

COASTAL CONSERVANCY
Staff Recommendation

June 16, 2005

**BEL MARIN KEYS UNIT V EXPANSION OF THE
HAMILTON WETLAND RESTORATION PROJECT**

File No. 94-003

Project Manager: Tom Gandesbery

RECOMMENDED ACTION: Consideration and possible Conservancy certification of the Supplemental Environmental Impact Report-Environmental Impact Statement (SEIR) for the expansion of the Hamilton Wetland Restoration Project to include the Bel Marin Keys Unit V property.

LOCATION: City of Novato, Marin Co

PROGRAM CATEGORY: San Francisco Bay Area Conservancy

EXHIBITS

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| Exhibit 1. | Regional Map |
| Exhibit 2. | Site Map |
| Exhibit 3. | Supplemental Environmental Impact Report (SEIR) for the expansion of the Hamilton Wetland Restoration Project to include the Bel Marin Keys Unit V property, April 2003 (<i>separate CD enclosed</i>) |
| Exhibit 4. | SEIR Response to SEIS/EIR Comments (<i>separate CD enclosed</i>) |
| Exhibit 5. | Mitigation Monitoring and Reporting Plan |
| Exhibit 6. | Summary of Project Cost Estimates |

RESOLUTION AND FINDINGS:

Staff recommends that the State Coastal Conservancy adopt the following Resolution pursuant to Chapters 4.5 and 6 of Division 21 of the Public Resources Code:

HAMILTON WETLAND RESTORATION PROJECT

“The State Coastal Conservancy hereby certifies the Supplemental Environmental Impact Report-Environmental Impact Statement for the Bel Marin Keys Unit V Expansion of the Hamilton Wetland Restoration Project, jointly prepared by the United States Army Corps of Engineers and the State Coastal Conservancy, dated April 2003, and attached to the accompanying staff recommendation as Exhibit 3 (SEIR); modifies its previous authorizations for implementation of the Hamilton Wetland Restoration Project (HWRP) in accordance with the SEIR and its preferred alternative; and adopts the Mitigation Monitoring and Reporting Plan attached as Exhibit 5 of the accompanying staff recommendation.”

Staff further recommends that the Conservancy adopt the following findings:

“Based on the accompanying staff report and attached exhibits, the State Coastal Conservancy hereby finds that:

1. The final EIR/EIS for the Hamilton Wetland Restoration Project, certified in December 1998, and the SEIR attached to the accompanying staff recommendation were completed in compliance with the California Environmental Quality Act.
2. The Conservancy has independently reviewed and considered the information contained in the SEIR pursuant to its responsibilities under 14 California Code of Regulations Sections 15090, 15163 and 15222. The SEIR identifies potential significant impacts from the project in the areas of biological resources, hazardous substances, land use, water quality, hydrology and cultural resources, air resources, and noise. With regard to these impacts, the Conservancy finds as follows:
 - (a) Changes have been made in the proposed and expanded Hamilton Wetland Restoration Project or its operating procedures to avoid, reduce or mitigate the above possible significant environmental effects to a level of insignificance.
 - (b) Such changes are within the responsibility and jurisdiction of the Army Corps of Engineers and should be implemented as part of the project and its Adaptive Management and Monitoring Plan.
 - (c) The SEIR identifies two potentially significant impacts for which no mitigation may be available or feasible, due to specific economic, technological or other considerations. However, the Conservancy finds that the environmental and economic benefits of the Hamilton Wetland Restoration project, as described in previous Conservancy authorizations, the accompanying staff recommendation and SEIR, outweigh and render acceptable these unavoidable adverse environmental impacts.
3. The revised and expanded Hamilton Wetland Restoration Project remains consistent with the purposes and criteria set forth in Chapter 4.5 of Division 21 of the Public Resources Code (Sections 31160-31164), regarding enhancement of San Francisco Bay Area resources; with Chapter 6 of Division 21 (Sections 31251-31270), concerning

HAMILTON WETLAND RESTORATION PROJECT

the enhancement of coastal and bay resources; and with the Conservancy's authorizations of April 22, 1999 and June 25, 2001."

