



# California Regional Water Quality Control Board

## San Francisco Bay Region



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Secretary for  
Environmental  
Protection

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**Subject: Comments on Sunol and Ohlone Wilderness Regional Preserves Land Use Plan, Alameda County.**

Dear Mr. Wiese:

We recently received the above-referenced Land Use Plan (LUP) and associated Initial Study and Proposed Mitigated Negative Declaration (Negative Declaration) for the Sunol and Ohlone Wilderness Regional Preserves (Project site). Thank you for the opportunity to comment on these documents.

This letter comments on several areas of the Negative Declaration:

- **The Board's role permitting potential bridge work on Alameda Creek.** The proposed bridge repair or replacement work on Alameda Creek, as presently described, would likely require a Board approval separate from the East Bay Regional Park District's (EBRPD's) regional maintenance approval. This is already noted in the Negative Declaration, but the approval should be made part of the Negative Declaration's mitigation;
- **The status of EBRPD's maintenance waste discharge requirements (WDRs).** The original WDRs were issued in July 1998, and were valid for work completed over a period of 5 years. Thus, they no longer cover regional maintenance activities, although we anticipate issuing another Board Order to cover these activities in the future. The Negative Declaration should be revised to reflect that EBRPD does not presently have a valid Board approval for its regional maintenance activities; and,
- **The use of cattle grazing as a land management tool,** as described in the Negative Declaration and LUP. We support the proposed enclosure fencing along approximately 7.5 miles of Alameda Creek as having the potential to significantly improve water quality and

beneficial uses of waters of the State. However, the Negative Declaration and LUP do not address significant ongoing grazing impacts, do not make a substantive connection between how grazing is presently practiced on the Project site and how that practice achieves the multiple uses/goals identified in EBRPD's 1997 Master Plan, and do not identify and clearly evaluate alternative management methods that could achieve the range of goals identified, while reducing ongoing impacts. Also, the timing of enclosure fencing construction along Alameda Creek is unclear.

EBRPD plays an important role as steward of lands across the East Bay, including preserving and conserving the natural and cultural resources on those lands and providing recreation and interpreting the values of those lands to the public. In addition, we believe that by working with EBRPD, the Regional Water Quality Control Board (Board) has been able to assist EBRPD to accomplish these goals, while also helping the Board to pursue its mandate to protect water quality and beneficial uses of waters of the State, including recreation, wildlife habitat, and habitat for special status species. We look forward to continuing to work with EBRPD not only in the Sunol and Ohlone Wilderness Regional Preserves, but across the entire park system.

### **Alameda Creek Bridge**

The Negative Declaration notes that an existing bridge across Alameda Creek, on Camp Ohlone Road (pp.8, 18, & 33) may be repaired or replaced, and that EBRPD would obtain all appropriate regulatory permits for this work. We concur that such work could likely require a Clean Water Act Section 404 permit from the U.S. Army Corps of Engineers, and associated Section 401 Water Quality Certification from the Board, as it would be beyond the scope of the minor maintenance activities that were previously permitted under Board Order 98-063, Waste Discharge Requirements for a five-year period, beginning in July 2003, for regional maintenance activities. This requirement should appear as part of the Negative Declaration's mitigation measures. We concur with the Negative Declaration's statement that appropriate approvals from agencies including the U.S. Army Corps of Engineers, State Department of Fish and Game, U.S. Fish and Wildlife Service, and National Marine Fisheries Service may also be required.

### **Regional Maintenance Approval**

The Negative Declaration's statement on page 18 that EBRPD has "...a Waiver of Waste Discharge and Water Quality Certification under Section 401 of the Clean Water Act" with the Board for the completion of minor maintenance activities appears to be incorrect. As noted above, at its July 1998 meeting, the Board did approve Order No. 98-063, Waste Discharge Requirements that allowed regional maintenance activities for a period of five years. That period has now ended, and thus, while we anticipate that a new Order will be issued for similar activities, there are presently no general Board approvals for EBRPD minor regional maintenance activities.

