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November 30, 2023

OneShoreline Board of Directors
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Via email: Board@OneShoreline.org
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RE: Comments on the Notice of Preparation of an Environmental Impact Report
for the Millbrae and Burlingame Shoreline Area Enhancement Project

Dear Board Members and Ms. Wong:

Citizens Committee to Complete the Refuge, the Center for Biological Diversity, Sequoia Audubon Society, Green Foothills, Baykeeper and Sierra Club appreciate the opportunity to provide comments on the October 10, 2023 Notice of Preparation (NOP) of an Environmental Impact Report (EIR) issued by the San Mateo County Flood and Sea Level Rise Resiliency District (OneShoreline). We applaud OneShoreline for coordinating multi-jurisdictional efforts to plan and implement measures to build resilience to climate change; however, the release of this NOP is premature.

Our non-profit organizations advocate for the protection and preservation of San Francisco Bay wetlands and wildlife habitats, the health of the San Francisco Bay Estuary, and opportunities for ecologically sound, nature-based flood protection from sea level rise. The signatories of this letter have taken an active interest in the Clean Water Act, Endangered Species Act, Porter Cologne Act, McAtteer-Petris Act and California Environmental Quality Act and the implementation of these laws, regulations, and policies, at the local, state and national levels, demonstrating many years of ongoing commitment to Bay conservation and to protecting the public interest.

Our comments here summarize some of the serious concerns and known issues with the preferred project OneShoreline has selected, the *Offshore Barrier and Lagoon*, which call into question the feasibility of this unprecedented and controversial flood control project within Bay waters. Additionally, there has been a lack of transparency and outreach to agencies, key stakeholders and the public with

respect to the process for identifying the Preferred Project Alternative that has been selected for further detailed studies in the EIR.

For these reasons, **we strongly urge you to rescind the current NOP and reissue it only after ensuring regulatory and resource agencies, key stakeholders and the community have the opportunity to provide critical input, informing the decision on alternatives that should be considered and the selection of the Preferred Project Alternative for further CEQA analysis.**

Flawed Process for Selection of the Preferred Project Alternative

According to the January 2022 Request for Proposals (RFP) that OneShoreline issued for this project, **prior to** preparation of the NOP, the final decision criteria for the alternatives analysis and selection were supposed to be “based on input from the project key partners and stakeholders”. In spite of a clearly defined process, the outreach to secure input on this decision never occurred, or only occurred on a limited basis, and OneShoreline appears to have made the decision on the Preferred Project Alternative in a “key stakeholder vacuum”.

No presentation on the “Project” described in the NOP (the offshore barrier and lagoon) was made to the City Councils of Millbrae or Burlingame prior to the NOP release. Ann Schneider, Mayor of Millbrae, commented at the October 23rd meeting of the San Mateo County Flood & Sea Level Rise Resiliency District Board of Directors and stated:

“... I’m going to start on the process, that you’ve already released the NOP without coming to City Council. I read about this in the Daily Journal, and it sounds like staff has already made a decision without even coming and speaking with the elected body of the City of Millbrae.”

According to the project *Conceptual Alternatives Feasibility Analysis* (page 2-4), “The proximity to San Francisco International Airport (SFO) will play an important role in alternative evaluation and Preferred Project selection”. And yet, SFO, an adjacent jurisdiction and key stakeholder, was also caught off guard when the NOP was released. Audrey Park, Environmental Affairs Manager, San Francisco International Airport, made the following comments at the November 2, 2023 NOP Public Scoping Meeting:

“We are disappointed that there has been no discussions or outreach to the airport about this project which is now the subject of an EIR. The airport urges OneShoreline to discuss the project with the airport and members of the public before proceeding any further. Especially as OneShoreline is proposing a project where most of the project would be on property owned by the City and County of San Francisco, operating SFO. Creating new wildlife habitat so close to the airfield does not comply with national FAA goals and regulations meant to keep the travelling public from harm...” [emphasis added]

Based on testimony at the public meeting, there also appears to have been no outreach to local recreational kiteboarders, or environmental groups about the preferred project alternative prior to release of the NOP.