PROJECT SUMMARY:

Staff is recommending that the Conservancy certify the Bel Marin Keys Unit V Expansion of the Hamilton Wetland Restoration Project Supplemental Environmental Impact Report-Environmental Impact Statement (SEIR). The SEIR amends the original project Environmental Impact Report –Environmental Impact Statement certified by the Conservancy and the Corps of Engineers in 1998, which was focused on the Hamilton Airfield Parcel, in that it addresses impacts of expanding the project to include the Bel Marin Keys Unit V (BMK) property, an increase that would more than double the size of the project to a total of nearly 2500 acres. The SEIR both analyzes the impacts of the BMK addition and also supplements the 1998 EIS/EIR for the Hamilton Airfield.

Specifically, with regard to the currently authorized Hamilton Wetland Restoration Project as well as the expanded project, the SEIR considers the impacts from the use of a diesel off-loader and booster pump in the placement of dredge material, and from the presence of methylmercury in waters affecting the property or in dredge materials brought to the site. Staff is recommending that the Conservancy certify the SEIR at this time in order that these analyses be included in CEQA determinations made by other state agencies issuing permits for the project this summer. If Congress authorizes expansion of the project to include the BMK property, certification of the SEIR will be necessary to support future Conservancy actions to implement the expanded project. It is expected that any such actions, if they involve the commitment of additional funding, would be the subject of one or more future staff recommendations.

The certification of this document will further the implementation of the Hamilton Wetland Restoration Plan, adopted by the Conservancy in 1999 and now being carried out by the United States Army Corps of Engineers (Corps). As the nonfederal sponsor of the project, the Conservancy is responsible to pay 25% of the total project cost and provide all of the land and easements necessary to its implementation. The Corps will undertake design and construction, and will be primarily responsible for monitoring.

Previous CEQA Actions:

The Conservancy has previously certified two environmental documents for the Hamilton wetland project. The original EIR, certified by the Conservancy on April 22, 1999, described impacts of restoring wetlands at the site under five different scenarios. It analyzed impacts from restoring wetlands to the former Army Airfield and North Antenna Field; however, it did not examine the remediation of contaminated soils and sediment because the U.S Department of Army and Navy cleanup plans had not yet been completed.

The second environmental document, entitled a Subsequent EIR, was certified by the Conservancy, as the lead CEQA agency, on August 14, 2003. The document was narrow

HAMILTON WETLAND RESTORATION PROJECT

in scope in that it addressed only impacts from contaminant cleanup activities proposed in the final cleanup plan for the Airfield. The cleanup plan preparation and cleanup work was undertaken by the Army's Base Closure Program (BRAC). It followed a Record of Decision/Remedial Action Plan (RAP), jointly prepared by the Army, California Department of Toxic Substance Control (DTSC) and the San Francisco Bay Regional Water Quality Control Board (RWQCB).

Site Description:

The Hamilton Wetland Restoration Project includes the 633 acre Army Airfield, a portion of the former Hamilton Air Force Base, the 18 acre- former Navy Ball Field (pending transfer) and the approximately 344-acre North Antenna field, currently owned by the State Lands Commission. (See Exhibit 2 and SEIR, Figure 1-2)

The expanded HWRP would include the Conservancy's 1,600-acre Bel Marin Keys Unit V property, expanding the restoration project to a total of almost 2,500 acres.

The Bel Marin Keys V property is located within the historic margins of San Pablo Bay. Initially, the site was part of the sloughs and adjacent tidal marshes associated with the mouth of Novato Creek. The marshes of the project site were part of a larger system, which extended from Corte Madera in Marin County to Vallejo in Solano County.

During the period 1853 through 1884, hydraulic mining for gold in the Sierra Nevada foothills caused substantial amounts of sediments to enter into the Bay system. This resulted in the accretion of the shoreline to the east of the project site. Around the turn of the last century, marsh lands on the project site were diked to accommodate dry land farming. A system of levees and drainage ditches were constructed and pumps were installed to drain rainwater and the naturally high ground water table. Over the intervening century, oxidation, consolidation, and subsidence of the bay mud substrate occurred. As a result, the former tidal baylands have fallen to an average of five feet below sea level.

