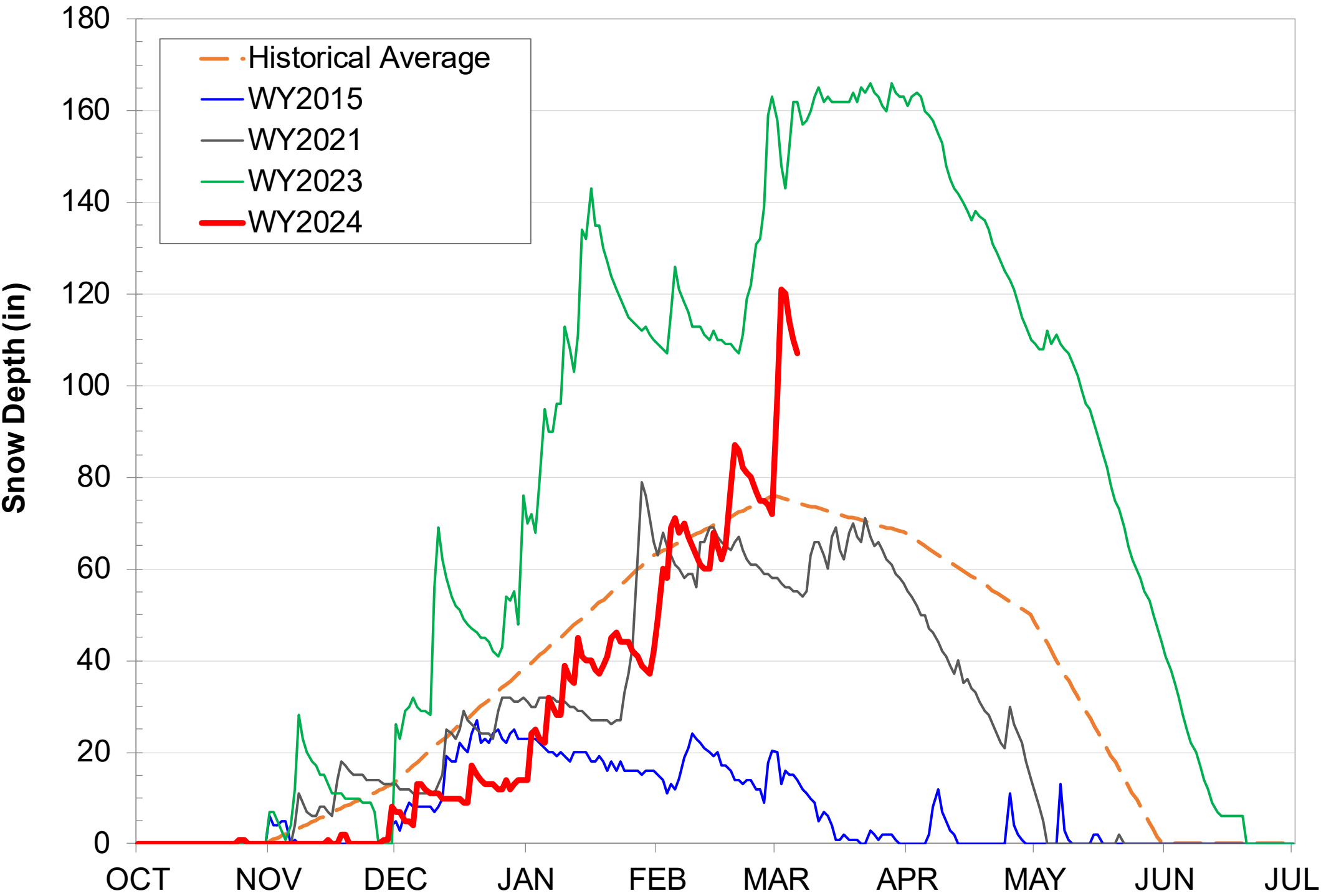
Mokelumne: 34.03" (96% of Average)



High-Elevation Snow (Caples Lake) as of March 6

Snow Depth
 107" (144% of average)

Snow Water Content
 29.10" (107% of average)



4-Day Snowfall Totals

February 29 – March 4
Caples Lake = 49"

Top 4-Day Snow Reports

Sugar Bowl	126"
Soda Springs CalTrans	116"
Kingvale CalTrans	106"
Palisades Tahoe	96"
Dodge Ridge	89"
Sierra Snow Lab	75.2"
Boreal	74"
Eagles Lakes CalTrans	66"
Blue Canyon CalTrans	31"

Additional Snow Reports

Quincy* (3-day)	18-24"
Shingletown* (3-day)	5-10"
Arnold* (2-day)	10.5"
Camino* (2-day)	6.6"

* CoCoRaHS or Spotter Reports

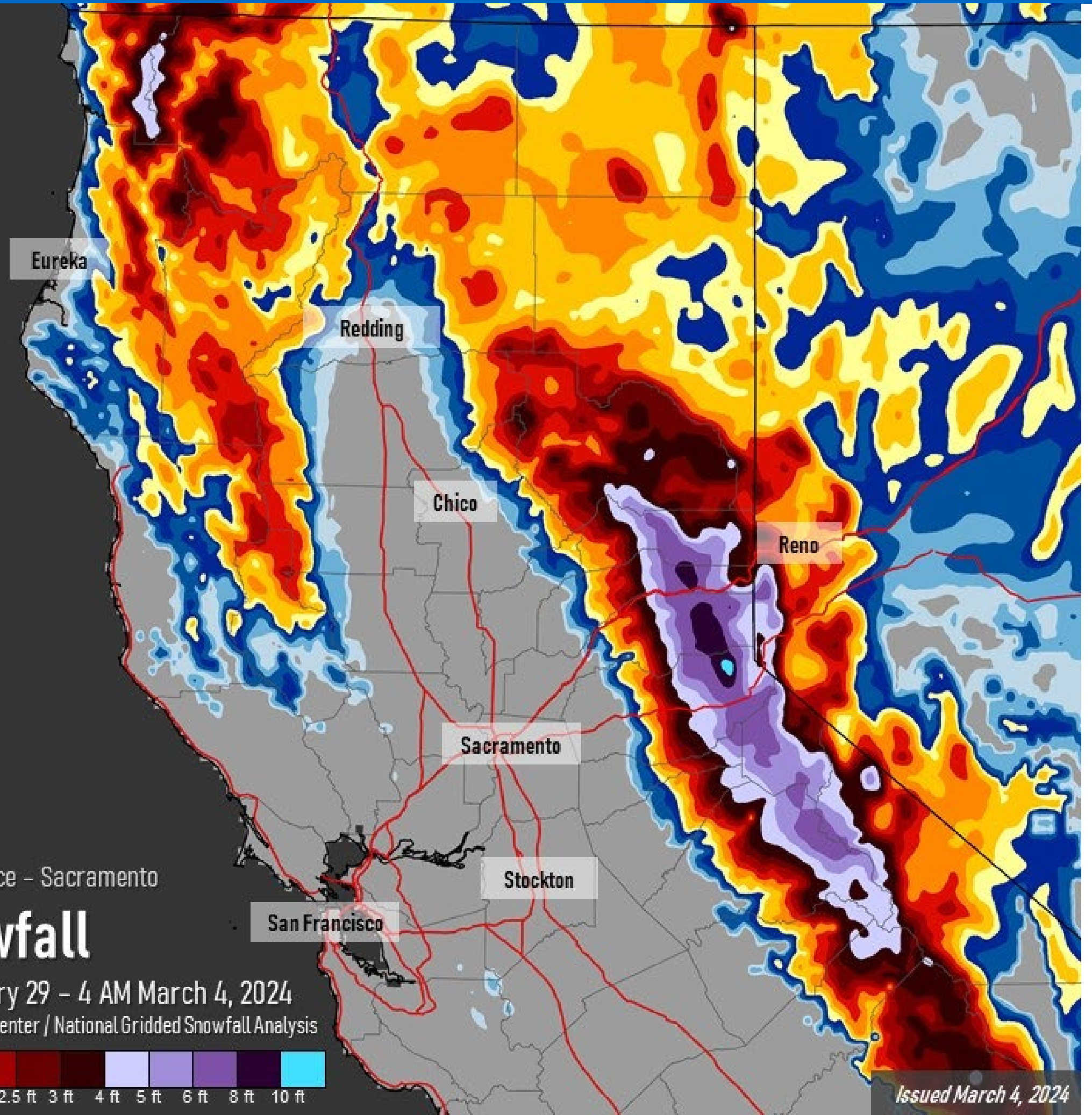
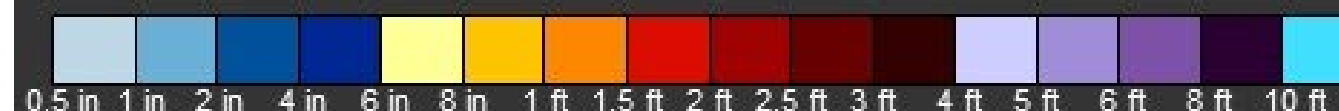