Significant Water Quality Concerns

The Bay is facing an increasing threat from Harmful Algal Blooms (HABs) in areas of calm, shallow and warmer waters, and the *Offshore Barrier and Lagoon* alternative may replicate such conditions, potentially leading to periodic die-offs of fish, sharks and rays, as well as potential harm to humans. The

proposed project would initially mute tidal flushing in this area, and eventually, with sea level rise, create increasingly less tidal circulation in the artificial lagoon just as conditions conducive to HABs, such as higher temperatures and prolonged heat waves, become more prevalent.

In addition to muted tidal circulation, the preferred alternative will result in changes to the local hydrologic regime as the proposed lagoon will serve as a temporary floodwater detention basin during rain events and extreme high tides for the five urban creeks entering the Bay at this location. The detention of the freshwater flows from the five creeks will likely have significant and adverse impacts to water quality within the lagoon that could harm fish, invertebrates and aquatic and marsh vegetation, including changes in salinity, water temperature, turbidity and dissolved oxygen, and impacts from volatile sulfides, nitrogen, sediment and toxins. In addition, these impacts could adversely affect species higher up the food chain, particularly for species currently identified within the Project area such as the endangered Ridgway's Rail. There may also be a need for future dredging from accumulated sediment.

The Project *Biological Resources Constraints Analysis* identifies, as a constraint, that the preferred alternative may "alter/limit sediment transport." The report also acknowledges:

"The proposed permanent breakwater may decrease tidal circulation and increase sediment accumulation within the tidal lagoon altering water chemistry of the South Bay estuary."

The report fails to identify the coarse organic debris loading from the creeks and flood control channels, or debris that initially floats and then sinks to the bed, which in turn provides the carbon fuel for microbial decay and anoxia that drives toxic hydrogen sulfide and oxygen deficits, fish kills, phosphorus and ammonia release from the detention basin bed sediments, and creates favorable conditions for the development of HABs.

The report mentions accumulation of sediments but, as stated above, does not consider the potential for this flood detention basin to lose capacity over time, resulting in the need to dredge the basin to remove anoxic, organic-enriched sediments.

As sea levels continue to rise, what happens to the tidal flow in the lagoon? According to the Project *Biological Resources Constraints Analysis*, "tide gates would be used to manage the lagoon until sea level rises to a point that low tides no longer allow the lagoon to drain. At that time, a pump station would be required." Of great concern, is what happens if (or when) this experimental project fails and the health of the Bay within this shoreline region is compromised?

Project Alternatives Feasibility Analysis is Insufficient

While it is possible that an offshore barrier 2.65 miles long within San Francisco Bay waters could technically be engineered and constructed, it is highly unlikely that the proposed bay fill project, and the 670-acre artificial lagoon it creates, would be considered ecologically sound. This unprecedented project proposal faces significant regulatory challenges to secure the approval of the federal, state and regional agencies with jurisdiction over the Bay waters and the subtidal, intertidal and wetland habitats and endangered species found in the immediate Project area. In addition, the proximity of both the offshore barrier and the lagoon to SFO raises public safety concerns related to bird strike hazards that may not be able to be resolved.

Regulatory Permit Approvals:

The *Offshore Barrier and Lagoon* alternative would greatly impact both federal and state waters and fall within the jurisdiction of the Bay Conservation and Development Commission (BCDC). Agency regulations and policies are in place for a reason – to protect public trust lands and waters. Each alternative considered for this project should be vetted with the permitting and resource agencies to ensure it is in fact feasible under state and federal regulations and policies, before moving on for further detailed analysis in the EIR. This is even more critical for a substantial offshore barrier/artificial lagoon project that is unprecedented in San Francisco Bay.

The proposed project will require authorization from the U.S. Army Corps of Engineers (Corps) pursuant to Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act (CWA), the San Francisco Bay Regional Water Quality Control Board pursuant to Section 401 of the CWA and the state Porter-Cologne Act, and from BCDC pursuant to the McAteer-Petris Act. The project will likely trigger formal consultation with the U.S. Fish and Wildlife Service under Section 7 of the Endangered Species Act due to potential impacts to Ridgway's Rail which is present within the Project area, and likely require consultation with the National Marine Fisheries Service due to impacts Essential Fish Habitat.