In the 1960s, Units 1 through 4 of the adjacent Bel Marin Keys residential and lagoon development were constructed. Fill for this development was taken from borrow pits on BMK Unit V site. These borrow pits have since filled with brackish water, some of which are ponds on a year-round basis and provide limited habitat.

About 40 percent of the BMK Unit V site used for oat-hay production, though the quality of farming is constantly declining due to poor soil quality, which is an artifact of the proximity to the bay and lack of irrigation.

The Bel Marin Keys Community Services District maintains the lagoons surrounding the home development. The water level in the lagoons is kept constant year-round via a system of locks along Novato Creek and an wet weather overflow onto the Unit V property. The proposed project would use the wet weather overflow to maintain seasonal wetlands.

HAMILTON WETLAND RESTORATION PROJECT

Project History:

Following closure of the Hamilton Army Airbase in 1994 and development of a Reuse Plan by the City of Novato for much of the former military base, the Conservancy assumed the lead in developing a wetland restoration plan for the former Hamilton Army Airfield and adjacent properties. In 1996, Conservancy staff joined with staff from the San Francisco Bay Conservation and Development Commission (BCDC) to address the technical aspects of restoration and to better link the project with the efforts of BCDC in finding ways to restore wetland habitat using dredged sediment. In April 1999, the Conservancy adopted the Hamilton Wetlands Restoration plan and certified the EIR-EIS for the project. The Conservancy entered into agreements with the Army Corps of Engineers to study the feasibility and design of the project; these agreements were entered into in 1998 and 1999, respectively. In 1999, the Congress of the United States authorized the project under the ecosystem restoration authority of the Civil Works program. Subsequently, the project has received federal funding to carry out project design, development and construction.

In 1999, Conservancy also entered into a Memorandum of Agreement (MOA) with the Army BRAC program for the transfer of the Airfield parcel as a no-cost public benefit transfer for wildlife conservation. In January of 2001, the Conservancy purchased the 1600-acre Bel Marin Keys Unit V property for wetland restoration purposes, with the intent of adding it to the existing Hamilton project. On August 14 2003, the Conservancy authorized the Executive Officer to accept title to the Army Airfield parcel under a no-cost, public benefit conveyance and title was transferred on September 30, 2003. A 18 acre portion of the Airfield owned by the Navy is scheduled to transfer to the Conservancy in the summer of 2006, pending contaminant investigation and BRAC remediation process.

In order to start design and construction work, on April 14, 2002, the Conservancy entered into a Project Cooperation Agreement (PCA) with the Army Corps of Engineers for implementation of the Hamilton wetland restoration project. Under the PCA, the Army will construct the wetland restoration project using suitable dredge material pursuant to federal law and practice. The Conservancy has responsibility to take title to the lands, easements and rights of way necessary to construct the project, and to pay 25% of project costs. Since then, the following work has been accomplished:

- The BRAC program has proceeded with remediation of sites in the outboard marsh, outside the project boundary, and with several remaining areas within the project boundary that were discovered later during an archive document search.
- The Corps substantially completed design work related to wetlands, trail access and sediment offloading, and in 2003 and 2004, undertook limited site preparation work including demolishing buildings and constructing two segments of the perimeter flood control levee. This summer the Corps plans to construct more levee segments, berms and sediment impoundments .
- The Conservancy is working closely with the Novato Sanitary District to relocate a de-chlorination station from the Hamilton project site. On September 15, 2004, the Conservancy granted \$4,000,000 to the Novato Sanitary District to carry out planning, design and permitting for a replacement dechlorination facility. On March 10, 2005, the

HAMILTON WETLAND RESTORATION PROJECT

Conservancy granted \$1.6 million toward the cost of constructing a new facility. The District has entered into a contract for the replacement station with the intention of closing the existing station by this fall.