National Weather Service – Sacramento

Total Snowfall

4 Days: 4 AM February 29 – 4 AM March 4, 2024

Data Source: National Water Center / National Gridded Snowfall Analysis



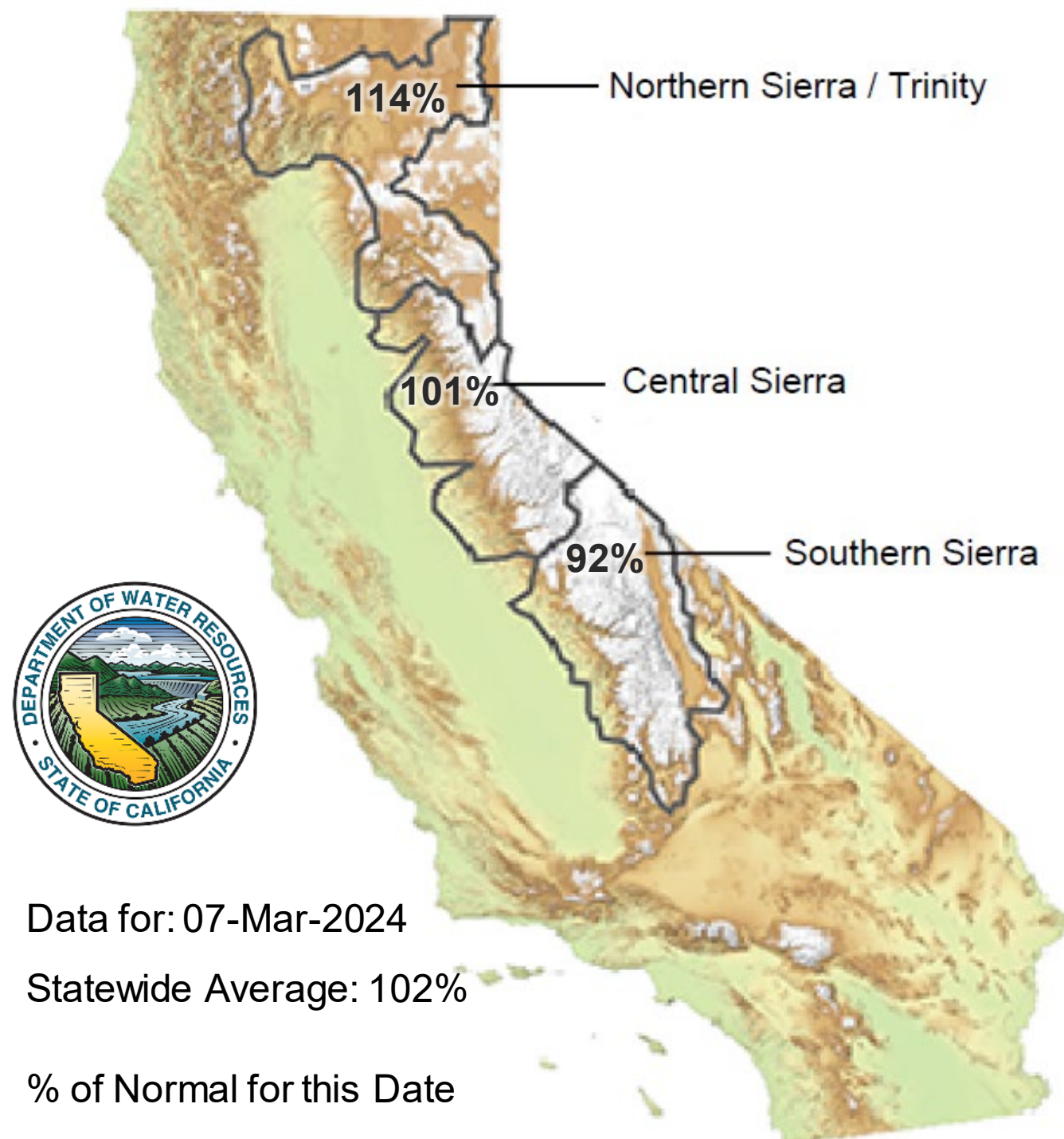
Issued March 4, 2024

California Water Supply



Snowpack as of March 7

Snow Water Equivalent:
101% in Central Sierra



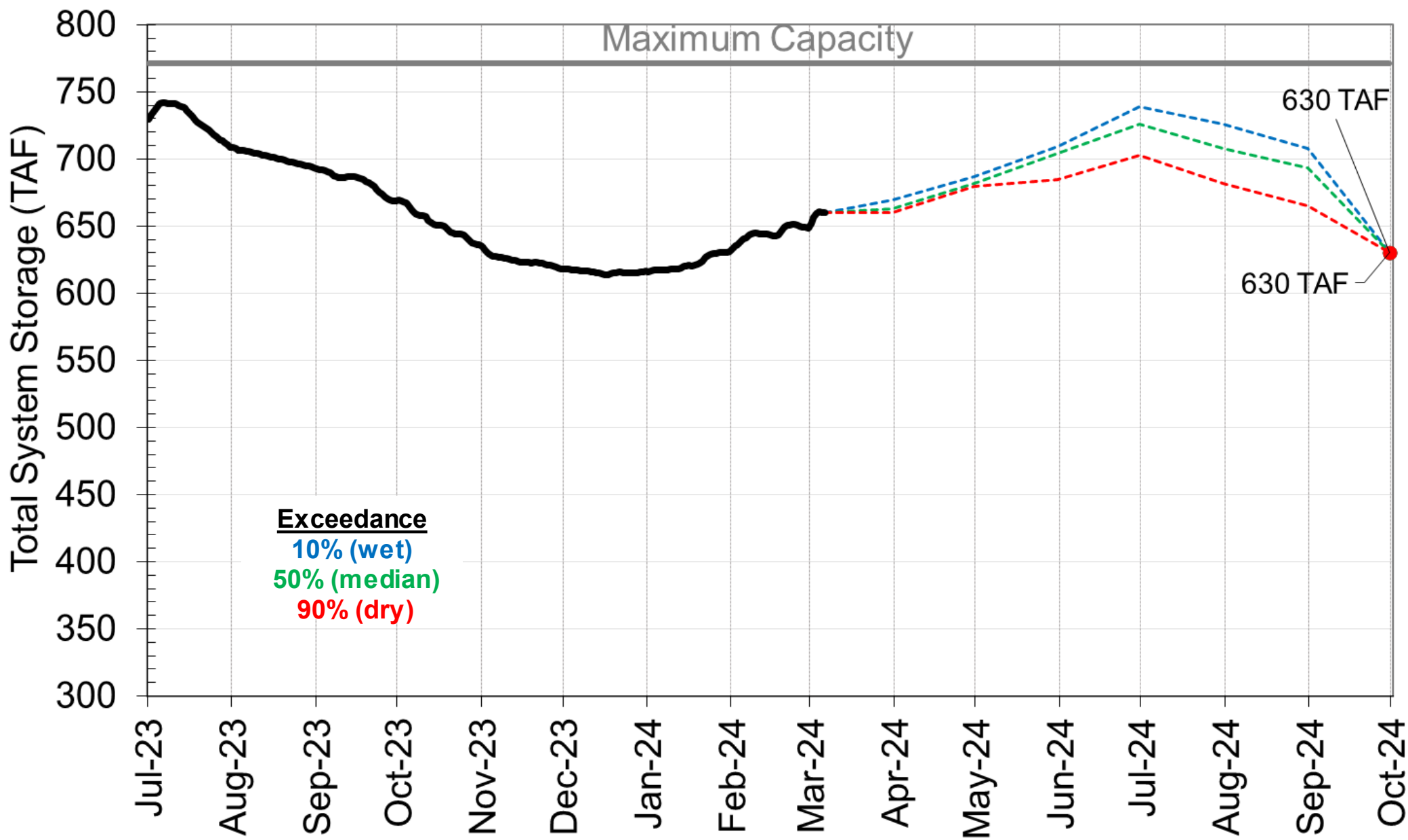
Water Supply Projections

Total System Storage as of March 6

Projected: 630 TAF by 9/30

Current: 660 TAF (111% of Average)

Reservoir	Current Storage, TAF	Percent of Average	Percent of Capacity
Pardee	183	99%	90%
Camanche	337	121%	81%
East Bay	140	104%	93%
Total System	660	111%	86%



TAF: Thousand Acre-Feet

Questions ?



Pardee Powerhouse, J. Wood, January 2023



**FLOWING
INTO
THE
FUTURE**

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EAST BAY MUNICIPAL UTILITY DISTRICT

DATE: March 12, 2024

MEMO TO: Board of Directors

FROM: Clifford C. Chan, General Manager 

SUBJECT: Monthly Report – February 2024

HIGHLIGHTS

In February, District recreation areas opened for the season. On February 2, the San Pablo Reservoir Recreation Area opened. The following day, the recreation area hosted the 10th Annual NorCal Trout Anglers Challenge with 445 participants. On February 16, Pardee Recreation Area opened to day-use visitors only because of the ongoing work to replace the water treatment plant that serves the recreation area. The project is expected to be completed in July 2024.

On February 7, the District sold \$426 million in Water System revenue bonds which carry the highest credit ratings of AAA/Aaa at a true interest cost of 3.88% for an average life of 18.3 years. On February 14, the District sold \$24.5 million in Wastewater System revenue bonds which carry very high credit ratings of AAA/Aa1 at a true interest cost of 4.25% for an average life of 24.5 years. The bonds were well received by the market and attracted a large and diverse group of investors. This high demand allowed the District to price its bonds aggressively and borrow at lower costs. The Water System and Wastewater System bonds are scheduled to close on March 5 and March 12, respectively. Proceeds from the issuance of the bonds will be used to reimburse the District for capital improvement program expenditures which meet the District's Green Bond Criteria in the amounts of \$275 million for the Water System and \$27.5 million for the Wastewater System and to refinance outstanding Water System debt for net present value savings of \$35.4 million.

WATER SUPPLY

On February 2, staff attended the 2021 Reinitiation of Consultation on the Long-Term Operation of the Central Valley Project and State Water Project status briefing meeting. The U.S. Bureau of Reclamation released the second draft of the Cooperating Agency Draft Environmental Impact Statement (EIS) at the end of February. The public draft of the EIS is planned for release in mid-2024.

On February 14, staff attended the public negotiation session hosted by the U.S. Bureau of Reclamation for the Long-term Warren Act Contract with Placer County Water Agency (PCWA). Negotiations will continue through March 13, 2024 to support EBMUD's proposed long-term water transfer project with PCWA.

On February 21, staff met with San Joaquin County (SJC) to provide comments on the Mokelumne Integrated Conjunctive Use Project (MICUP) Partnership Charter. The purpose of the MICUP Partnership Charter is to advance SJC's Mokelumne River Water & Power Authority Water Right Application 29835, gain MICUP support, and satisfy requirements of the State Water Resources Control Board to issue a permit for Application 29835, including California Environmental Quality Act compliance and resolving all protests. Staff plans to provide feedback on how EBMUD can support SJC's MICUP effort.

On February 28, staff, in collaboration with North San Joaquin Water Conservation District and San Joaquin County provided an update to the Eastern Water Alliance/Monitoring Committee for the Demonstration, Recharge, Extraction, and Aquifer Management (DREAM) Project. The update included a summary of extraction schedule, required troubleshooting and repair efforts, and groundwater conditions. Groundwater extraction for the DREAM Project was initiated on January 10, and is planned to continue through March 29. The Monitoring Committee recommended that the San Joaquin County Board of Supervisors extend the extraction period through April 30.