According to the Project *Coastal Hazard Analysis Feasibility Assessment*, OneShoreline has had preliminary discussions with BCDC and the Corps. Both agencies have already indicated a strong preference for a shoreline barrier to the construction of an offshore, in-Bay barrier. Both agencies have also indicated that permitting the preferred alternative would be "challenging." Given this initial feedback, it is puzzling that OneShoreline has chosen to disregard this feedback.

The NOP states that a flood protection alternative "exclusively with features along the shoreline" will also be evaluated in the EIR, and OneShoreline has deemed the *Shoreline Barrier and Tide Gates* alternative to be feasible. Clearly, alternatives exist to placing an offshore barrier inside Bay waters to address the challenges of coastal creek flooding and sea level rise.

The California Environmental Quality Act (CEQA) requires identification of an environmentally superior alternative, and the federal counterpart, the National Environment Policy Act (NEPA) imposes a similar requirement for the identification of an environmentally preferred alternative. However, the Clean Water Act (CWA) 404 (b)(1) Guidelines (40 CFR 230.10(a)), impose a much more stringent standard for alternatives. The U.S. Environmental Protection Agency (EPA) webpage explaining the Memorandum of Agreement between the Army Corps of Engineers and EPA explains this standard further:

"Avoidance.⁴ Section 230.10(a) allows permit issuance for only the least environmentally damaging practicable alternative.⁵ The thrust of this section on alternatives is avoidance of impacts. Section 230.10(a) requires that no discharge shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact to the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences. In addition, Section 230.10(a)(3) sets forth rebuttable presumptions that 1) alternatives for non-water dependent activities that do not involve special aquatic sites⁶ are available and 2) alternatives that do not involve special aquatic sites have less adverse impact on the aquatic environment. Compensatory mitigation may not be used as a method to reduce environmental impacts in the evaluation of the least environmentally damaging practicable alternatives [LEDPA] for the purposes of requirements under Section 230.10(a)."

Footnotes to the language regarding discussion of “Avoidance” are important to note and are as follows:

⁴Avoidance as used in Section 404(b)(1) Guidelines and this MOA does not include compensatory mitigation.

⁵It is important to recognize that there are circumstances where the impacts of the project are so significant that even if alternatives are not available, the discharge may not be permitted regardless of the compensatory mitigation proposed (40 CFR 230.10(c)).

⁶ Special aquatic sites include sanctuaries and refuges, wetlands, mud flats, vegetated shallows, coral reefs and riffle pool complexes.” [emphasis added]

It is true that the federal environmental review process is generally not triggered until a CWA permit application is submitted; however, it would be irresponsible to wait until that late in the game to determine whether the preferred alternative is in fact the LEDPA.

Conclusion

San Mateo County already faces great challenges from coastal flooding during major rain events, and the NOP states that “Projected sea level rise will exacerbate this flooding and threatens more people and property here than in any other county in California.” Regional planning agencies released a joint analysis calculating a “high-level” regional cost estimate for sea level rise adaptation through 2050 and came up with an estimate, of \$110 billion. Most concerning, is the identification of a “significant funding gap of over \$104 billion” that has been identified.

Against this dire backdrop of a regional funding shortfall, it is not prudent to expend precious funding, time and resources to continue with the costly development of an engineering design and environmental analysis for a project proposal that has not been adequately vetted with major stakeholders, may have significant air traffic safety concerns, and may not receive the necessary regulatory permits. Grant funding, OneShoreline staff resources and permitting agency time could be redirected to analysis of a project that doesn’t have unprecedented and potentially severe impacts to San Francisco Bay waters, habitats and wildlife, or public safety.

