

Response to Comments

Roger James, Letter dated May 5, 2004

Comment #1

Proposed use of artificial turf should be investigated to determine whether the material contains fire retardants or breakdown products that could be released to water tributary to San Pablo Reservoir – a water supply for East Bay Municipal Utility District.

Response: There is a potential that materials in the artificial turf could pollute stormwater runoff. The Discharger is currently meeting with the artificial turf company to determine whether potential pollutants could runoff. If so, the Discharger will need to propose appropriate downstream treatment control as part of its Final Stormwater Management Plan. If potential pollutants cannot be treated, the Discharger will not install the artificial turf and return to the original plan of installing grass.

Clyde Vaughn, Letter dated May 5, 2004

Mr. Vaughn commented that approval of this project is predicated on a number of incorrect assumptions. (The assumptions are underlined in the text.)

Comment #1

Recreated wetlands will be successful. There is little or no evidence that recreated wetlands will be successful. There is little or no evidence that recreated wetlands have a viable long-term effective life for endangered species.

Response: The Discharger has submitted a mitigation and monitoring plan to address impacts to water bodies on the Project site. This plan requires a minimum of 10 years of monitoring. The Discharger is responsible for implementing the plan and monitoring the wetlands until the plan's performance criteria are met. The Discharger will post financial assurance that the recreated wetlands will be monitored and be successful. The United States Fish and Wildlife Service (USFWS) and the California Department of Fish and Game (DFG) have reviewed the Project related to endangered species and agree with the mitigation and monitoring required by the Tentative Order.

Comment #2

Ineffective recreated wetlands cannot be redone to make them effective. If the recreated wetlands were originally ineffective they will also fail on a second try. By this time the development cannot be reversed and the defective wetlands become permanent.

Response: Provision 12 in the Tentative Order requires that if the proposed mitigation does not achieve performance criteria after a reasonable portion of the monitoring period, even after remedial measures have been implemented, the Discharger shall initiate efforts to define alternative mitigation at an offsite parcel as necessary to accomplish the goals of the original mitigation measures.

Comment #3

The East Bay Regional Parks will accept the proposed restrictions on cattle grazing. It is my understanding that the Parks will not accept the restrictions. If the Parks refuse, who will accept, manage and finance the extensive land which is supposed to be given to the Parks? East Bay Parks has also refused to allow the high-voltage lines to run through the land to be given to them as proposed by the developer.

Response: If the Park District will not accept the land, the Discharger will need to find another appropriate conservation entity, as described in Findings 8 and 9, for these portions of the open-space management areas.

Comment #4

The present Plan does not harm the endangered Alameda whipsnake. The Plan's trails for pedestrian, horses and bicycles will decidedly threaten the whipsnake.

Response: The USFWS has reviewed the proposed Project and proposed open-space amenities and will issue a Biological Opinion under Section 7 consultation of the Endangered Species Act. This Opinion will determine the level of anticipated threat to the whipsnake and resultant mitigation measures that will need to be implemented.

Comment #5

The runoff from the project site will not adversely affect the quality of water leaving the site. The extensive grading of the extremely slide-prone land in Gateway Valley will present a continuous water quality problem in the rainy season.

Response: The Discharger has submitted a stormwater management plan for the project, which describes control measures and best management practices that the Discharger will utilize to address the Project's post-construction urban runoff impacts.

Comment #6

The City of Orinda will enforce various parts of the Plan. One member of the Orinda City Council has told me that the Council is terrified of being sued by the Developer if Orinda opposes any part of the Development, since the Developer bought Orinda's approval with an \$8 million payment.

Response: Comment acknowledged.

Comment #7

Fortunately if the Southwest Center for Biological Diversity fulfills its promise to sue to stop this development, the final decision will be in Federal Court, and the Center's win ratio has been spectacular.

Response: Comment acknowledged.

East Bay Municipal Utility District, Letter dated May 21, 2004

Comment #1

Finding 10 - Add the following sentence to end of the second paragraph concerning Long-term Management: Endowment funding will be distributed among the Conservation Entities in proportion to their respective long-term management responsibilities as determined by the final PAR evaluation.

Response: The sentence was inserted into the final paragraph of Finding 10.

Comment #2

Finding 14 – Change the first two sentences of the first paragraph to read as follows: The subject wetlands, seasonal creeks, and other waters on the Project site are located in the San Pablo Creek Basin and the San Leandro Creek basin, and are tributaries to either San Pablo Creek or San Leandro Creek. San Pablo Creek is tributary to the San Pablo Reservoir and San Leandro Creek, including tributaries of Moraga and Indian Creek.

Response:

San Leandro Creek, which is located in the South Bay Basin, was added to Finding 14 text.

Comment #3

Finding 14 – Change selected bullets to read as follows:

- Cold freshwater habitat (San Pablo Creek, San Pablo Reservoir, San Leandro Creek, San Leandro Reservoir)
- Fish migration (San Pablo Creek, San Pablo Reservoir, San Leandro Creek, San Leandro Reservoir)
- Non-contact water recreation (San Pablo Creek, San Pablo Reservoir)
- Water contact recreation (San Pablo Reservoir)
- Fish spawning (San Pablo Reservoir, San Leandro Creek, San Leandro Reservoir)
- Wildlife habitat (San Pablo Creek, San Pablo Reservoir, San Leandro Creek, San Leandro Reservoir)

Response:

Proposed changes to more completely specify which water bodies have the listed beneficial uses were incorporated into Finding 14.

Shute, Mihaly & Weinberger LLP, representative for City of Orinda, Letter dated May 21, 2004

Comment #1

We have proposed edits to clarify that the developer will create a separate and adequate endowment fund for each of the Conservation Entities. The Conservation Entities will use the endowment funds to satisfy their long-term resource management obligations

following the Initial Monitoring Period. Other related edits clarify that the boundaries of the GHAD created by the City need only include the development area and those portions of the Montanera Preserve Area for which the GHAD becomes the fee owner.

Response: Comments accepted. Findings 9 and 10 were edited to address the above comments.

Comment #2

We have proposed edits to clarify that multiple conservation easements will be required for the six management areas that together constitute the Montanera Preserve Area, which management areas will be owned by different Conservation Entities.

Response: Proposed edits were accepted for Finding 8 and Provision 7 to clarify that multiple conservation easements will be required.

Comment #3

We have proposed the elimination of the requirement that the Plan of Control for the Montanera GHAD earmark 15% of annual assessments to cover the cost of its long-term resource management obligations. This restriction on the use of GHAD assessments is no longer needed or appropriate because the developer has committed to fund the GHAD's long-term resource management obligations through an endowment fund.

Response: Comments accepted. Finding 9c(iii)c was removed from the Tentative Order.

Comment #4

We have proposed adding text to the discussion of the California Environmental Quality Act ("CEQA") to make clear that the City of Orinda has determined that it is required to prepare a Supplemental Environmental Impact Report to evaluate the potentially significant visual/aesthetic impacts of the proposed above-ground rerouting of the electrical transmission line and the illumination of the community playfields, both of which are new components of the Montanera Project and therefore were not considered in the previous CEQA documentation.

Response: These two issues are not water quality related and will not impact waters of the State; the proposed edit was not included in the Tentative Order.