



Midpeninsula Regional
Open Space District

R-19-35
Meeting 19-08
March 27, 2019

AGENDA ITEM 10

AGENDA ITEM

Local/County Permit Case Studies

GENERAL MANAGER'S RECOMMENDATIONS *den*

1. Receive permit case study information to understand the complexities, redundancies, and cost/schedule factors of the multi-layer permitting processes that affect Midpeninsula Regional Open Space District projects.
2. Direct the General Manager to continue to gather more information and engage in additional discussions with local jurisdictions and return to the Board with findings and options in the fall/winter.

SUMMARY

Earlier this year, the Midpeninsula Regional Open Space District (District) considered pursuing state legislation to exempt local/county permits for minor site development and restoration work on District lands. During prior discussions with the Board about District permitting issues, the Board of Directors (Board) raised several questions about the permit redundancies and multi-regulatory level reviews of District projects. These questions prompted a suggestion for the General Manager to provide permit case studies that highlight ongoing permit complexities, redundancies, and cost/schedule factors that continue to affect the delivery of District projects. On March 27, staff will provide the Board an overview on the project delivery process to describe the Board approval process and multiple public review opportunities that exist within District processes, and three case studies to illustrate the District's ongoing permitting issues.

DISCUSSION

With a mission that includes the protection and restoration of the natural environment, the District has continuously demonstrated its expertise in effective resource stewardship and land management for nearly 50 years. The District regularly encounters overlapping and redundant jurisdictional permitting processes at the local, county, state, and federal levels that can substantially increase project costs and extend project delivery times, creating an excessive financial burden on public taxpayers. To this end, staff is examining a variety of ways to mitigate these impacts.

This report provides an overview of the District's project delivery process and three case studies to illustrate major ongoing themes and issues related to project permitting.

Project Delivery Overview:

The District follows a robust project delivery process with multiple public meetings at which different phases of a project are reviewed by the Board and the public. Typically, a project goes through conceptual design, environmental review, permitting, final design, bid and award, construction, and project closeout phases. For large, complex projects, or smaller projects with policy implications, a Board Committee reviews and the full Board approves the conceptual designs at publicly noticed meetings. In addition, the full Board approves the environmental review findings and any awards of contract for work over \$50,000, also at publicly noticed meetings. For small to medium scale projects that implement prior Board-approved plans or policies, which had previously gone through prior Committee and Board reviews and approvals at public meetings, the Board confirms and approves the project scope, schedule, and budget as part of the annual Action Plan and Budget approval process, and approves any awards of contract for work over \$50,000. If a project significantly deviates from the Board-approved scope, schedule, budget, or policy framework, the General Manager would bring forth the project to the Board for review and approval regardless of the size of the project. This design review and approval process provides the level of detail necessary for the Board to direct the allowable uses, the specific amenities and improvements, overall design character, use of green materials, location, scale, connectivity, cost, and any other project specific elements important to the Board. The design review and approval process also allows the Board to provide oversight on conformance to District Policy and design standards. All Board discussions take place in public meetings (notice of which is advertised per the Brown Act) that provide the public with opportunities to receive information, provide comments, and raise issues, concerns, or suggestions to the Board as part of the District's transparent public participation process during critical project phases.

In addition, the District follows the California Environmental Quality Act (CEQA) process to review the environmental impacts of and identify mitigate measures for District projects. Consistent with the CEQA requirements, the District records Notices of Exemption with the appropriate County Recorder's Office, who post the notices for public review. Similarly, the District sends a Notice of Preparation (NOP) for Environmental Impact Report (EIR) or a Notice of Intent (NOI) to adopt Negative Declaration (ND)/Mitigated Negative Declaration (MND) to the State Clearinghouse. The State Clearinghouse notifies the appropriate regulatory agencies, such as the US Army Corps of Engineers (USACE), the California Department of Fish and Wildlife (CDFW), the Regional Water Quality Control Board (RWQCB), and counties of the availability of the environment documents for review. These permitting agencies have the opportunity to review and comment on District projects through the CEQA process. Another key feature of the CEQA process is the opportunity for the public to review and provide input on District projects and the related environmental documents through public scoping meetings and public hearings.

Another component of the District's project delivery process is the internal review of projects to ensure that these adhere to the District's mission and comply with Board-approved District policies. Staff applies a high bar to project design to ensure that projects, per the mission statement, '*protect and restore the natural environment and provide opportunities for ecologically sensitive public enjoyment and education*'. The District's mission is reinforced in all Board-adopted policies, such as the Resource Management Policies and Coastal Service Plan, which staff rely on to guide the design and implementation of District projects.

