



Midpeninsula Regional
Open Space District

LEGISLATIVE, FINANCE, AND PUBLIC AFFAIRS COMMITTEE

R-18-146

December 4, 2018

AGENDA ITEM 3

AGENDA ITEM

Legislative Proposals for 2019

GENERAL MANAGER'S RECOMMENDATION *den*

Review and provide input on legislative proposals for the 2019 legislative session, and consider forwarding the legislative proposals to the full Board of Directors for approval.

SUMMARY

The Legislative, Funding, and Public Affairs Committee (LFPAC) will consider two potential bill ideas to pursue during the 2019 State Legislative Session. The first bill, initiated by the Midpeninsula Regional Open Space District (District), would seek to exempt the District from permits required by a local jurisdiction for habitat restoration projects, maintenance projects, fuels management projects, and minor site improvements in a manner similar to the exemption that now applies to the California State Department of Parks and Recreation (State Parks). The second bill is a response to a co-sponsor request by State Senator Bill Dodd's office to enable regulation of nurseries that supply plants to public agencies for land restoration work in order to reduce the prevalence of Phytophthora contamination. Both bills are in a preliminary development stage awaiting input from LFPAC and early feedback from partner agencies.

DISCUSSION

Potential Legislation for the 2019 Legislative Session:

A number of legislative topics have arisen over recent months that the District may wish to pursue in the 2019 Legislative session.

- **Local and County Permit Exemptions.** As a 45-year old public agency whose mission includes the protection and restoration of the regional natural environment, the District has continuously demonstrated its expertise in effective resource stewardship and land management. Unfortunately, the District regularly faces a litany of overlapping and redundant jurisdictional permitting processes at the local, county, state, and federal level that increases project costs and extends project delivery times, creating an excessive financial burden on the public taxpayer. The proposed legislation the District is seeking would exempt it from local and county permitting requirements in a manner similar to State Parks. For the District, an exemption would be explored for certain types of low-impact, minor work, including habitat restoration projects (e.g. pond berm repairs, natural site re-contouring and re-vegetation), maintenance projects (e.g. ranch road repairs,

retaining wall repairs), limited fuels management (e.g. fuel clearance, new disc lines), and minor site developments (construction of narrow trails and pedestrian bridges).

- **Phytophthora regulation for nurseries who contract with public agencies.** In October, the staff of State Senator Bill Dodd (Napa) approached the District for help in formulating new state legislation to address the increasing prevalence of Phytophthora pathogens encountered during native plant restoration activities. This legislative effort follows on the coattails of *SB 287 (Dodd): Habitat restoration: invasive species: Phytophthora pathogens*, which the District supported. SB 287 sought to require the California Department of Fish and Wildlife to adopt regulations minimizing the risk of Phytophthora pathogens in plant materials used for habitat restoration projects authorized, funded, or required by the state. The bill failed to advance due to strong pushback from large commercial nurseries in southern California. The problem of Phytophthora contamination was described in a March 23, 2017 bill analysis for the Senate Natural Resources and Water Committee:

More than 50 Phytophthora (Greek for “the plant destroyer”) species, including species detected for the first time in the U.S. and California, and new hybrid species, have been identified in habitat restoration plantings and native plant nurseries in California. Many native plants have little or no resistance to these introduced pathogens, which can persist in the soil and proliferate on the plants they infect, causing irreparable damage to sensitive habitats.... Phytophthora is a concern in restoration activities because nursery plants are placed into a wildland habitat providing a direct pathway for pathogen introduction and spread. Once these pathogens get into the wild, they are very difficult, if not impossible, to eradicate... As the California Invasive Plant Council notes, agencies such as CDFW, the Wildlife Conservation Board, California State Parks, and other agencies need to be able to rely on safe stock from native plant nurseries when they undertake restoration projects. Other supporters point out that the best defense against Phytophthora pathogens becoming established in wildlands and other areas is to prevent their inadvertent introduction through infested nursery stock. Many of the supporters also point out that the death of plants in restoration projects increases the long-term costs of restoring these habitats, adds future remediation costs to the public, and places adjacent native vegetation at risk of infection.

While the bill details are not yet finalized, the new bill proposal will attempt to promote the use of industry recognized best management practices (BMPs) in nurseries across the state through preferential state contracting incentives. While there is nothing in law prohibiting local agencies from creating a preference requirement, state agencies need specific authorization to do so. With so many different agencies involved in and contracting for environmental mitigation work, the sheer number of state contracts may be enough to begin influencing nursery industry behavior.

Legislative Process:

The legislative process in general is very fluid and bills may change – sometimes substantially – throughout the course of the session. Pending Board support of the two recommended legislative proposals, staff will work with the District’s legislative consultants to continue refining the proposals with the end goal as noted above in mind. In some cases, bills may take more than one

year to complete or may have so many amendments that the bill ceases to meet the original objectives. Opposition by stakeholder groups may also serve to dilute bill language or kill the bill entirely. Periodic updates would be provided to LFPAC and the full Board as part of this process to periodically check in on bill status and confirm that the bills remain a priority based on the direction these legislative proposals take. The benefit of introducing a bill in the first year of a two-year session is that if hurdles are encountered, the District will have additional time to work out issues and achieve the consensus necessary to eventually move the bill to the Governor's desk.

FISCAL IMPACT

The estimated cost of pursuing permit exemption legislation is \$5,000 per month and would be handled by a new contract. Since the District is not sponsoring the Phytophthora legislation, costs will be absorbed by existing legislative consulting contracts and staff resource allocations. There are sufficient funds in the Public Affairs Department budget to cover the cost of the recommendation.

BOARD COMMITTEE REVIEW

This item was not previously reviewed by a Board Committee.

PUBLIC NOTICE

Public notice was provided as required by the Brown Act. No additional notice is required.

CEQA COMPLIANCE

This item is not a project subject to the California Environmental Quality Act.

NEXT STEPS

Following LFPAC consideration and input, the General Manager will forward LFPAC's recommendations for consideration and approval to the full Board of Directors in January. If the legislative proposal for Local and County Permit Exemptions is supported by the full Board, a legislative author will be approached to introduce the bill in February.

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