In 2002 and 2003 the he Conservancy and the Corps completed the planning for the addition of BMK property to the project. The SEIR-EIS (the subject of this recommendation) was completed in April 2003; however, the Corps has delayed the completion of the Record of Decision pursuant to the National Environmental Policy Act pending approval by Congress. It is now hoped that the BMK portion of the project will be added to the federally authorized Hamilton Wetland Restoration Project as part of the Water Resources Development Act of 2005 (WRDA), which is currently before the U.S. Congress. If the expanded project is authorized by Congress, the PCA will be amended to include the BMK property and the Conservancy would likely need to commit additional funding to the project. Based on federal appropriations, the Conservancy's funding is adequate to fund the project until 2007 (see Project Financing Section, below).

Project Description:

Restoration of tidal wetlands on BMK property requires constructing similar features as are proposed for the HWRP. To create tidal marsh, site elevations will be brought back up to mean-higher-high water, a point at which marsh vegetation normally thrives. Raising the site elevation involves the placement of soil or sediment fill, natural sedimentation provided by tidal action, or a combination of both. Therefore the focus of the expanded Hamilton project is on the design and construction of earthen structures, flood control levees, dikes and berms and the placement of large volumes of imported fill, mainly sediment that will be pumped ashore from an offloader located some five miles away from the site, in the deep waters of San Pablo Bay. The SEIR helps assess and disclose to the public, first the impacts of constructing the site features, and second, the changes to the landscape after construction is complete and tidal action is restored to the land.

The Conservancy is the lead agency for the preparation of SEIR which analyzes the impacts of expanding the existing, authorized Hamilton Wetland Restoration Project to include the Bel Marin Keys Unit V property (BMK). The SEIR also modifies the HWRP and its original EIR by analyzing specific information that was not available when the original EIR was certified as complete (e.g. the use of diesel off-loader and booster pump), and changes in the conditions under which the project would be undertaken, which could involve significant new environmental effects (e.g. methylmercury). The specific environmental effects and mitigation measures are more fully described in the "Compliance with CEQA" section of this Staff Recommendation. However, the wetland restoration plan for the HWRP, as described in the original EIR, has not been significantly changed. Rather, the plan has been refined through detailed design work and new information. To the extent possible, that information has been incorporated into the subject SEIR.

Certification of the SEIR is necessary at this time to allow the RWQCB to make the necessary findings required for issuance of a permit for the Hamilton project, scheduled

HAMILTON WETLAND RESTORATION PROJECT

for board hearing this July 20, 2005. The SEIR may also be of value to the Bay Conservation and Development Commission (BCDC) staff in the preparation of the project permit, scheduled for hearing on August 4, 2005.

PROJECT FINANCING:

No cost to the Coastal Conservancy for this action.

The funding for the preparation of the SEIR was a project cost with funding approved previously by the Conservancy. The expenditures for the plan were cost-shared with the Corps on a 50/50 cost sharing basis. If the HWRP is expanded to include BMK, the costs of project implementation would increase; however, the expenditure of funds for an expanded wetland restoration project would be subject to future Conservancy authorization. The project is pending Congressional approval in the Water Resources Development Act. Assuming approval by Congress, future work on the Bel Marin Keys portion of the site will be design and construction work, thus the cost-share ratio would switch to a 75/25 basis. For additional information about the cost of the Hamilton wetland restoration project, see Exhibit 6, Project Cost Summary.

CONSISTENCY WITH CONSERVANCY'S ENABLING LEGISLATION:

Implementation of the proposed project would advance the purposes of Division 21 of the Public Resources Code, by implementing a resource enhancement plan approved pursuant to Chapter 6, and by protecting and enhancing natural habitats within the San Francisco Bay Area pursuant to Chapter 4.5.

In its action to adopt the Hamilton Wetland Restoration Plan on April 22, 1999, the Conservancy found the project to be consistent with Chapter 6 of Division 21, including specifically sections 31252, 31258.5, and 31263.5. The Conservancy also determined the Hamilton Wetland Restoration Project to be consistent with Chapter 4.5, the San Francisco Bay Area Conservancy Program's resource and recreational goals. The expanded project remains consistent with the authority, purposes and objectives of Chapter 4.5 and Chapter 6 of Division 21.