Precipitation. The East Bay precipitation for February was 4.51 inches (96 percent of average) and the season total was 14.67 inches (74 percent of average). The Mokelumne precipitation for February was 9.90 inches (126 percent of average) and the season total was 29.20 inches (86 percent of average).

Water Releases

Camanche Reservoir. The average rate of Camanche release for February was 599 cfs (549 cfs generation, 10 cfs sluice, and 40 cfs through the hatchery), and the average flow below Woodbridge Dam was 555 cfs, both in accordance with the Joint Settlement Agreement "Normal & Above" water year criteria.

East Bay Reservoirs. Releases were made from Upper San Leandro and Chabot reservoirs from February 8-14 and from February 21-29, respectively, to maintain the reservoirs within the winter operating storage ranges.

Water Storage

Mokelumne reservoirs storage is 112 percent of average. As of February 29, Pardee was at 555.0 feet or 97 percent of average, and Camanche was at 223.8 feet or 123 percent of average. Combined Pardee and Camanche reservoir storage was 511,000 acre-feet compared to 486,000 acre-feet last year.

East Bay reservoirs storage is 103 percent of average. As of February 29, USL was at 457.6 feet or 117 percent of average, San Pablo was at 304.5 feet or 92 percent of average, and Briones was at 574.5 feet or 104 percent of average. Total terminal reservoir storage was 138,000 acre-feet compared to 146,000 acre-feet last year.

Mokelumne Aqueducts and Raw Water Pumping Plants. The average rate of Mokelumne Aqueduct draft for February 2024 was 101 MGD. Walnut Creek, Moraga and Briones Raw Water Pumping Plants remained out of service for the month.

Water Production. Average rate of gross water production for February:

	February 2024	February 2023	February 2020	Average of FY 2005-2007
East of Hills	22 MGD	23 MGD	33 MGD	29 MGD
West of Hills	95 MGD	97 MGD	108 MGD	125 MGD
Total	117 MGD	120 MGD	141 MGD	154 MGD
Max Day Production	127 MGD (2/6/2024)	125 MGD (2/8/2023)	160 MGD (2/26/2020)	

Note: Data are all from preliminary daily operational reports and are subject to revision

WATER QUALITY AND ENVIRONMENTAL PROTECTION

In February, the District conducted a seven-day pile burning operation on the southern edge of San Pablo Reservoir. Approximately 1,500 logs were burned, which had been harvested as part of the ongoing hazard fuel modification project. During the burning operation, meteorologists from the Bay Area Air Quality Management District were onsite to observe burning techniques and monitor smoke output from the burn to gain knowledge of EBMUD’s pile-burning operations.

In February, staff and the California Division of Safety of Dams performed annual dam safety inspections of the local reservoirs. The inspections included a review of the dams, spillways, outlets, and instrumentation. No significant items of concern were noted.

In February, seasonal salmonid field monitoring was conducted in the Mokelumne River. The final salmon escapement total is 28,698 for the 2023/2024 season. With the draining of Lodi Lake, initiated on February 2, the Woodbridge Irrigation District Dam fish ladder will not be monitored for fish passage until the lake is re-filled. Through February 16, a total of 20,766 and 1,482 naturally produced juvenile Chinook salmon were counted in the upstream and downstream rotary screw traps, respectively (including weekend estimates). In addition to trap checks, rotary screw trap calibrations were conducted to help provide an estimate of the proportion of natural-origin juvenile Chinook salmon captured. As a result, the current production estimate of juvenile Chinook salmon at the upstream trap is 353,754, while the outmigration estimate of juvenile Chinook salmon at the downstream trap is 24,501. Staff continued to conduct weekly redd surveys, with a cumulative total of 4,951 Chinook salmon redds observed as of February 15.

In February, staff conducted biological surveys at three District sites and a habitat assessment at one site. On February 6, biological surveys were conducted at the Dufresne and Yager pond enhancement sites. On February 8, a biological survey was conducted at the

Woodward Island bent repair project site. The surveys were conducted to provide the necessary information for the submittal of a Verification Request Form for the upcountry Routine Maintenance Agreement. No potential impacts were identified. On February 14, a turtle nesting habitat assessment was conducted in the Western Pond in which staff worked on finalizing the potential nesting habitat along the Mokelumne aqueduct alignment for Northern western pond turtles, a species of special concern, which has been petitioned to be a listed a threatened species.

On February 13, staff submitted the Annual Project Operations Report to the Federal Energy Regulatory Commission to fulfill the hydropower license terms. The Operations Report provides a summary of the measures that EBMUD implemented in the previous calendar year and those that will be implemented in the current calendar year pursuant to the Joint Settlement Agreement to protect and enhance the fishery resources and ecosystem of the lower Mokelumne River.

On February 15, the District submitted to the U.S. Fish and Wildlife Service (USFWS) a draft amendment to the EBMUD Low Effect East Bay Habitat Conservation Plan (HCP) for review. Staff is negotiating an amendment to the HCP to address lessons learned after 16 years of implementation. Staff is recommending improvements to protection measures, updating species information, adding newly acquired properties and recommending changes to streamline HCP implementation for the remainder of the 30-year permit term. USFWS review and finalization of the new permit is expected to be completed in 2025.

On February 15, the California Wildlife Conservation Board approved \$180,000 in grant funding for the District's Tomato Stand Fish Passage Project. The District will use consultants to complete site assessments and fish passage analysis, design fish passage improvements and complete environmental permitting for the project. The Board will consider this agreement at its May 28, 2024 meeting. Design and permitting is expected to be completed in time for construction of the fish passage improvements in fall 2025.

On February 15, staff conducted interviews as part of the Federal Energy Regulatory Commission Relicense request for proposals for strategic consulting and facilitation services. A tentative consultant selection was made and is undergoing contract negotiations and administrative review. The selection will be presented to the Board for approval on April 9. The anticipated contract amount is \$3.0 million.

On February 27, the District submitted the annual Pretreatment Report and Pollution Prevention Report for calendar year 2023 to the San Francisco Regional Water Quality Control Board and the U.S. Environmental Protection Agency. These reports are required by the National Pollutant Discharge Elimination System (NPDES) permit for the Main Wastewater Treatment Plant (MWWTP) and summarize sampling and analysis of pollutants that enter the MWWTP and the discharges from the MWWTP. The Pretreatment Report summarized the District's oversight of permitted significant industrial users within the wastewater service area. The Pollution Prevention Report summarized the District's education and outreach activities to reduce pollutant discharges at the source and reported on the overall effectiveness of the various efforts, including more than 24 years of consecutive compliance with the NPDES permit limits.

All authorized discharges from the Main Wastewater Treatment Plant (MWWTP) were in compliance with the permit limits for the month of February. This is the 294th consecutive month that the MWWTP experienced no exceedances.

The District received no odor reports from the public in February.

INFRASTRUCTURE INVESTMENT

In February, staff completed a pipeline replacement project in the Celeste Avenue area in Walnut Creek. This project replaced asbestos cement pipe with approximately 6,240 feet of 6-inch structurally enhanced polyvinyl chloride pipe.

In February, staff completed a pipeline replacement project in the Fairmount Avenue area in Oakland. This project replaced cast iron pipe with 857 feet of 6-inch structurally enhanced polyvinyl chloride pipe.

In February, staff began a pipeline replacement project in the Camino Tassajara area in Danville. This project will replace asbestos cement pipe with approximately 8,000 feet of 6- and 8-inch structurally enhanced polyvinyl chloride pipe. This project is expected to be completed in July.

In February, staff began a pipeline replacement project in the Juanita Drive area in Walnut Creek. This project will replace cast iron pipe with approximately 8,320 feet of 6- and 8-inch structurally enhanced polyvinyl chloride pipe. This project is expected to be completed in June.

In February, staff began two pipeline replacement projects in Oakland. The Romany Road area project, part of the larger Margarido Drive area project, will replace cast iron pipe with approximately 980 feet of 6-inch structurally enhanced polyvinyl chloride pipe. This project was put on hold for nearly one year after underground utility conflicts required alternative alignments to be used. This portion of the project is expected to be completed in April. The Lincoln Avenue area project will replace cast iron pipe with approximately 4,725 feet of 4-, 6-, and 12-inch structurally enhanced polyvinyl chloride pipe. This project is expected to be completed in July.

In February, the replacement of the Quagga Zebra Mussel vessel inspection station at the Pardee Reservoir boat launch ramp was completed. The small wood-framed building was constructed by a local contractor and installed on-site by staff.

In February, staff completed design of the Lafayette Water Treatment Plant (WTP) Control System Improvements Project under Specification 2177. This \$2 million project will upgrade the control system at Lafayette WTP. This project will improve the operability, reliability, and resilience at the WTP. The construction is expected to be completed in July 2025.

Mains repaired in February totaled 39. The attached table lists the mains repaired by staff in February, sorted by city and street. The table indicates the source of the leaks in three categories: non-surfacing leaks discovered by leak detection technologies, breaks caused by contractors or other agencies, and all other main breaks. The associated map shows the location of the main repairs.

CUSTOMER AND COMMUNITY SERVICES

On February 1, staff participated in the City of Oakland monthly utility coordination meeting to discuss construction activities. Participants included local utilities (i.e., gas, electrical, and telecommunications). The participants shared information on current and upcoming work.

On February 1, staff presented to the Lafayette-Orinda Presbyterian Church. The presentation highlighted the District's water supply, operations, and infrastructure. Approximately 50 people attended.

On February 1, staff attended the Contra Costa County Mayor's Conference in El Cerrito. Staff received updates on local issues.

On February 2, the District received the Engineering Achievement Award from the California Water Environment Association, San Francisco section for the Large Diameter Interceptor Rehab, Special Structures Project.

On February 3, staff conducted an eagle tour at Pardee Reservoir for the San Joaquin 4-H Tokay Colony group. Eight bald eagles and six golden eagles were sighted. Approximately 15 people attended.

On February 6, staff met with the City of Albany to coordinate construction activities. The two agencies shared information on current and upcoming work.

On February 6, staff presented at the North Richmond Municipal Advisory Council meeting. The presentation highlighted the Galvanized Requiring Replacement project. Approximately 25 people attended.

On February 7, staff met with the City of Richmond to coordinate construction activities. The two agencies shared information on current and upcoming work.