## **CEQA Analysis**

We concur that the appropriate baseline conditions under CEQA for the Project site are the physical conditions of the site at present. However, it is not clear that the analysis should assume a future condition of continued grazing in the same manner as at present, given that EBRPD's grazing leases are discretionary and will be up for renewal during the LUP's implementation period. Rather, the analysis should consider both grazing and non-grazing options, since the leases' discretionary nature means that it is uncertain whether grazing will occur in the future. Among the grazing options considered should be the present case and other options that might include alterations to the seasonality, intensity, and other characteristics of EBRPD's grazing program on the site.

We note that the LUP does describe grazing as "...the most practical and cost-effective management option" to manage wildland vegetation and maintain suitable habitat conditions for resident wildlife (pp.59 and D3). However, we were not able to determine where other options were considered and how this conclusion was reached.

Since the Negative Declaration does not adequately evaluate these options and, as described below, all of the potentially significant impacts associated with grazing, the Negative Declaration cannot reasonably claim that all impacts have been reduced to a less-than-significant level. Therefore, the Negative Declaration should be revised or a full environmental impact report prepared.

## **Land Management & Grazing**

The LUP includes cattle grazing as the primary land management measure on the Project site. We are concerned that the use of cattle grazing, as presently practiced on the subject lands, can cause and contribute to significant impacts to water quality and beneficial uses of waters of the State, including, but not limited to: erosion, compaction, and removal of vegetation, leading to discharge of sediment to waters of the State through rainfall/runoff erosion and mass wasting; discharge of pathogens and material with biological oxygen demand (BOD) to waters of the State via cattle waste; and, loss of riparian vegetation through trampling and grazing of riparian species.

EBRPD's 1997 Master Plan identifies the multiple uses for which EBRPD will manage its lands over the long term. These uses include, but are not limited to: recreation; wildlife habitat; habitat for rare, threatened, and endangered species; water quality; public access; cultural value; and, scenic value. The Master Plan states that this may involve striking a balance between differing uses when there is a conflict between maximizing the long-term value of both. In addition, the LUP notes fire fuel load management as a constraint managing the Project site.

Given this background, the Negative Declaration's discussion of grazing is confusing. On the one hand, the Negative Declaration claims that "[m]anaged livestock grazing is an existing condition in the preserves; its continuation would neither result in a substantial physical change in the environment nor cause a significant environmental impact" (p.3). On the other hand, it suggests that grazing can result in significant impacts to the multiple uses identified in the Master Plan. For

example, it states that "...District staff considered the potential impacts of grazing operations on environmental resources including water quality, stream channel morphology, riparian areas, erosion, soils, and resident plants and animals" (p.3), and that livestock grazing has the potential to cause significant impacts, but "...the District has incorporated management actions and mitigation to reduce potential impacts to a level of less-than-significant" (pp.34, 39, and 43).

EBRPD's analysis demonstrating how impacts have been mitigated and how that mitigation is related to the uses for which the land is managed is not substantively presented in the Negative Declaration or LUP. Also, numerous potential livestock grazing impacts do not appear to have been evaluated. Thus, we conclude that EBRPD is not completing, with this document, a CEQA review of its Project land management practices as related to grazing. This lack is confusing, given the Negative Declaration's acknowledgement that livestock grazing can have significant impacts to the environment, and because grazing appears to be the LUP's primary land management tool within the preserve areas.

The LUP itself is also confusing, as it lays out goals including land management for endangered and other special-status species, recreation, wildlife habitat, and more, but it does not set out a vision, including measurable goals, for how EBRPD will judge whether these are being achieved. Instead, it appears EBRPD's success in meeting these goals will be judged solely on whether the residual dry matter level (RDM) in each grazed area is met. However, with limited exceptions (e.g., for erosion) the Negative Declaration and LUP do not make a substantive case that there is a nexus between achieving a certain RDM and achieving the other stated goals.

