



November 6, 2013

Larry Goldzband, Executive Director
San Francisco Bay Conservation and Development Commission
50 California Street, Suite 2600
San Francisco, CA 94111

Subject: Consistency Determination for Cullinan Ranch Project, Application No. C2004.005.03

Dear Larry:

Our team of consultants has reviewed BCDC's Staff Summary for a material amendment to the BCDC Consistency Determination for Cullinan Ranch that would complete BCDC's final authorizations for the project and authorize a sediment offloading facility in the Napa River. We have also reviewed the underlying environmental studies that are being referenced to support the amendment application. As the owner of the largest successful beneficial dredged sediment reuse facility in the region, we are interested in making sure that public and private projects get the same treatment in the permitting process. Similar treatment between public and private sites leads to fair competition, which benefits the taxpayer and supports the free enterprise system. Additionally, and perhaps more importantly, requiring public sites to undergo the same rigorous technical evaluation and planning required of private sites leads to a higher probability of success. The technical evaluations required to permit our beneficial reuse site were detailed and rigorous, and Montezuma's experience in going through the detailed analysis and planning process was a key factor that has led to the project's successful implementation over these past ten years.

I am raising these issues because you are considering a final authorization for the Cullinan Ranch project without actually requiring nor reviewing the detailed analysis typically required of beneficial reuse sites. While Section 3.C. of your staff report identifies the relevant Cullinan environmental documents (EIS/EIR and addendums), none of these documents actually evaluated the potential impacts of using dredged sediment for site restoration, except the limited use of sediment for levee construction and maintenance. A detailed review of these documents shows that none of them contain any analysis of site operations sediment and water management, elevation control and settlement, sediment physical properties such as grain size, temporal habitat loss, or many other technical analyses related to using dredged sediment to raise the elevations of the Cullinan site. Nor do the documents evaluate the efficacy of

or need for dredged sediment to achieve project objectives. For our project, there were detailed mitigation measures in the EIR/EIS addressing many of these issues. Given that the project being authorized isn't actually described in the underlying environmental documents, I am not sure how you can legally proceed with the permitting, even if you were confident the site could be successfully managed without these analyses. You may hear an opinion that you are simply approving a new offloader location, however you cannot de-link the offloader from the operations of the site.

Furthermore, the CEQA/NEPA documents for the offloading facility (i.e., the EIR Addendum prepared for the State Lands Commission and the Environmental Action Statement prepared by USFWS) both indicate that they only evaluated impacts that would be different from those of the offloader design evaluated in the Final EIR/EIS. However, an offloading facility was not part of the project description during preparation of the Final EIR/EIS, so that document did not evaluate any potential impacts from operating an offloading facility. Notably, the EIR Addendum and Environmental Action Statement did not consider impacts to air quality from offloader operation, only air quality impacts during construction of the offloading facility. In fact, the power source for the offloader pump is not described at all. There are no new power transmission lines described in any document, and no calculations of diesel emissions if an on-site diesel-powered system is proposed. So even for just the offloader, there appear to be significant differences between what the project facilities will actually be and the CEQA and NEPA analyses.

We understand that the existing BCDC Consistency Determination for Cullinan Ranch requires a dredged sediment management plan before any sediment is placed on the site. Our operations plan for Montezuma was a 3-inch binder with detailed calculations, procedures and drawings, and having that in place was key to successful operation of the site. Based on the limited information available on how sediment placement and management would be accomplished at Cullinan, it is unclear whether the project can be operated within the constraints already described in the EIS/EIR and imposed by other agency permits such as the RWQCB Order. Once operations plans are developed it is very likely that practical operation of the site requires methods and management techniques not described or evaluated previously in the EIR/S and permits.

The Staff Summary describes requirements for fish screens on the offloading facility's water intake, but seasonal restrictions on pumping to protect listed fish species are mentioned only in passing as a possibility. You may not be aware that Montezuma's Streambed Alteration Agreement from CDFW allows pumping through approved fish screens only during a narrow seasonal window for protection of larval longfin smelt (August 1 through December 15). Based on publicly available CDFW survey data, it appears that the seasonal occurrence of that species is similar at Montezuma and in the lower Napa River. We understand that protection of listed fish species is not a core part of BCDC's regulatory mandate, but the absence of any requirement for Cullinan to adopt appropriate seasonal pumping windows seems like another striking omission.

Basic CEQA and NEPA procedures require enough detail on what is actually being proposed prior to the EIR/EIS evaluations, not after the fact. Without following this protocol, the environmental documents can't address what is actually going to take place, which is exactly the problem we face here. Proceeding down the path currently proposed would set a new standard for future CEQA review on other projects. That might be OK with many constituencies around the Bay Area, so long as it is uniformly applied.

Cullinan is a relatively small project (400,000 cubic yards), so we at Montezuma are not overly concerned about competition from this site, and in fact we would even be interested in assisting Ducks Unlimited in implementing the project. However, we are concerned about a pattern we have seen of requiring detailed and exhaustive information and operational planning from private applicants, but very little information and operational planning from public applicants of similar projects. It's unequal and unfair, provides cost advantages for certain projects, and threatens the success of beneficial use everywhere. Having special rules or procedures for certain favored applicants or projects also diminishes the value and meaning of a public review process, where due process is supposed to be applied uniformly.

We believe there is adequate time to undertake the detailed technical planning and review required, and that doing so will allow you to comply with the law and will lead to a higher probability of success for Cullinan, and for the LTMS program in general. The major 2013 dredging projects have already been slated for aquatic disposal or for reuse at other sites including Montezuma, so the Cullinan timeline is realistically a 2014 or 2015 project start. There is time to do this the right way.

Thank you for considering these comments.

Sincerely,



James D. Levine, P.E.
Managing Partner