Themes for Permitting Issues:

Issues encountered during project permitting include:

1. **Federal/state/local overlap and redundancy (permitting and public process):**
Significant overlap of regulatory subject area and public review processes exists across the federal, state, and local levels. For example, a typical culvert replacement project on a District road may be within the following jurisdictional areas and subject to the following permits: federal Clean Water Act (US Army Corps of Engineers); California State Porter Cologne Act (California Regional Water Quality Control Board); California Fish and Game Code (California Department of Fish and Wildlife); and federal Clean Water Act stormwater discharge laws (County or City). Depending upon the size and surrounding terrain where the project is located, local agency grading and/or zoning permits may also be required.
2. **Expertise – government agency with nearly 50 years of experience:**
The District has built a skilled workforce and is recognized at a national level for its expertise in managing natural lands, as well as planning, constructing, and maintaining trails within the natural landscape. This expertise is recognized by many of the staff working at the federal and state regulatory agencies who partner with the District on many programs. They also recognize the District’s role in enacting special status species recovery and managing rare and sensitive habitats.

When seeking permits from local agencies, District staff periodically encounter staff responsible for issuing permits who do not understand or have experience with projects in natural lands and who apply conditions of approval for the built/urban environment that are not well suited for restoration projects located in the natural environment. District staff is then confronted with local permitting processes and conditions that are difficult to implement in the natural landscape and are ineffective and inappropriate for the wildland setting. For example, local agency tree mitigation requirements are often not effective and inappropriate for projects located in dense forests in the middle of an open space preserve with overstocked fuels.

3. **Multiple local agency jurisdictions with varying design standards that result in inconsistent conditions of approval:**
The District faces a relatively unique challenge in the permitting of projects due to the multiple local jurisdictions overlapping District boundaries. Because District boundaries encompass 20 different local governmental agencies (17 cities and 3 counties), the variability in the types of local regulatory control and application of ordinances is significant. For District staff responsible in obtaining permits for projects, it can be a confusing process and one where the application of similar ordinances and rules varies greatly. This variability can even be seen within the same jurisdiction due to staff turnover from year to year.

Case Studies:

Below are three examples of projects that illustrate the difficulties encountered by the District:

1. **Harkins Bridge Replacement:**

Project Overview:

This project included the replacement of a 50-foot long vehicle bridge in a sensitive environment and a complex regulatory setting in lower Purisima Creek Redwoods Open

Space Preserve. The Board awarded a design contract, selected the preferred bridge alternative, certified the CEQA document, and awarded a construction contract at multiple, publicly noticed meetings.

Permit Process:

The permitting process included review and approval of the project plans, details, and environmental review findings at the federal, state, and local levels. The following is a list of the required permits:

- Section 404 permit from the USACE
- Biological opinion from the US Fish and Wildlife Service (USFWS)
- Streambed alteration agreement from CDFW
- Section 401 certification from the RWQCB
- San Mateo County (County) Resource Management permit
- County Stormwater permit
- County Demolition permit
- County Building permit
- County Coastal Development permit

Permit Issues:

The extensive and multi-regulatory permit process demonstrates the complex and interlinked nature of local, state, and federal permits. The County permit process required significant staff resources for the District and the County. Both the District and the County conducted separate public review and comment processes, duplicating the public outreach and associated taxpayer costs. Meanwhile, always looming is the short construction window, dictated by local species protection considerations and weather. As a result, permitting timelines and delays have repeatedly affected the potential of missing the originally scheduled construction window, thereby postponing construction by up to a year. Permits for the Harkins Bridge project took two and half years to secure from the time of application to receipt.

2. Oljon Trail:

Project Overview:

The project consisted of the design and construction of a new 1.3-mile multi-use recreation trail to connect the El Corte de Madera (ECDM) parking area with the southern portion of the preserve. Additionally, 0.66 miles of existing trail and 800 feet of old logging roads were abandoned and restored in order to achieve the goals of the Board-approved ECDM Watershed Protection Program. Watercourse crossings were installed in seven locations, consisting of two wooden bridges and five wooden puncheons (a structure similar to a low boardwalk).

Permit Process:

The permitting process required a multi-jurisdiction review and approval of the project plans, details, and environmental review findings. Local permits were issued by San Mateo County, covering site grading and the construction of bridges, retaining walls, and puncheons. An agreement with the CDFW was also required to cover the construction of bridges and puncheons within the riparian areas. The agreement with CDFW was secured prior to issuance of permits from San Mateo County. Below is a summary of the permitting agency and types of permits issued:

- Streambed Alteration Agreement from CDFW
- San Mateo County (County) Timber Preserve permit
- County Grading permit
- County Architectural Review permit
- County Building permit

Permit Issues:

The permitting process with San Mateo County took 19 months from application to issuance. Multiple plan checks and reviews required the District to update and resubmit project plans in order to comply with County design requirements. These requirements are generally focused on urban design standards that do not translate to the type of low-impact public recreational projects that the District constructs in a rural setting. For example, a County Planning Department plan checker took the position that no trail construction could occur near or under tree canopy within the Preserve. This highlights the County's unfamiliarity of District Preserve lands and how the District manages the potential impacts of public recreational trail development. This unfamiliarity of the District's trail construction and environmental preservation work leads to delays in the local permitting process, and significant staff time and resources to educate other agency staff, address comments, and resubmit plans. Compared to the 19-month County permitting timeline, the State's CDFW 1600 Agreement was issued only seven months after application.