We would suggest that a framework could have been developed to better determine EBRPD's success at meeting its multiple-use goals. Questions that this framework should or could answer include, but are not limited to:

- What is the existing state of the multiple uses on the Project site, and how can it be improved/maximized?
- What are the measurable indicators that will allow EBRPD to determine whether it is meeting its multiple-use management goals?
  - How frequently should these indicators be evaluated?
  - How will the results of this evaluation be reported to the public and responsible agencies?
- Would managing for the most sensitive use on the Project site, and measuring whether that use is maximized, allow EBRPD to meet its stated goals for the site?
  - What is the most sensitive use on the Project site?
- If grazing is used as a tool, can it be managed (e.g., its intensity, seasonality, etc.) to minimize impacts to the multiple-use goals?
  - What effects does grazing presently have on the Project site's multiple uses?

- Is it appropriate for grazing to be conducted during the rainy season?
- Can grazing be conducted such that cattle presence in waters of the State (e.g., perennial, seasonal, and ephemeral creeks, seeps, wetlands, and other waters) is avoided or otherwise minimized?
- Should grazing with livestock other than cattle be considered? How would this affect how grazing is managed on the Project site?
- Is there a significant difference in fire threat at varying levels of RDM on the Project site, and what is it?
  - Are there key RDM thresholds associated with significant differences in fire danger?
  - Are some areas of the site more sensitive than others in this regard?
  - If grazing is significantly reduced on a portion of the site, how will fire danger quantifiably change over time? Will it increase? Increase, but gradually level off? Is such an increase significant?
- Measurable indicators that could be evaluated to help determine the state of multiple uses include, but are not necessarily limited to:
  - Linear feet of multi-story riparian habitat developed;
  - Development of flourishing populations of California Red-Legged Frog (CRLF), California Tiger Salamander (CTS), etc.;
  - Achievement of target turbidity and pathogen levels in preserve creeks;
  - Reductions in mass-wasting events, including landslides;
  - Days of trail closure due to landslides, cattle presence, etc.;
  - Relative amount of native vegetation restored; and,
  - Percentage of the Project site on which managed burns are completed each year.
- If RDM is used as a measurable indicator, is it the sole measurable indicator that should be used?
  - Can a clear connection be made between RDM and the uses for which the site is being managed, including water quality, health and structure of riparian vegetation, and quality of recreational experience, such that it is not necessary to complete a separate evaluation of indicators for those uses?

On this last point, substantively making this connection appears problematic, since RDM does not measure a number of potential cattle impacts, including impacts from cattle shading and drinking in creeks, mass wasting events, presence/absence/vigor of wildlife, quality of riparian habitat, and effects on recreational experience. Also, we recognize that the landscape is heterogeneous, and that RDM evaluates one indicator of vegetation in only a portion of the landscape. For example, RDM

would not be a good indicator of the structure and health of riparian zones, or of native species presence in upland areas.

The LUP would appear to largely continue the existing grazing practices on the project site. Therefore, in determining how land might be managed in the future, a simple approach might have been to have performed an on-the-ground assessment of the effects of existing land management and identify any necessary fixes within the LUP's proposed future management framework. Indeed, one LUP resource management recommendation is to "[p]romote seasonal and/or rotational grazing as a means to maintain or restore riparian and wetland areas without fencing" (LUP, p.59). However, it does not appear that the effects of this particular recommendation, as currently practiced, have been evaluated.

In general, an on-the-ground evaluation of the effects of existing land management practices is not presented and does not appear to be proposed. It appears that cattle carrying capacities in the LUP have been determined based on the NRCS Alameda County Soil Survey, and that the determination did not include ground-truthing based on current stocking levels and state of the multiple-use goals on the Project site (p. D17). Since grazing has been ongoing at known levels under existing EBRPD leases for some time, ground-truthing seems a reasonable approach to determining future stocking levels.

The LUP does include a number of statements about work that will be done, such as: "[t]he need for riparian protection measures that include fencing will be determined on a case-by-case basis by District biologists" (p.D5) and "[r]angeland monitoring will be carried out by District staff to observe existing conditions and to determine how well resource and fire management objectives are being met." Similarly, the LUP states that "[I]ndividual areas may have special circumstances which will require that...plant material remain" at levels greater than specified RDM levels, and that this will be determined on a site-specific basis by an EBRPD biologist (p. D8). In comparison to the level of detail provided on number of cattle that can be allowed in a given pasture (e.g., pp. D25-D52), these statements are very vague. It is not clear how often rangeland monitoring will be conducted, for example, or what standards, other than the very limited RDM standards, will be used to assess how well multiple-use objectives are being met.