CONSISTENCY WITH CONSERVANCY'S STRATEGIC PLAN GOAL(S) & OBJECTIVE(S):

The combined Hamilton-Bel Marin Keys project is consistent with the Strategic Plan Goals and Objectives as follows:

Consistent with **Goal 10 Objectives A** of the Conservancy's Strategic Plan, the proposed project will, restore and enhance wetlands and other natural habitats and connecting corridors, of regional importance including 277 acres of seasonal wetlands and 122 acres of uplands to serve as wildlife corridors.

Consistent with **Goal 11 Objective B** of the Plan in that the project would create approximately 3.1 miles of Bay Trail ,including 2.66 miles of trail to be constructed

HAMILTON WETLAND RESTORATION PROJECT

immediately as part of the Airfield restoration and two thousand feet of additional trail as part of the BMK addition.

CONSISTENCY WITH CONSERVANCY'S PROJECT SELECTION CRITERIA & GUIDELINES:

On June 25, 2001, the Conservancy found the Hamilton Wetland Restoration Project consistent with the Conservancy's Project Selection Criteria and Guidelines adopted January 24, 2001. Certification of the Supplemental EIR would be consistent with Project Selection Criteria and Guidelines in the same way, and also in the following respects:

Required Criteria

Promotion of the Conservancy's statutory programs and purposes: See the "Consistency with Conservancy's Enabling Legislation" section above.
Consistency with purposes of the funding source: See the "Project Financing" section above.

Support of the public: Comments were received from Bel Marin Keys residents and environmentalists during the public comment period (Exhibit 4). General project support and concern was also received when the first EIS/EIR was drafted in 1998. The project enjoys the broad support of labor, industry and environmental interests. Additionally the project has the support of the County of Marin, City of Novato, Department of Fish and Game, the Regional Water Quality Control Board, USEPA and the National Marine Fisheries Service. The Conservancy also received numerous letters of support for the purchase of the Bel Marin Keys property in Year 2000.

Need: In order to stay on schedule, major construction of site features on the Airfield needs to occur this summer and fall. The Corps and Conservancy have requested permits from the Regional Water Quality Control Board (RWQCB) and Bay Conservation and Development Commission (BCDC). The Conservancy's certification of the SEIR as lead agency for CEQA is needed in order for these responsible agencies to make CEQA determinations relating to construction activities on the Airfield. Although the Conservancy certified an EIR for the wetland project in 1999, the April 2003 Supplemental EIR contains additional analysis and mitigation measures which will be of benefit to the project during the permitting process and project implementation.

Additional Criteria

Urgency: The Army is seeking to begin sediment delivery to Hamilton from the Port of Oakland deep draft navigation improvement project this fall, and permits are pending for construction of site features on the Airfield property. Certification of the SEIR at this time is needed to allow the Hamilton Airfield restoration stay on schedule and be implemented in the most cost-effective and environmentally beneficial way. Delays in the implementation of the HWRP may mean that the site cannot accept dredged sediment

HAMILTON WETLAND RESTORATION PROJECT

from the Port of Oakland's minus 50-foot navigation improvement project and other San Francisco Bay dredging projects, thereby further delaying the implementation of planned aquatic disposal reductions, as outlined in Long Term Management Strategy (LTMS) policies.

Resolution of more than one issue: Certification would provide a more robust and up-to-date environmental analysis of the Hamilton Airfield restoration while at the same time enabling planning and design work for the BMK portion to move forward, assuming authorization in the Water Resources Development Act.

Conflict resolution: The BMKV Expansion of the Hamilton Wetland Restoration Project will more than double the amount of beneficial dredge materials that can be used, thereby further resolving the longstanding conflict between environmentalists and the maritime industry related to the impact of aquatic disposal of dredged sediment. The project will accept clean sediments for beneficial reuse that would otherwise be disposed of in the bay or ocean.

