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December 30, 2016

The Honorable Pedro Nava  
Chair, Little Hoover Commission  
925 L Street, Suite 805  
Sacramento, CA 95814

c/o Jim Wasserman, Deputy Executive Director

**RE: Case Studies – East Bay Regional Park District; Permitting, Mitigation Requirements and Endowments**

Dear Chair Nava:

The East Bay Regional Park District is the largest Special Park District in the nation with over 120,000 acres of open space in the Eastern San Francisco Bay Area to serve 2.7 million people. The Park District owns and manages 65 regional parks within 33 cities and across two counties, including 55 miles of Bay-Delta shoreline.

Many of the East Bay's most disadvantaged communities reside along the shoreline and are vulnerable to the impacts of sea level rise. Enhanced protection from flooding caused by storm surges or sea level rise significantly contributes to shoreline resiliency. Steps to increase resiliency include the restoration of wetlands, beaches, tidal marshes and dune habitats to protect coastal infrastructure in and around the San Francisco Bay-Delta Area. Currently, to embark on these types of projects at least eight state and federal agencies have a role in permitting of Bay-Delta wetlands – creating delay in project delivery.

The Park District has already successfully completed shoreline resiliency projects:

- The Dotson Family Marsh investment in Richmond is an example of wetland restoration for carbon sequestration, sea level resiliency and coastal access for a disadvantaged community.
- Sand replenishment efforts along Shoreline Drive in Alameda was initiated by the District to protect the community from storm surges – and also act as a buffer zone for homes and infrastructure at-risk to sea level rise.

Without a doubt, a clean and healthy Bay is the first line of defense in protecting billions of dollars of infrastructure from storm surges and sea level rise. Recognizing this, Bay Area voters enacted Measure AA in June – a nine county bond measure to invest \$500 million into shoreline restoration and protection. A key restoration goal is to prevent emergencies before

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they happen. The measure has a 20-year sunset, so projects need to be fast tracked – waiting five to eight years for permit approval runs counterintuitive to the goals of the measure. Emergency permits can be obtained more quickly, but only after something has failed. Permitting practices must take into account climate change resiliency, mitigation and adaptation.

## **I. California Permit Streamlining Act**

The State's Permitting Streamlining Act (California Government Code § 65920 et seq) is designed to expedite the processing of permits for development projects. This is done by imposing time limits within which state and local government agencies must either approve or disapprove permits. In an effort to meet these time limits, however, permitting agencies often deem the applications as "incomplete" and return them back to the applicant for further amendment – actually creating more delay.

Restoration projects on marshes and creeks are often constrained by grant funding deadlines and have narrow, seasonal windows in which work is actually allowed. As a result, a delay in the permitting process can actually multiply the delay of project delivery if a "construction" season is missed.

*Recommendation:* This State code should be reconsidered. Deeming permit applications as "incomplete" should not increase delay. Nor should it simply be a way to meet a deadline. Limits on the number of times an application can be returned for additional information also need to be in place.

## **II. Modification of State Water Code to Allow for Management and Protection of Shoreline Marshes**

Hayward Regional Shoreline consists of 1,811 acres of salt, fresh and brackish water marshes, seasonal wetlands and public trails. The Park District has been working for many years to maintain the existing levees at this shoreline park. These levees protect hundreds of acres of salt marsh and freshwater wetlands along the edge of the San Francisco Bay which provide habitat for federally-listed species. They are also the first line of defense against storm surges and sea level rise for the City of Hayward. Hundreds of millions of dollars of critical water, energy, transportation and wastewater infrastructure is just behind this levee system.

In order to manage these critical shoreline areas and protect our communities from sea level rise, the levee system needs to be strengthened, maintained and restored. Implementing any additional improvements to the levee system should create transitional shoreline habitat and tidal uplands to absorb more water. This can be done through the construction of horizontal levees which create traditional marsh habitat. The existing power plants and sewage treatment facilities constrict expansion on the inland side, but horizontal levees and living shoreline solutions could be developed along the outboard side of existing levee system. Current state water code and Federal Clean Water Act restrictions, however, would view outboard expansion as filling in the San Francisco Bay. Such activity would require significant, and maybe even impossible, mitigation if considered throughout the entire Bay Area.

*Recommendation:* Special consideration in the State Water code should be made for restoration and enhancement projects that protect inland communities and infrastructure from water intrusion. Funding for the implementation of wetland and marshland projects throughout the entire San Francisco Bay should be made available for local agencies to implement.

### **III. Changing Requirements for Mitigation Credits**

Resource agencies frequently change mitigation requirements. They have requested additional surveys documenting species use, as well as changes to the credit ratio allowed even after a conservation bank has been previously approved. As a result, project implementation is delayed. In addition, the credit ratio acts as a disincentive for the Park District to establish conservation banks on its lands because there is no certainty it will be accepted by the agencies. Notably, if the Park District has placed a conservation easement on its property prior to permit application, the regulatory agencies do not allow the area to be used as mitigation.

*Recommendation:* The State Resources code should be revised to provide incentives for land management agencies, like the Park District, to place conservation easements on its lands. Consistent review of conservation land banks must provide certainty and no surprises later on. Existing conservation areas should be eligible as mitigation sites.

### **IV. Development of Alternative Methods to Provide Long Term Funding Assurances for Lands that are protected under Conservation Easements**

The California Department of Fish and Wildlife currently interprets existing law as requiring all entities (public, private businesses and non-profits) to set aside restricted endowments when mitigating for projects on their own land. Endowments provide financial guarantee the lands where conservation easements are required will be maintained in perpetuity. The Park District's sole purpose, however, is to acquire and manage land for open space, public recreation and natural resource protection, as stated in the Master Plan. Nevertheless, the District is being held to the same endowment standard as large scale developers. Requiring Park District General Fund dollars to be locked up in an endowment is redundant and doubles the cost burden on local tax payers for managing conservation lands in the East Bay. Locking up General Fund dollars in a permanent endowment reduces the District's ability to hire more staff for stewardship and management of the very sensitive habitat public lands the Department is seeking to protect.

Senator Bob Wieckowski, at the Park District's request, authored SB 1020 to address this relatively new endowment interpretation toward public land management agencies by the California Department of Fish and Wildlife (CDFW). SB 1020 would have affirmed the ability of CDFW to use discretion when public resources from public land management agencies have the very core mission of protecting natural resources as part of the agency's ongoing responsibilities and operations. Senator Wieckowski's legislation led to a two-year safe harbor agreement with CDFW while a working group, including the District and other stakeholders, work to determine alternatives to endowments. To date, this working group has not moved this charge forward.

*Recommendation:* Alternative funding mechanisms should be established in the State Resources code to provide long term funding assurances for conservation easements established by public agencies with the mission of preserving and protecting public land. It should be made clear the California Department of Fish and Wildlife have the discretion to accept such other assurances.

**The Park District calls on the Little Hoover Commission to address the permitting practices of state agencies, including the need to determine alternatives to endowments, to ensure pre-disaster resiliency projects are afforded the same prompt consideration as emergencies.**

Respectfully submitted,



Dr. Ana M. Alvarez  
Deputy General Manager  
East Bay Regional Park District

cc: Bob Doyle, General Manager