On February 7, staff conducted a virtual tour of the Main Wastewater Treatment Plant for the public. Approximately 40 people attended.

On February 7, staff participated in the Lao Family Community Development's Food Pantry event in Oakland. Staff provided information on the Customer Assistance Program, its eligibility requirements and applications in English, Chinese and Vietnamese. Approximately 75 people attended.

On February 7-9, staff attended the 2024 Annual Meeting of the Western Section of the Wildlife Society in Rohnert Park. The focus for this year's conference revolved around connection, insightful discussions, and practical approaches to navigating the complexities arising from pressing issues we face as natural resource managers.

On February 8, staff met with the City of Emeryville to coordinate construction activities. The two agencies shared information on current and upcoming work.

On February 8, staff participated in the Lao Family Community Development's Volunteer Income Tax Assistance session in Oakland. Staff provided information on the Customer Assistance Program and its eligibility requirements, and applications in English, Chinese and Vietnamese. Approximately 30 people attended.

On February 8, staff presented at the Northern California Pipe Users Group annual seminar. The presentation highlighted the challenges and lessons learned from recent construction projects to repair and rehabilitate wastewater interceptors. Approximately 250 people attended.

On February 11, staff participated in the Tzi Chi Foundation Lunar New Year celebration in Oakland. Staff provided information on water conservation, careers, and the Customer Assistance Program. Approximately 500 people attended.

On February 13, staff met with the City of Berkeley to coordinate construction activities. The two agencies shared information on current and upcoming work.

On February 13, staff presented at the Oakland Chinatown Chamber of Commerce Board meeting. The presentation highlighted the upcoming Community Water Academy. Approximately 15 people attended.

On February 13, staff conducted an environmental education field trip. A total of 20 students from Calaveras High School's Forestry class cut willows, repotted existing trees into larger pots and provided general maintenance of the Camanche South Shore Native Nursery.

On February 14, staff attended the Alameda Chamber and Economic Alliance's Economic and Government Affairs virtual meeting. Meeting topic included the City of Alameda Base Reuse Update on leasing and sales at Alameda Point.

On February 14, staff conducted an environmental education field trip. A total of 75 second graders from Oakland's Aspire Monarch Academy participated in a discussion about EBMUD's water supply, water conservation, and a broom pulling activity.

On February 14, staff met with the City of El Cerrito to coordinate construction activities. The two agencies shared information on current and upcoming work.

On February 14, staff presented at the Alameda County Mayor’s Conference in Alameda. The presentation highlighted the upcoming Community Water Academy and an invitation for officials to join and to spread the word. Approximately 50 people attended.

On February 16, staff conducted a virtual tour of the Main Wastewater Treatment Plant for third graders from Albany’s Marin Elementary. Approximately 25 people attended.

On February 21, staff attended a briefing from Water Information Sharing and Analysis Center. Topics included community engagement and crisis communications for water sector natural disasters and other emergencies.

On February 21, staff met with the City of Piedmont to coordinate construction activities. The two agencies shared information on current and upcoming work.

On February 22, staff presented at the West County Mayors and Supervisors meeting. The presentation highlighted the Galvanized Requiring Replacement project. Approximately 15 people attended.

On February 23, staff conducted a virtual tour of the Main Wastewater Treatment Plant for fifth grade students from Oakland’s Francophone Charter School. Approximately 25 people attended.

On February 24, staff participated in the TURN and the True Gospel Baptist Church's Bill Assistance Open House in Oakland. Staff provided information on the Customer Assistance Program applications in English, Chinese and Vietnamese. Approximately 30 people attended.

On February 27, staff attended the Oakland Chinatown Community Improvement Council Board meeting.

On February 28, staff conducted a virtual tour of the Main Wastewater Treatment Plant for fourth grade students from Oakland’s Escuela Bilingue Internacional. Approximately 25 people attended.

On February 28, staff conducted an environmental education field trip for fifth grade students from Hercules’ Lupine Hills Elementary School. The field trip included a visit to EBMUD’s Simas environmental education site; and a discussion on EBMUD’s water supply, water conservation, as well as a broom pulling activity. Approximately 35 people attended.

On February 28, staff participated in the District’s virtual Water Wednesday series, “Working for Water.” Staff provided information about District careers, upcoming recruitments, the application process, and internship opportunities, including the High School Summer Internship program. Approximately 300 people attended.

Media. Storm preparations (ABC7) and water supply status (KCBS, Mercury News/East Bay Times, Telemundo, KSTS) were reported by multiple outlets. A main break in Emeryville was covered (KRON4 and The E'ville Eye). Director John Coleman's resignation was featured (ACWA). EBMUD's bond ratings were featured in a financial publication (Bond Buyer, ACWA). Numerous publications highlighted a February 22 webinar about reducing the use of fossil fuels in water systems and working towards decarbonization; the webinar featured five industry leaders as panelists, including General Manager Clifford Chan.

Social Media:

Social Platform	Popular Topic	Impression Generation	# Followers	Change Over Last Month
Twitter	Black History Month Art Exhibit	3,671	3,957	7
Facebook	High School Internships	7,597	2,034	25
Instagram	Black History Month Art Exhibit	797	668	44
LinkedIn	High School Internships	1,687	9,527	99
Nextdoor	Printable Valentine's Day Cards	39,236		

Staff conducted public outreach to neighbors and interested parties on the following projects:

- Briones Reservoir Soils Off-Haul (Orinda)
- Happy Valley Pumping Plant and Pipeline Replacement (Orinda)
- Juanita Cluster Pipeline Replacement (Walnut Creek)
- Orinda Water Treatment Plant Disinfection Improvements (Orinda)
- Piedmont Reservoir #1 (Piedmont)

Contract Equity

On February 21, staff participated in the Western Regional Minority Supplier Development Council's Construction Day 2024: Building Diversity in Construction Supply Chains, in San Francisco. Staff provided information on how to do business with EBMUD and upcoming contracting opportunities. Approximately 250 people attended.

Contract Equity staff participated in the following customer events and outreach activities:

- February 8 – National Association of Minority Contractors – Construction Talk – 70 attendees
- February 20 – Association of Government Contractors Small/Underrepresented Business Forum Meeting – 70 attendees
- February 29 – Gateway's 2024 Lunar New Year Celebration and Networking Mixer – 85 attendees
- February 29 – Small Business Administration/Oakland African American Chamber – Inclusivity Project Small Business Workshop/Resource Fair – 100 attendees

Water Conservation

On February 21, staff presented at the Serpico Landscaping Account Managers meeting in Fremont. Staff provided information on the District's landscape rebates and Assembly Bill 1572, which prohibits the use of potable water for the irrigation of nonfunctional turf. Approximately 25 people attended.

WORKFORCE PLANNING AND DEVELOPMENT

In February, District security began accompanying staff from the Administrative Building to the 12th Street BART station between the hours of 4:00 p.m. – 6:00 p.m. In addition, the District hosted a brown bag forum for the Oakland Police Department's Chinatown Liaison Officer to discuss security concerns, safety tips, and crime trends.

Staff participated in events/activities that support the District's long-term efforts to develop a diverse pipeline of candidates for future workforce needs and expand collaborative relationships with local partner organizations:

- **On February 5, staff participated in Cristo Rey De La Salle High School's Student Workforce Cohort in Oakland.** Staff provided information on the District's High School Summer Internship program, District career pathways, and Customer Assistance Program resource information. Approximately 50 people attended.
- **On February 8, staff participated in the Oakland Private Industry Council's 2024 Job & Resource Fair.** Staff provided information on District careers, recruitments, and the application process, with an emphasis on the upcoming Utility Laborer and Community Trainee Program recruitments. Approximately 400 people attended.
- **On February 17, staff participated in the National College Resources Foundation's Black College Expo in Oakland.** Staff provided information on District careers, recruitments, the application process, and internship opportunities, including the High School Summer Internship program. Approximately 200 people attended.
- **On February 23, staff attended the Bay Area Community Colleges and the Association of Manufacturers Bay Area's Women in Manufacturing Skilled Trades Symposium in Fremont.** Staff participated in workshops, panels and breakout sessions with peer agencies and discussed regional strategies for developing a diverse, qualified pipeline of female candidates in the manufacturing skilled trades. Approximately 75 people attended.
- **On February 25, staff participated in the Black Infant Health's Black Joy Parade in Oakland.** Staff provided information about District careers, recruitments, the application process, and internship opportunities, including the High School Summer Internship program. The District sponsored this event. Approximately 15,000 people attended.

Tuition Reimbursement

	February 2024	FY 2024 Total
# of Employees	13	106
# of Classes	16	151
Total Reimbursed	\$9,076.81	\$90,387.47

Employment Information

	February 2024	FY 2024 Total
Retirements – Regular	3	41
Retirements – Vested	0	5
Hires/Rehires	19	139
Other Separations	3	59

FINANCIAL STABILITY

Capital Budget Transfers. In February 2024, there were no capital transfers greater than \$2.5 million. Through February 29, 2024, there have been eight capital transfers for a total of \$23.9 million in the Water System and \$5.2 million in the Wastewater System.

The construction contract with Mitchell Engineering, Inc. for the Fuel System Improvements Project requires an increase in the change order contingency. Cost increased due to additional fuel system equipment required to meet new regulatory requirements implemented after bid opening; replacement of existing fuel tanks that were too corroded to rehabilitate; the addition of an ADA-compliant sidewalk and ramp at Camanche Southshore Marina; the addition of a retaining wall at Pardee Center; removal and disposal of contaminated groundwater at Fleet Maintenance East and the Adeline Maintenance Center; and replacement of existing underground fuel lines at the Adeline Maintenance Center to meet current code requirements. It is estimated that the change order contingency will need to be raised to \$2,234,850 or 15 percent of the original contract amount of \$15,499,000.

The construction contract with Sierra Mountain Construction, Inc., for the Briones Outlet Tower Seismic Upgrade project requires an increase in the change order contingency. Cost increased due to suspension of work in fall 2023 to accommodate the need to use the tower for water supply operations, installation of articulated concrete mats to cover the shore-to-tower piping, purchase of an auxiliary hydraulic power unit (HPU) for emergency use, and repair and retesting of factory-assembled District-furnished HPUs. It is estimated that the change order contingency will need to be raised to \$3,768,000 or 40 percent of the original contract amount of \$9,420,000.