Innovation: Similarly to the Hamilton project, the expanded project includes several innovative features that make it of interest to restoration advocates worldwide. First, the project uses dredged sediment as fill and as the future marsh surface. Secondly, the project will result in tidal and non-tidal wetlands on a large scale, and the site is situated within the San Pablo Bay margin where numerous other wetland restoration efforts are underway.

Realization of prior Conservancy goals: See "Project History" and "Strategic Plan" Sections above.

CONSISTENCY WITH SAN FRANCISCO BAY PLAN:

The project will assist in the implementation of BCDC's San Francisco Bay Plan which contains policies to protect and restore marshes and mudflats (pages 9 and 1012): "Marshes and mudflats should be maintained to the fullest possible extent to conserve fish and wildlife and to abate air and water pollution." And ". . . the quality of existing marshes should be improved by appropriate measures wherever possible." And Fish and Wildlife policy (Page 7, Policy 1) ". . . to the greatest extent possible, the remaining marshes and mudflats around the Bay . . . should be maintained." The project would also be consistent with the Bay Plan dredging policies (pages 21-22) that promote the use of dredged material as a resource and specifically policy 4 that states: "To ensure adequate capacity for necessary Bay dredging projects and to protect Bay natural resources, acceptable non-tidal disposal sites should be secured and designated. Further, disposal projects should maximize use of dredged material as a resource, such as creating, enhancing, or restoring tidal and managed wetlands. . . ."

The Bay Plan identifies the Hamilton Airfield and coastal salt marsh area as high-priority areas for wildlife use. The plan was amended (Bay Plan Amendment No. 1-95) to change the airport priority use designation and policy note for the former Hamilton airfield parcel. The plan contains the following policy:

HAMILTON WETLAND RESTORATION PROJECT

Develop comprehensive wetlands habitat plan and long-term management program for restoring and enhancing wetlands habitat in diked former tidal wetlands. Dredged materials should be used whenever feasible and environmentally acceptable to facilitate wetlands restoration.

Therefore, implementation of the Hamilton Wetland Restoration Project is necessary to carry out that Bay Plan policy.

COMPLIANCE WITH CEQA:

The Hamilton Wetland Restoration Project was analyzed in an Environmental Impact Statement and Report, published December of 1998 and certified by the Conservancy in April 1999.

In accordance with the California Environmental Quality Act (CEQA), the Conservancy has undertaken an analysis of the environmental impacts resulting from restoration of tidal and seasonal wetlands at the Hamilton Airfield and BMK properties. A SEIR (Exhibit 1) was prepared and circulated for public comment during the period July 19 2002 through September 13, 2002. This work was undertaken in order that the proposed project be included in the Water Resources Development Act (WRDA) of 2003. However, the WRDA legislation did not move forward that year or in 2004. Recent developments by the Corps, project stakeholders and Congress suggest that a WRDA bill is likely for passage this year. Furthermore, as mentioned above, the Conservancy and the Corps have applied to the RWQCB and BCDC for permits to construct the Airfield portion of the project; those hearings are scheduled for July and August, respectively. It is desirable that the SEIR be certified now so that those agencies may rely on the SEIR and take actions as “responsible agencies” under CEQA during the permit process.

In an approach similar to the original Hamilton EIR, the SEIR examined three project alternatives.

Alt 1: Tidal wetlands with an enlargement of Pacheco Pond and dredged material placement;

Alt 2: Dredged material placement with an enlargement of Pacheco Pond and seasonal wetlands;

Alt 3: Natural sedimentation with an enlarged Pacheco Pond, commonly referred to as the no-fill alternative.

The Conservancy/Corps project team concluded, after a comprehensive stakeholder process, that Alternative 2 was the preferred alternative, because it provides all the desired habitat benefits while providing flood water detention for the BMK south lagoon and a natural buffer between the tidal wetlands and the BMK residents (specifically a concern voiced by the BMK community).

The SEIR found that the project could result in significant environmental impacts but that under Alternative 2, nearly all these impacts could be reduced to a level that is less-than-

HAMILTON WETLAND RESTORATION PROJECT

significant by monitoring construction activities, making minor changes to the design and incorporating noise-reducing construction practices. These impacts, and recommended mitigation measures are summarized in Table ES-2 of the SEIR and in the Mitigation and Monitoring Plan attached as Exhibit 5.