Similarly, it is unclear when the case-by-case analyses envisioned in the LUP would be conducted. Will site-specific analyses be conducted for all creeks and pastureland immediately upon adoption of the LUP? Will the analyses be completed and appropriate further actions taken within five years of LUP adoption? Will analyses be completed only if extra funding is available in EBRPD's budget, or there is a complaint by a local environmental organization? In general, no thresholds or deadlines have been identified to measure the stated goals or determine when action would be taken. The LUP is therefore so vague that it cannot reasonably be claimed such actions would mitigate CEQA impacts, and the LUP and Negative Declaration should be revised or a full EIR prepared. Also, because there are no measurable goals, there is little by which the public or responsible agencies can judge EBRPD's stewardship of these lands and whether they are being managed to their highest multiple-use potential.

Similarly, the LUP discusses RDM thresholds for grazing in the project's various pastures. These have been calculated based on the maximum carrying capacity of the pastures for livestock in different rainfall years, contingent on achieving a target RDM level in each pasture. They do not seem to have not been calculated based on optimal cattle presence for habitat, riparian corridor development, or similar values as described above, because no nexus is shown between RDM and those values. The LUP does state that a "...range analysis was conducted on each grazing unit to determine the amount of land suitable for grazing and to provide an estimate of its forage productivity and livestock carrying capacity consistent with resource conservation objectives" (p. D7, emphasis added). However, this analysis is not included in the LUP, which has only analyses based on RDM.

The LUP appears to assume that the lowest acceptable RDM for erosion (i.e., which would maximize the number of cattle for that RDM) is also the best to reduce fire threat and to manage for the Project site's various multiple-use goals. However, this assumption is not clearly stated and is not supported within the document. It is not clear whether there would be a significant difference in fire danger if RDM levels were even substantially higher. Other agencies, such as the East Bay Municipal Utility District (EBMUD) and the California State Park System, appear to have lighter grazing regimes, or no grazing. Experiences from areas similar to the Project areas, but under these different management regimes, could have been evaluated in making such an analysis. Similarly, while the LUP notes that vegetation management, including using livestock grazing, can benefit certain wildlife species, it does not make the more nuanced point that this benefit, and the presence of a benefit, are dependent on the intensity, duration, and other characteristics of grazing.

Setting aside whether it is appropriate to graze by RDM level and not other standards, the LUP does not set out clear standards for unacceptable RDM levels. These are set out in a general way, but it is not clear how often they will be evaluated while grazing is ongoing. It is also unclear what level of overgrazing would be significant enough to require alteration of the number and/or seasonality of cattle on a pasture. For example, cattle may preferentially graze portions of a pasture, but not the whole pasture, to well below the required RDM standard. How much of a pasture must fall below the standard to trigger a change in grazing? Two percent? Ten percent? Fifty percent? How much of a pasture would be evaluated, and how frequently, over the course of a grazing season? How quickly would remedial actions, such as increasing or decreasing the number of cattle on the pasture, be implemented?

By basing grazing on RDM—which is a typical standard among livestock grazers—the LUP does not address other known grazing impacts, including pathogen loading to surface and ground water, compaction and rilling/gullyng on hillsides, preferential browsing of young plants (e.g., in riparian zones), and cattle presence in riparian zones and other State waters when they seek shade or water during dry months.

The LUP's proposed seasonality of grazing is unclear. Why graze at all during the rainy season, for example? From a water quality perspective, this can be one of the most sensitive times to have grazing, since the soil structure is at its most vulnerable and disturbed soils are more likely to be

immediately affected by rainfall or other erosional processes. Could the multiple-use objectives be attained with a very short period of relatively more intense grazing? Should the Project site be divided into a larger number of small pastures, rather than the existing five pastures of 2,755 – 5,815 acres? Should EBRPD construct and maintain a number of upland watering locations sufficient to avoid cattle presence in creeks and other waters of the State?