In February, an additional qualified service provider was added to the agreements for vehicle collision repair and glass replacement. Aurora Collision Center meets District standards and has been added to increase flexibility and ensure service provider availability.

On February 9, the District transferred \$1.1 million to the Army Corp of Engineers for the District's 25 percent match share of project funds for the East Bayshore Recycled Water

Project – Oakland Estuary Crossing. Submitting the match share, pursuant to the Project Partnership Agreement, allows the Army Corp of Engineers to proceed with procurement of contractors for pipeline inspection and design. The federal funding cost match is 75 percent. On February 15, staff met with Army Corp staff to confirm the project scope of work and schedule.

The estimated earned revenue from the Main Wastewater Treatment Plant Power Generation Station’s surplus power sales for February is \$24,830. The District sold renewable power and related Renewable Energy Credits (RECs) to the Port of Oakland. The sale of RECs generated \$7,280 from the Port of Oakland. Earned revenue for FY 2024 to date is estimated at \$324,748 or 81 percent of the total FY 2024 budget of \$400,000.

The estimated earned revenue from Mokelumne power sales for February is \$849,296. The District sold renewable power and related Renewable Energy Credits (RECs) to Marin Clean Energy (MCE). Sales of REC’s generated \$102,421 from MCE. Resource Adequacy (RA) capacity sales to Ava Community Energy (East Bay Community Energy) earned \$76,905. Earned revenue to date through February is estimated at \$10,872,000 or 136 percent of the FY 2024 budgeted \$8.0 million. Forecasted revenue for FY 2024 is estimated to be \$14.7 million.

There were no material, supply, or construction contracts from \$80,001 to \$100,000 and two general and professional service agreements from \$30,001 up to \$80,000 approved by the General Manager in February 2024.

VENDOR NAME	DATE AWARDED	CEP STATUS	ITEM (S) PURCHASED	PROJECT	CONTRACT TERM	VALUE
Probolsky Research, LLC	02/15/2024	Hispanic Women	Administer five focus group discussions with K-12 teachers, STEM coordinators, and school administrators to inform the District’s Education Program K-12 strategies and programming	N/A	N/A	\$80,000
Consolidated Engineering Inc.	02/21/2024	White Men	Complete the paving project at the Mokelumne Watershed Headquarters	N/A	N/A	\$57,750

As of February 29, 2024, the District received benefit payments from the Low-Income Household Water Assistance Program (LIHWAP) for \$2,151,698.03 for Alameda County customers and \$298,199.57 for Contra Costa County customers. LIHWAP benefit payments are processed through designated local service provider for each county. The total amount received to date is \$2,449,897.60 and additional payments are expected as the state continues to process applications for the program. Eligible households have until March 31, 2024, to submit an application. The District will continue to share information on LIHWAP with customers.

Low-Income Household Water Assistance Program as of February 29, 2024		
County	Total Count	Total Payment Amount
Alameda County	1,679	\$2,151,698.03
Contra Costa County	316	\$298,199.57
Grand Total	1,995	\$2,449,897.60

Low-Income Household Water Assistance Program July 2022 - February 2024												
Month	July 2022		August 2022		September 2022		October 2022		November 2022		December 2022	
County	Accounts	Payment Received	Accounts	Payment Received	Accounts	Payment Received	Accounts	Payment Received	Accounts	Payment Received	Accounts	Payment Received
Alameda	17	\$14,105.43	78	\$70,570.04	92	\$85,690.99	78	\$67,563.45	49	\$48,161.64	81	\$87,880.54
Contra Costa	0	\$0.00	10	\$5,707.69	12	\$6,295.35	10	\$7,408.44	13	\$8,318.57	14	\$15,972.87
Totals	17	\$14,105.43	88	\$76,277.73	104	\$91,986.34	88	\$74,971.89	62	\$56,480.21	95	\$103,853.41

Month	January 2023		February 2023		March 2023		April 2023		May 2023		June 2023	
County	Accounts	Payment Received	Accounts	Payment Received	Accounts	Payment Received	Accounts	Payment Received	Accounts	Payment Received	Accounts	Payment Received
Alameda	62	\$64,521.24	68	\$73,704.39	45	\$51,726.67	72	\$77,037.41	66	\$82,589.30	35	\$58,917.54
Contra Costa	26	\$21,385.89	18	\$11,357.19	16	\$11,931.92	17	\$11,661.52	17	\$17,770.47	15	\$12,855.72
Totals	88	\$85,907.13	86	\$85,061.58	61	\$63,658.59	89	\$88,698.93	83	\$100,359.77	50	\$71,773.26

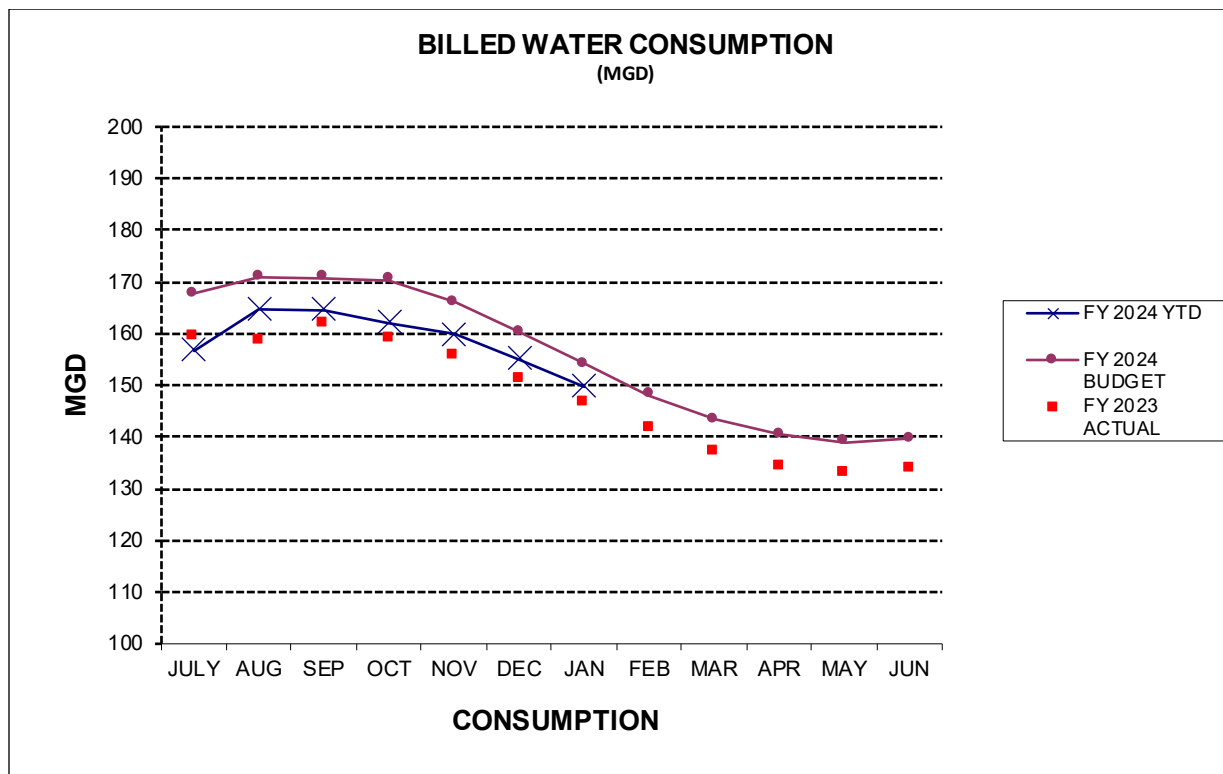
Month	July 2023		August 2023		September 2023		October 2023		November 2023		December 2023	
County	Accounts	Payment Received	Accounts	Payment Received	Accounts	Payment Received	Accounts	Payments	Accounts	Payments	Accounts	Payments
Alameda	67	\$105,425.64	95	\$164,667.46	111	\$188,740.64	69	\$104,089.80	270	\$351,349.23	50	\$68,202.17
Contra Costa	24	\$32,716.76	35	\$44,897.64	21	\$17,586.18	10	\$11,639.79	17	\$14,413.75	10	\$12,839.85
Totals	91	\$138,142.40	130	\$209,565.10	132	\$206,326.82	79	\$115,729.59	287	\$365,762.98	60	\$81,042.02

Month	January 2024		February 2024		Total to Date	
County	Accounts	Payments	Accounts	Payments	Accounts	Payment Received
Alameda	170	\$221,996.41	\$105.00	\$166,298.88	1679	\$2,151,698.03
Contra Costa	24	\$26,301.27	\$7.00	\$7,138.70	316	\$298,199.57
Totals	194	\$248,297.68	\$112.00	\$173,437.58	1995	\$2,449,897.60

Water Sales (Billed Consumption)

The following consumption information is the average billed water consumption in millions of gallons per day (MGD) for the first seven months of FY 2024.¹ Budgeted average daily water consumption for FY 2024 is 139.7 MGD, and summer month consumption is generally higher due to outdoor watering. The table below shows the average billed water consumption information by customer class with a comparison to FY 2023 data for the same period of time.