The SEIR found that there are a total of 106 potential environmental impacts amongst the three alternatives, of which five are beneficial (positive impacts) and two can not be mitigated to a level of insignificance. The remaining impacts, mostly concern biology (44), hydrology (11) and water quality (10). These impacts can be mitigated by changing the proposed project slightly, incorporating additional construction approaches, scheduling and phasing activities, avoiding sensitive habitats, and by increasing the level of project monitoring.

The SEIR concludes that two significant impacts, which are common to all three alternatives, could have unavoidable adverse environmental impacts. However, staff feels strongly that the environmental and economic benefits of the Hamilton Wetland Restoration project outweigh and render acceptable these impacts. Moreover, there is a great deal of scientific uncertainty regarding the significance and efficacy of mitigating one of these impacts. Unavoidable adverse environmental impacts may be considered acceptable under provisions of CEQA where the lead agency finds that the project's specific economic, legal, social, technological or other benefits outweigh the unavoidable adverse impacts. In view of tremendous benefits of restoring wetlands on the property, staff is recommending that the Conservancy make such findings – known as a “Statement of Overriding Considerations” - with respect to these impacts.

First, the SEIR concludes that the future wetland, like all wetlands, will create bioavailable forms of mercury that could accumulate through the food chain, having a potential impact on the health of some higher order animal species. Elemental forms of mercury are found to occur naturally in many bay area soils and sediments. Sediment placed at the site, once flooded to make the new wetland, will have the potential to create mercury that could accumulate through the food chain. [SEIR page 4-64]

Natural chemical transformations, facilitated by microbial action, will convert some of the mercury in the sediment to the more bioavailable methylmercury. Methylation potential is only slightly correlated to sediment concentration, and many other chemical and physical factors likely contribute to whether a sediment produces more or less methylmercury. Further complicating the issue is the fact that such production rates are likely transient and will change as the marsh matures and evolves over time.

The SEIR recommends that the Conservancy and Corps carry out a Methylmercury Adaptive Management Plan, which would be drafted with input from key resource and regulatory agencies and which would describe monitoring and corrective actions, if necessary, to minimize the effects of methylmercury production. Mercury production in aquatic systems is an area of active research; however, no corrective actions are currently known or recommended. Because scientific understanding of this impact is insufficient to

HAMILTON WETLAND RESTORATION PROJECT

provide definitive conclusions about the significance of this impact or the efficacy of mitigation, this impact is currently assumed to be significant and unavoidable.

Secondly, the SEIR also concludes that the driving of pilings required for the construction of the sediment offloading platform may have adverse impacts to fish and marine mammals. The SEIR recommends that the Corps and Conservancy should consult with the Department of Fish and Game and the National Marine Fisheries Service to determine the appropriate corrective actions. These actions include timing of pile driving with respect to certain fish species, and monitoring of marine mammal populations and noise levels. While the impact is expected to be temporary and will not affect these species at a population level, there is the potential for individual mortality of listed fish species and harassment of marine mammals even with mitigation. [SEIR page 4-115]

Under terms of the PCA and federal project authorizations, the project is to be implemented by the Army Corps of Engineers pursuant to federal law, policy and procedure. The Corps developed the SEIR-EIS jointly with the Conservancy and pursuant to provisions of the National Environmental Policy Act (NEPA), and will be primarily responsible for implementing mitigation measures. As the non-federal project sponsor, the Conservancy will participate in project management decisions, keeping track of the progress of the project and the implementation of project mitigation. In compliance with CEQA Guidelines, Conservancy staff has prepared a Mitigation Monitoring and Reporting Plan (Exhibit 5), pursuant to which the Conservancy will report annually to the public on the progress of the project and the status of mitigation measures. It should be noted that the project would also return short and long term benefits (positive impacts). For example, there would likely be a minor reduction in flood frequency in the local Streams due to the inclusion of Pacheco Pond into the project.

Staff will file a Notice of Determination upon approval by the Conservancy.