Additionally, the construction and monitoring requirements incorporated into the project by the District, as detailed in the State CDFW 1600 Agreement, and the District's project Stormwater Pollution Prevention Plan (SWPPP) and MND, were already more stringent than San Mateo County's final conditions of permit approval. San Mateo County's Grading Permit included 19 conditions of approval which were repeated verbatim from the project MND prepared by the District. This verbatim application of the District's own project requirements and CEQA mitigations occurs regularly at the local permitting level. In the end, the additional and lengthy review at the local level, and the costs to the taxpayer, resulted in no substantive changes to the project.

3. Five Restrooms/Four Jurisdictions:

Project Overview:

The District is seeking to improve five vault toilet restrooms at parking areas located in four different local agency jurisdictions. Four of the restrooms will replace existing vault toilets, and one will be a new addition to that parking area. Below is a summary of the local jurisdictions who require permits for the new restrooms:

San Mateo County:

- Purisima North Restroom Replacement
- Russian Ridge Restroom Replacement

City of Palo Alto

- Monte Bello Restroom Replacement

Town of Portola Valley

- Windy Hill Restroom Replacement

Town of Los Gatos

- Kennedy Trail New Restroom

The District intends to use a standardized pre-fabricated restroom design (similar to what exists at new parking areas) and combine all five restrooms together into one Design-Build Entity (DBE) contract to attract more contractors. The DBE would be responsible for design, permitting, procurement, and installation at all five sites. This approach would increase interest from bidders, offer an economy of scale, and a reduction in the construction window due to the standardized and repetitive nature of the work.

Permit Process:

The permit process for each of the four jurisdictions will generally follow the same permit review process:

Planning Department → Building Department → Specialty Departments

The county or city Planning Department typically completes the application intake and determines compliance with zoning, land use, and general plan ordinances. Any non-compliance issues at this level may result in exemption requests, public notices, and/or commission hearings.

The Planning Department then routes the plans to the Building Department to complete the detailed review of technical documents and construction plans. Local and/or state building codes determine compliance at this level, and staff identify technical exemptions, such as grading permit exemptions. At this stage, the plans also route to specialty departments, such as Fire and Environmental Health, as warranted.

Permit Issues:

Although the four replacement restrooms will follow all applicable jurisdictional and District Best Management Practices (BMPs), the District anticipates that each local government agency will impose its own unique permit requirements for each site. Even though the permit review process is similar for each jurisdiction, there are differing design standards, permit thresholds, and exemption criteria, which could result in time delays, overlapping permits, and inconsistent requirements that will need to be sorted to ideally reach a consensus among amongst all regulatory jurisdictions.

For example, some of the restrooms may be subject to an Architectural Review process, which would be unique to each jurisdiction. The process for each County/City may differ in design criteria, qualitative factors, and public input. It is reasonable to expect that these restrooms would go through substantive review and incur time delays as a result.

For planning purposes, each jurisdiction provided an estimated permit review and processing time. The estimated time difference between the jurisdictions is up to 12 months, not including delays due to public noticing requirements, responding to permit conditions, and design revisions. It will be very challenging to keep all five restrooms on the same project schedule. If an economy of scale is desired for construction, the District may need to push out the bidding process a year or more, which may negate the cost savings that could have been realized by packaging the replacements under one contract if construction costs continue to increase over time.

Based on preliminary conversations with each jurisdiction, the District anticipates differing interpretations of local codes, which can modify the outcome at each site since the building departments of many local municipalities indicate that they hold jurisdiction over pre-fabricated buildings.

The San Mateo and Santa Clara County Departments of Environmental Health will need to issue permits for the restrooms in their respective jurisdictions. Because both departments have ordinances discouraging the use of vault toilets, the District will need to apply for a variance at each site. The criteria for granting the variance includes proving infeasibility of septic sewer and domestic water systems, yet there are no quantitative benchmarks to determine infeasibility. Instead, County staff will review each site individually, and a determination of infeasibility will be made at the sole discretion of the reviewer. It is reasonable to anticipate different outcomes based on the lack of definitive standards.

These case studies and the District's project delivery process will be discussed in greater detail on March 27, and the Board will have an opportunity to ask questions to further understand the Board and public review processes of District projects and the overlapping and redundant permitting processes that are currently in place.

FISCAL IMPACT

There is no cost associated with this item.

BOARD COMMITTEE REVIEW

This item has not been reviewed by a 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

The District will continue to evaluate potential options for streamlining the local permitting process, including the potential for a future legislative proposal to streamline or exempt specific permitting processes for minor site development and restoration work. This year, staff will continue to gather more information and engage in additional discussions with local jurisdictions and return to the Board with findings and options in the fall/winter.

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