Fiscal Year-to-Date Billed Water Consumption			
Usage Type	FY 2024 (MGD)	FY 2023 (MGD)	Year-over-Year (% change)
Residential	74.6	73.1	2.1%
Commercial	48.6	48.2	0.8%
Industrial	19.5	18.4	6.0%
Public Authority	7.0	6.9	1.4%
Total Billed Water Consumption	149.7	146.6	2.1%

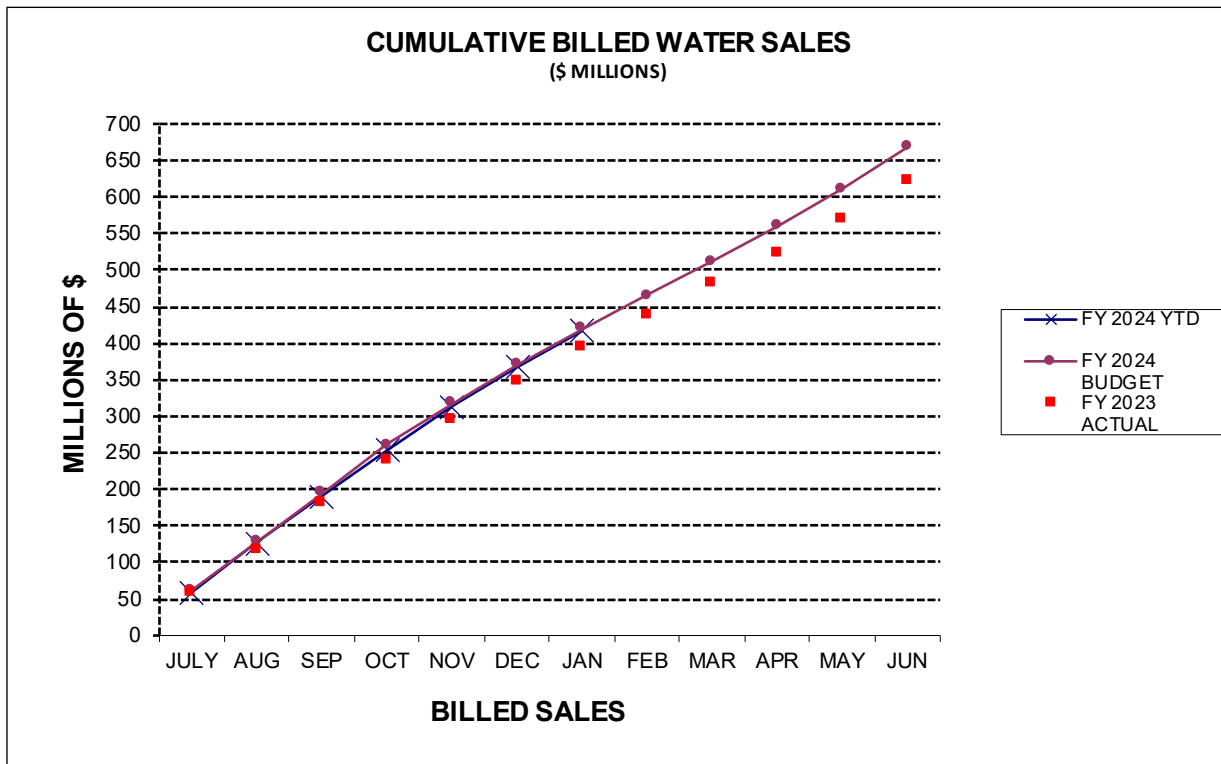


Source: Customer Information System

¹ Billed consumption is the amount of potable and non-potable water use for which EBMUD billed customers during the month and not actual customer usage within that month. During any month, roughly half of all EBMUD customers are billed for the prior two months of consumption. For example, a customer bill sent in early August would generally contain charges for water consumed in June and July.

Water Sales (Expected Revenue)

FY 2024 water revenues billed through the end of January were \$416.9 million or 5.6% more than the FY 2023 revenue for the same period of \$394.8 million.² This increase in water revenues is a result of higher January 2024 consumption year-over-year and an 8.5% rate increase (effective July 1), partially offset by the removal of drought surcharges prior to the start of FY 2024. FY 2024 water revenues through January are \$3.1 million less (or 0.7% less) than the budgeted water revenue of \$420.0 million due to lower-than-projected consumption.



Source: Customer Information System

² Water sales includes potable and non-potable water sales. FY 2023 water sales shown in this report include drought revenue (\$16.7M through January 2023).

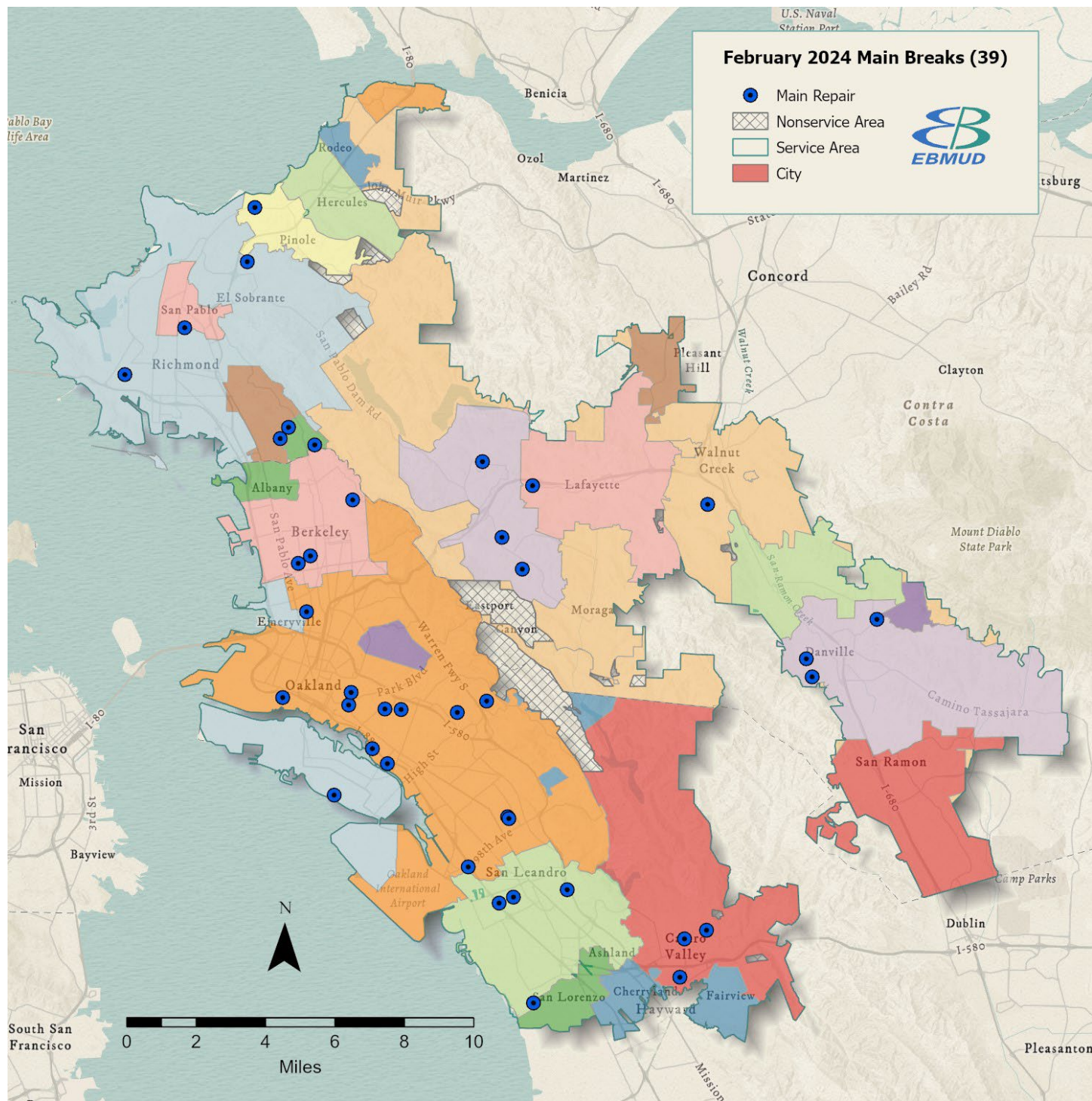
February 2024 MAIN BREAK REPAIRS										
City	Pre	Street	Suf	Pipe Material	Pipe Diameter	Year Installed	Est Water Loss (Gal)	Identified On	Completed On	KPI Met?
ALAMEDA		KITTY HAWK	RD	STEEL	6	1958	12,960	2/28/2024	2/28/2024	Y
BERKELEY		DEL MAR	AVE	CAST IRON	6	1930	3,600	2/7/2024	2/7/2024	Y
BERKELEY		DERBY	ST	CAST IRON	4	1929	0	1/30/2024	2/5/2024	Y
BERKELEY		DOHR	ST	ASBESTOS CEMENT	6	1959	8,640	2/6/2024	2/7/2024	Y
CASTRO VALLEY		KATHLEEN	AVE	CAST IRON	4	1948	1,350	2/11/2024	2/11/2024	Y
CASTRO VALLEY		REDWOOD	RD	NON-METALLIC / PLASTIC	2	1991	540	2/16/2024	2/16/2024	Y
CASTRO VALLEY		VESTAL	AVE	CAST IRON	4	1948	2,700	2/10/2024	2/11/2024	Y
DANVILLE		MONTCREST	PL	STEEL	6	1973	144,000	2/6/2024	2/15/2024	Y
DANVILLE		ROAN	DR	ASBESTOS CEMENT	6	1961	14,400	2/11/2024	2/12/2024	Y
DANVILLE		SKY	TER	STEEL	12	1962	6,750	2/3/2024	2/4/2024	Y
EL CERRITO		BONNIE	DR	ASBESTOS CEMENT	6	1947	900	2/25/2024	2/26/2024	Y
EMERYVILLE		ADELINE	ST	CAST IRON	8	1907	18,000	2/4/2024	2/4/2024	Y
KENSINGTON		ANSON	WAY	STEEL	6	1972	18,000	2/6/2024	2/7/2024	Y
KENSINGTON		YALE	AVE	CAST IRON	4	1936	18,000	2/2/2024	2/2/2024	Y
LAFAYETTE		CREST	RD	CAST IRON	8	1940	17,280	2/16/2024	2/19/2024	Y
OAKLAND		4TH	AVE	CAST IRON	6	1936	9,000	2/4/2024	2/4/2024	Y
OAKLAND		14TH	AVE	CAST IRON	12	1938	3,150	2/8/2024	2/8/2024	Y
OAKLAND		23RD	AVE	CAST IRON	6	1931	9,000	2/22/2024	2/22/2024	Y
OAKLAND		90TH	AVE	CAST IRON	6	1941	720	2/15/2024	2/15/2024	Y
OAKLAND		BIRCH	ST	CAST IRON	4	1911	720	2/15/2024	2/15/2024	Y
OAKLAND		CHAPMAN	ST	CAST IRON	6	1910	9,000	2/10/2024	2/10/2024	Y
OAKLAND		CHESTNUT	ST	STEEL	8	1967	0	2/14/2024	2/23/2024	Y
OAKLAND		DENNISON	ST	CAST IRON	8	1918	28,800	2/22/2024	2/26/2024	Y
OAKLAND		HANOVER	AVE	CAST IRON	4	1910	9,000	2/15/2024	2/15/2024	Y
OAKLAND		HESKET	RD	CAST IRON	4	1944	1,440	2/21/2024	2/21/2024	Y
OAKLAND		MAGEE	AVE	CAST IRON	4	1910	14,400	2/16/2024	2/20/2024	Y
OAKLAND		VAN CLEAVE	WAY	STEEL	6	1957	2,250	2/21/2024	2/21/2024	Y
ORINDA		CRESTVIEW	DR	CAST IRON	6	1941	4,500	2/11/2024	2/11/2024	Y
ORINDA		ESTATES	DR	CAST IRON	4	1939	0	2/20/2024	2/23/2024	Y