It may be that from the practical perspective of using grazing as a tool, lessees may not have the ability to remove their livestock to other locations, allowing shorter grazing periods to be established on the Project site, or that EBRPD may not have the funding available to complete additional pasture fencing and/or construction of upland watering sources. However, these issues are not raised in the Negative Declaration or LUP.

All of these issues are significant because of the known impacts of grazing, which have previously been identified by members of the public as occurring on EBRPD lands. The Negative Declaration and LUP address some impacts, but without providing sufficiently specific mitigation measures, thresholds for action, time schedules, proposed actions in the event a threshold for action is met, etc.

The result appears to be that EBRPD biologists will evaluate impacts across more than 25 square miles of land at an unknown schedule and may specify additional mitigation measures that are not yet identified. However, it is not clear that there would be funding to implement such measures. The relationship of these somewhat unclear future actions to the multiple uses for which the Project site is being managed are not also not fully clear. There is no proposed reporting of this evaluation and subsequent implementation of fixes to the public and responsible agencies, which would then have no way to know how the LUP mitigation actions are progressing, other than completing evaluations in person.

The public has already completed some level of evaluation of its park lands, and presented in some detail an alternative land management plan (“Alternative W”) for the Project site. However, this alternative has not been considered by EBRPD in these documents, and is, indeed, not even mentioned. We understand that EBRPD responded to Alternative W in a separate document, “Cattle Grazing as a Resource Management Tool,” dated September 2003. However, on reviewing that document, we were unable to identify the kinds of analysis that we have suggested should be a part of EBRPD’s development and adoption of an LUP. The Negative Declaration, LUP, and the “Cattle Grazing” document generally do not seem to be taking a nuanced look at cattle grazing, one that considers the reasonable assumption that grazing at different intensities and schedules could have vastly different effects on a landscape, but rather seem to be considering only the continuation of grazing on the lands at or near its present intensity and timing.

We support the LUP’s proposal to remove livestock from approximately 7.5 miles of Alameda Creek, but note that the implementation of this plan is not fully clear, as the enclosure area (i.e., the buffer width from Alameda Creek and the circumstances under which this area would be grazed in the future) and timing of construction of the enclosure are not fully defined. Also, the LUP proposes the

construction of 15 upland watering sources to provide water to livestock that previously would have gone to Alameda Creek. We support these measures as likely to help reduce livestock impacts to waters of the State, but recognize that some additional information is needed to fully evaluate the impacts of the upland water sources' construction.

The Negative Declaration states that the projects "...would be located at springs and natural drainages, but away from creeks, or would tap into existing underground water pipelines" (p. 33). It is not clear what is meant by natural drainages, or what the difference is between a natural drainage and a creek. While it seems likely that the proposed fencing along Alameda Creek would reduce the existing cattle impact there, it also seems reasonable that the upland water sources could lead to a concentration of cattle near the sources. As such, if they are located very close to existing seeps or "natural drainages," they could have the potential to significantly impact those waters. These potential impacts are not evaluated in the Negative Declaration.

### Summary

We value the significant work that EBRPD does and the important stewardship role it plays, as well as the work we have been able to accomplish together to improve water quality, beneficial uses of waters of the State, and EBRPD stewardship goals. However, with these documents, EBRPD is missing a significant opportunity to implement a land management program that might better accomplish its goals, as identified in the documents and its 1997 Master Plan. In addition, it does not appear that EBRPD has satisfied its CEQA responsibilities with these documents. We have suggested a framework of questions that could allow EBRPD to better evaluate means of accomplishing its multiple-use goals and provided some comments on portions of the Negative Declaration and LUP.

If you have any questions or further comments on this matter, please contact me via email to [khl@rb2.swrcb.ca.gov](mailto:khl@rb2.swrcb.ca.gov), or at (510) 622-2380.

Sincerely,

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