In 2016, millions of Bay Area residents voted for Measure AA, taxing themselves to restore tidal lands and provide flood protection measures that are ecologically sound. In San Mateo County, the measure passed by over 70%. With funds from this measure, barriers constructed atop former marshlands at the edges of the Bay are now being breached to re-establish tidal flows and ensure the ecological health of the estuary, and to provide sea level rise resilience for our communities. **This project represents a significant departure from decades of efforts to remedy past harms to San Francisco Bay.** OneShoreline should reconsider promoting a project that walls off a significant portion of the Bay through construction of an offshore barrier/floodwater detention lagoon, sets a dangerous regional precedent, jeopardizes the health of the estuary, may pose significant risks for air traffic safety, and disregards the Bay Area community’s closely-held conservation values.

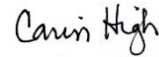
As a public agency, OneShoreline has an obligation to follow its defined protocol of outreach to the public and key stakeholders and to conduct deliberations and decision-making on multi-jurisdictional projects in a transparent, inclusive, and effective manner. Again, we urge OneShoreline to halt the CEQA process until you solicit, and consider, input from key stakeholders, the community and permitting agencies on the selection of the Preferred Project Alternative.

Several of our organizations have submitted additional, more detailed NOP scoping comments under separate cover. Thank you for giving our comments your careful consideration. We request that we be kept informed of any decision regarding whether OneShoreline will continue with, or will withdraw, the current NOP, as well as any future opportunities for public review and comment on the proposed project.

Respectfully submitted,



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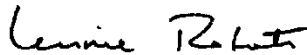
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Mayor Schneider and City Council, City of Millbrae
Mayor Brownrigg and City Council, City of Burlingame
Mayor Lee and City Council, City of San Mateo

Audrey Park, San Francisco International Airport

U.S. EPA, Lisa Valiela
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California Department of Fish and Wildlife
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National Marine Fisheries Service, Alison Weber-Stover
National Marine Fisheries Service, Gary Stern

References

All numbered documents listed below for the Millbrae and Burlingame Shoreline Area Protection and Enhancement Project are available at <https://oneshoreline.org/projects/millbrae-burlingame/>
1) *Notice of Preparation of an Environmental Impact Report for the Millbrae and Burlingame Shoreline Area Protection and Enhancement Project*, OneShoreline, October 10, 2023

2) Appendix A: *Biological Resources Constraints Analysis* (page 16) prepared for OneShoreline by Rincon Consultants, Inc. 449 15th Street, Suite 303 Oakland, California 94612, April 2023

3) *Conceptual Alternatives Feasibility Analysis* (pages 2-4, 5-25) prepared for OneShoreline by Schaaf & Wheeler, 4699 Old Ironsides Drive, Suite 350 Santa Clara, CA 95054, October 2023

4) EIR Public Scoping Meeting for OneShoreline Millbrae and Burlingame Shoreline Area Protection and Enhancement Project, November 2, 2023: Recording

One Shoreline Board of Directors Meeting, November 2, 2023, Agenda Item: Update on One Shoreline's Millbrae and Burlingame Shoreline Area Protection and Enhancement Project, oral public comments (meeting notes of Gail Raabe, Citizens Committee to Complete the Refuge)

Measure AA, San Francisco Bay Clean Water, Pollution Prevention and Habitat Restoration Measure, June 2016 ballot, San Mateo County Elections Results: <https://smcacre.gov/elections/june-7-2016-election-results>

San Mateo County Flood and Sea Level Rise Resiliency District: Request for Proposals for the Millbrae and Burlingame Shoreline Area Protection and Enhancement Project, (pages 11,12) RFP Number 2022-01-18, Release Date: January 8, 2022
https://oneshoreline.org/wp-content/uploads/2022/01/OneShoreline-RFP-for-Millbrae-Burlingame-Shoreline_Final.pdf

U.S. Environmental Protection Agency. Section 404 of the Clean Water Act. "Memorandum of Agreement regarding Mitigation under CWA Section 404(b)(1) Guidelines (Text) Between the Department of the Army and the Environmental Protection Agency. <https://www.epa.gov/cwa-404/memorandum-agreement-regarding-mitigation-under-cwa-section-404b1-guidelines-text>

"Sea Level Rise Adaptation Funding and Investment Framework Final Report Draft." July 2023. Metropolitan Transportation Commission/Association of Bay Area Governments and the San Francisco Bay Conservation and Development Commission.