**KPI = turn around time to repair the leak*

February 2024 MAIN BREAK REPAIRS										
City	Pre	Street	Suf	Pipe Material	Pipe Diameter	Year Installed	Est Water Loss (Gal)	Identified On	Completed On	KPI Met?
ORINDA		LA PUNTA		CAST IRON	6	1934	8,640	2/14/2024	2/16/2024	Y
PINOLE	E	MEADOW	AVE	CAST IRON	8	1953	60,030	2/15/2024	2/16/2024	Y
RICHMOND		26TH	ST	CAST IRON	8	1928	13,500	2/10/2024	2/10/2024	Y
RICHMOND	W	CHANSLOR	AVE	ASBESTOS CEMENT	6	1942	60,030	2/3/2024	2/3/2024	Y
RICHMOND		GREENVIEW	LN	ASBESTOS CEMENT	6	1972	0	2/9/2024	2/16/2024	Y
SAN LEANDRO		EVERGREEN	AVE	CAST IRON	6	1949	0	1/26/2024	2/1/2024	Y
SAN LEANDRO		LEONARD	DR	ASBESTOS CEMENT	12	1956	1,080	2/22/2024	2/22/2024	Y
SAN LEANDRO		PACIFIC	AVE	CAST IRON	4	1943	25,920	2/8/2024	2/16/2024	Y
SAN LORENZO		VIA SORRENTO		ASBESTOS CEMENT	6	1956	9,000	2/18/2024	2/18/2024	Y
WALNUT CREEK		DEL MONTE	DR	ASBESTOS CEMENT	6	1952	1,350	2/23/2024	2/23/2024	Y
							538,650			

Non-surfacing leaks discovered by leak detection technologies	2
Breaks caused by contractors or other agencies	0
Other main breaks	37
Total water main repairs	39

**KPI = turn around time to repair the leak*



Board of Directors
Monthly Report – February 2024
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Customer Account Delinquency Information													
FEBRUARY 2024													
(Data collection began September 1, 2017)													
CUSTOMER ASSIST. PROGRAM (CAP) ENROLLMENT	Sept 23 ³⁷	Oct 23 ³⁸	Nov 23 ³⁹	Dec 23 ⁴⁰	Jan 24 ⁴¹	Feb 24 ⁴²	Totals						
New CAP Participants	211	200	142	102	164	125	13,305						
CAP Renewals	228	184	161	183	252	158	13,951						
CAP Departures	85	358	348	336	417	323	18,751						
Total Active CAP Participants w/Active Accounts	9,274	9,371	9,344	9,366	9,327	9,365	617,887						
PAYMENT PLANS	Sept 23	Oct 23	Nov 23	Dec 23	Jan 24	Feb 24	Totals						
Approved Payment Plans	1,817	2,105	1,913	1,937	2,103	1,881	224,563						
Payment Plans Established After Service Interruptions	-	-	-	-	-	-	1,320						
SERVICE INTERRUPTIONS - RESIDENTIAL	Sept 23	Oct 23	Nov 23	Dec 23	Jan 24	Feb 24	Totals						
15-day Final Collection Notices	16,602	20,658	14,282	16,780	16,481	17,033	1,236,859						
48-hr Service Interruptions Notices ³	10,727	13,168	10,658	11,241	11,125	11,313	732,127						
Service Interruption Orders Created	"	"	"	"	"	"	82,689						
Service Interruptions Completed (Actual)	"	"	"	"	"	"	22,712						
CAP Enrolled Service Interruptions	"	"	"	"	"	"	802						
WATER THEFT	Sept 23	Oct 23	Nov 23	Dec 23	Jan 24	Feb 24	Totals						
No. of Incidents	9	11	3	2	5	7	501						
No. of 2nd or 3rd Occurrences	-	-	-	-	-	-	41						
No. Water Theft Penalties Issued	1	-	-	-	-	-	228						
No. of Appeals Received	-	-	-	-	-	-	10						
No. of 1st Appeals Approved	-	-	-	-	-	-	5						
No. of 1st Appeals Denied	1	-	-	-	-	-	8						
Multi-Family Liens ¹	Sept 23	Oct 23	Nov 23	Dec 23	Jan 24	Feb 24	Totals						
Liens Filed	22	109	109	10	106	98	6,440						
Released	58	-	284	143	20	44	5,464						
Transferred to Alameda Cty.	-	-	-	-	-	-	2,194						
Transferred to Contra Costa Cty.	-	-	-	-	-	-	400						
Total/Month	80	109	393	153	153	-	14,383						
BAD DEBT - WRITE OFFS ²	Sept 23	Oct 23	Nov 23	Dec 23	Jan 24	Feb 24	Totals						
Total Referred to Collection Agency	\$ 467,300	\$ 421,308	\$ 493,499	\$ 356,253	TBD ⁴¹	TBD ⁴²	16,040,746						
Write-Off % to Billed Revenue	0.64%	0.61%	0.72%	0.58%	TBD ⁴¹	TBD ⁴²							
¹ Liens filed monthly represent delinquent accounts 4-6 months in arrears.													
³ 48-hour notices were generated, but not mailed to customers since March 23, 2020. Customers are receiving payment reminders in lieu of 48-hour notices.													
³⁷ CAP applications processed through September 27, 2023; September 2023 collection agency will be updated in Oct 2023. Write-off revenue for June, July, August, and Sep will be updated when final revenue reports are posted by Accounting.													
³⁸ CAP applications processed through October 30, 2023; October 2023 collection agency will be updated in Nov 2023. Write-off revenue for Oct will be updated when final revenue reports are posted by Accounting.													
³⁹ CAP applications processed through Nov 15, 2023; November 2023 collection agency will be updated in Dec 2023. Write-off revenue for Oct and Nov will be updated when final revenue reports are posted by Accounting.													
⁴⁰ CAP applications processed through Dec 28, 2023; December 2023 collection agency will be updated in Jan 2024. Write-off revenue for Oct, Nov, and Dec will be updated when final revenue reports are posted by Accounting.													
⁴¹ CAP applications processed through Jan 18, 2024; Jan 2024 collection agency will be updated in Feb 2024. Write-off revenue for Jan 24 when final revenue reports are posted by Accounting.													
⁴² CAP applications processed through Feb 20, 2024; Feb 2024 collection agency will be updated in Mar 2024. Write-off revenue for Jan 2024, Feb 2024 when final revenue reports are posted by Accounting.													
³ Notices effective March 12, 2020, the District suspended "Disconnections Due to Non-Payment" (DNP) to residential customers, withheld mailing 48-hr notices to customers, and began restoring service to all customers who lapsed as of January 2020. The DNP information will be omitted from this table until the District resumes DNP activities.													
Water Theft Type/City	Alameda	Alamo	Albany	Berkeley	Castro Valley	Crockett	Danville	El Cerrito	El Sobrante	Emeryville	Hayward	Hercules	Lafayette
Meter	4	1	2	18	4	3	1	2	3	1	8	6	1
Illegal Connection	-	1	-	1	-	-	-	-	-	-	-	-	-
Hydrant	-	-	-	-	-	-	-	-	-	-	-	-	-
Total	4	2	2	19	4	3	1	2	3	1	8	6	1
Water Theft Type/City	Oakland	Orinda	Piedmont	Pinole	Richmond	Rodeo	San Lorenzo	San Leandro	San Pablo	San Ramon	Walnut Creek	Total since 9/1/2017	
Meter	315	1	1	6	86	7	2	11	5	2	1	491	
Illegal Connection	4	1	-	-	-	1	-	-	-	-	1	9	
Hydrant	-	-	-	-	-	-	-	-	-	-	-	0	
Total	319	2	1	6	86	8	2	11	5	2	2	500	

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EAST BAY MUNICIPAL UTILITY DISTRICT

DATE: March 7, 2024

MEMO TO: Board of Directors

THROUGH: Clifford C. Chan, General Manager *CCC*

FROM: Rischa S. Cole, Secretary of the District *RC*

SUBJECT: Finance/Administration Committee Minutes – February 27, 2024

Chair Andy Katz called to order the Finance/Administration Committee meeting at 9:12 a.m. in the Administration Building Boardroom. Director William B. Patterson was present at roll call. Director April Chan was absent (excused). Staff participants included General Manager Clifford C. Chan, General Counsel Derek T. McDonald, Director of Finance Sophia D. Skoda, Manager of Budget Samuel A. Feldman, Director of Water and Natural Resources Michael T. Tognolini, Manager of Watershed and Recreation Charles C. Beckman, Treasury Manager Robert L. Hannay, Internal Auditor Supervisor Barry N. Gardin, and Secretary of the District Rischa S. Cole.

Public Comment. None.

Presentations/Documentation. 1) Presentation entitled “Employees’ Retirement System Annual Financial Update and Actuarial Valuations and Contribution Rates,” dated February 27, 2024; 2) Presentation entitled “Fiscal Year (FY) 2024 Semi-Annual Budget & Performance,” dated February 27, 2024; and 3) Presentation entitled “Camanche Mobilehome Park Rent,” dated February 27, 2024.

Monthly Investment Transactions Report. Director of Finance Sophia D. Skoda reviewed the January 2024 report and the drivers that increased the portfolio from \$482.4 million to \$515.4 million. She noted the portfolio is currently yielding about 4.0 percent. The report will be submitted to the Board for consideration at its meeting in the afternoon. The Committee raised no questions. It was moved by Director Patterson, seconded by Director Katz, and carried (2-0) by voice vote to accept the report. Director Chan was absent (excused).

Fiscal Year 2024 (FY 2024) Semi-Annual Budget Performance Report. Manager of Budget Samuel A. Feldman presented the report. Total Water System and Wastewater System revenues for the period July 1, 2023 to December 31, 2023 were \$443.3 million (75% of the six-month budget) and \$84.9 million (90% of the six-month budget), respectively. Total expenses for the Water System were \$475.1 million (95% of the six-month budget) and \$88.3 million (109% of the six-month budget) for the Wastewater System. Revenues for both systems were below budget primarily due to bonds that were budgeted but not issued in the first half of the fiscal year. Mr. Feldman explained higher-than-expected capital expenses for the Water System were offset because operating expenses were below budget and the bonds were not issued. Though operating and debt service expenses for the Wastewater System were below budget in the first half of the fiscal year, capital spending on projects deferred from FY 2023 into FY 2024 outpaced the savings. He reviewed capital cash flow expenses through December 31, 2023 and year-end projections for both systems. Water System revenue is expected to be less than budget by 2 percent, operating expenses by 5 percent, and debt service by 3 percent; capital

expenses are expected to exceed budget by 5 percent. Wastewater System revenue is expected to exceed budget by 1 percent and capital expenses by 10 percent. Operating expenses are expected to be less than budget by 6 percent and debt service by 3 percent. Bonds are being issued in FY 2024 for both systems. It was moved by Director Patterson, seconded by Director Katz, and carried (2-0) by voice vote to accept the report. Director Chan was absent (excused).

Employees' Retirement System Annual Financial Update. Treasury Manager Robert L. Hannay presented the financial update on the Employees' Retirement System and the system's Fiscal Year 2023 (FY 2023) actuarial valuations and FY 2025 employer contribution rates. Over the past three fiscal years, the market has alternated between strong returns and losses. Following returns of 26.6 percent for FY 2021 and negative 11.9 percent in FY 2022, FY 2023 had relatively strong investment performance with a 10.6 percent return. The system out-performed its 6.75 percent assumption over the 10- and 20-year timeframe. He reviewed the system's historical funded ratio and FY 2023 actuarial valuations noting the reports were reviewed and approved by the Retirement Board. The valuation value of the combined pension and Health Insurance Benefit (HIB) assets increased from \$2.22 billion in FY 2022 to \$2.31 billion in FY 2023, representing growth of 4.4 percent. Higher growth in liabilities led to the Unfunded Actuarial Accrued Liability increasing from \$751 million to \$812 million lowering the combined pension and HIB funded ratio from 74.7 percent to 74.0 percent. Overall, between FY 2022 and FY 2023, the pension only funded ratio on a valuation value basis fell slightly from 76.1 percent to 75.2 percent while the HIB funded ratio increased from 44.0 percent to 47.7 percent. The system's pension only funded ratio compares favorably to its water district peers, while the counties' retirement systems are generally better funded. According to the pension research firm Equable, the average funded ratio for public pensions across the country is estimated at 77.4 percent. Mr. Hannay reported the FY 2023 valuations led to higher actuarially determined employer contributions for the coming fiscal year. Actuarially determined contributions for FY 2025 are up 0.54 percent to 49.02 percent of covered payroll for 1955/1980 Plan members and up 0.86 percent to 40.07 percent of covered payroll for 2013 Plan members. The employee contribution rates remain unchanged for FY 2025. The Retirement Board recommended adopting these rates at its January 18, 2024 meeting. The EBMUD Board will consider adopting the actuarial valuations and recommended FY 2025 employer contribution rates at its meeting in the afternoon. Mr. Hannay reported a system asset allocation study is conducted about once every five years and a study currently being developed by Meketa will be completed in 2024. The Committee asked questions about the financial health of the retirement plan, how the HIB fund is funded, and the study underway to evaluate the HIB. The Committee requested information on when the HIB funded ratio would reach parity with the pension funded ratio. It was moved by Director Patterson, seconded by Director Katz, and carried (2-0) by voice vote to accept the report. Director Chan was absent (excused).

Employees' Retirement System Fiscal Year 2023 Actuarial Valuations and Fiscal Year 2025 Employer Contribution Rates. Treasury Manager Robert L. Hannay presented the update on the FY 2023 actuarial valuations and FY 2025 employer contribution rates with the presentation regarding the financial update on the Employees' Retirement System. The EBMUD Board will consider adopting the actuarial valuations and recommended FY 2025 employer contribution rates at its meeting in the afternoon. It was moved by Director Patterson, seconded by Director Katz, and carried (2-0) by voice vote to support the staff recommendation. Director Chan was absent (excused).

Revisions to District Policies. Internal Auditor Supervisor Barry N. Gardin reviewed proposed revisions to Policy 3.01 – Annexations and Policy 7.04 – Access to District Property for Tours. At its February 13, 2024 meeting, the Planning Committee recommended updating Policy 3.01 to capture elements of Policy 3.08 – Advisory Election for Annexations Outside the Contra Costa County Urban Limit, and rescinding Policy 3.08 as the policy is no longer viable due to cost implications, particularly in the context of advisory elections. The Board will consider approving the revised policies and rescinding Policy 3.08 at its meeting in the afternoon. Director Katz commented that in supporting the revisions to Policy 3.01 and the rescission of Policy 3.08, he recognizes the Board is not encouraging annexations, but affirming the District no longer needs to hold advisory elections as there are other ways to protect the interests of the District and the public during the annexation process. He noted the Board still reserves the right to call an advisory election on a case-by-case basis, but it is not necessary to state this in Policy 3.01. It was moved by Director Patterson, seconded by Director Katz, and carried (2-0) by voice vote to support the policy updates. Director Chan was absent (excused).

Semi-Annual Internal Audit Report. Internal Auditor Supervisor Barry N. Gardin discussed the status of following projects included in the Fiscal Year 2024 Internal Audit Plan: purchasing compliance and control; facility access and control; equipment acquisition and utilization; purchase card activity and use; capital budget expenditure and accountability; staffing plan and utilization; and ongoing implementation of Information Technology (IT) controls under the IT Control Implementation project. Mr. Gardin noted that during this time, two concerns related to the District being inaccurately invoiced for services were brought to the attention of Internal Audit. Due to the nature of the concerns and their apparent credibility, immediate efforts were made to review both matters. One review confirmed improper charges were assessed and has been reported to the General Manager. Action are being taken to recover the funds and ensure improper charges are no longer paid. The other concern is being evaluated and will be reported to the General Manager once the evaluation is completed. No other issues or concerns related to malfeasance, financial or regulatory irregularities/improprieties, or other potentially significant issues were identified or brought to the attention of Internal Audit during the period. The Committee raised no questions.

Camanche Mobilehome Park Rent. Manager of Watershed and Recreation Charles C. Beckman provided the presentation. He discussed the history and current status of the District's three mobilehome parks in the Camanche Recreation Area; how mobilehome park space rents are established by the EBMUD Board during the budget process and adjusted annually based on the U.S. Department of Housing and Urban Development (HUD) Fair Market Rents (FMR) for Amador and Calaveras counties; concerns raised by mobilehome park residents and the concessionaire responsible for operating Camanche Recreation Area regarding a 12.5 percent increase in space rent that went into effect February 1, 2024; and the recommendation from the Camanche Regional Park Advisory Board (CRPAB) for the District to continue utilizing the HUD FMR to determine annual changes in mobilehome site rent but to include a cap of 5 percent and a floor of 2 percent, effective as soon as practicable, but no later than July 1, 2024. Mr. Beckman explained the formula for determining the space rent was set by the EBMUD Board with input from mobilehome park residents in 2010. In addition to use of the mobilehome space, monthly rent paid by mobilehome residents covers potable water, wastewater, and garbage services. Residents are also provided discounts on boat rentals, marina slip rentals, houseboat mooring anchors, dry storage, and select retail purchases at the marina store. He discussed average annual rent increases in the HUD FMR, annual mobilehome park revenue, franchise

fees, and maintenance fees over the previous five-year period; future capital improvements required for the MHP sewer collection system replacement, Camanche Recreation Area water distribution lines, storage tank rehabilitation and replacement, and wastewater collection and treatment systems; and a comparison of mobilehome park rents from other parks in Calaveras and Amador counties. Mr. Beckman said staff recommends the District consider the CRPAB's recommendation for a rent cap as part of the District's regular review process for 2025 recreation fees. Staff will provide an analysis of the CRPAB recommendation for the EBMUD Board to consider which will include costs for other capital improvements to the Camanche mobilehome park. Any changes to the recreation fees made during the Board's review would become effective January 1, 2025. Addressing the Committee was 1) Kent Lambert, EBMUD retiree and CRPAB member commented on amending the 2024 rent increase before July 1, 2024 and flaws in the HUD FMR index, and urged the Committee to consider implementing the CRPAB recommendation for a rent cap; 2) Mike Wallis, mobilehome park resident commented on demographics of the park, the value of the mobilehomes, and park conditions, and asked the Committee to consider implementing the rent cap and decreasing the rent increase that went into effect February 1; and 3) Butch Carter, representative of the mobilehome park Homeowners Association, commented on how the 12.5 percent rent increase will impact residents, meetings with the concessionaire and the CRPAB about the rent increase, the request to implement a rent cap, and next steps in the District's process to address this matter. Mr. Beckman responded to the comments from the public regarding park conditions, the condition of some of the mobilehomes, and previous discussions with residents and the CRPAB regarding the 2024 rent increase. General Manager Clifford C. Chan clarified the District is unable to provide relief to the residents because District customers would be subsidizing their rent and any capital improvements to the park which violates Proposition 218. General Counsel Derek T. McDonald provided additional clarification on how subsidizing the rent for mobilehome park residents could violate Proposition 218. There was considerable discussion regarding the request to adjust the rent increase that went into effect February 1; the agreement between the District, the concessionaire and the mobilehome park Homeowners Association; how mobilehome park franchise and maintenance fees are disbursed and used; and options for phasing the 12.5 percent rent increase. Mr. Chan summarized the options available to the District and reiterated staff's recommendation for the Board to review this matter along with costs for any necessary capital improvements for the mobilehome park during the mid-cycle budget update. Staff will prepare additional information on rental fees and capital improvements for the mobilehome park and evaluate alternatives for aiding residents who have difficulty paying their rent. This information will be presented during the mid-cycle budget workshop in May.

Adjournment. Chair Katz adjourned the meeting at 10:53 a.m.

CCC/RSC