



Midpeninsula Regional  
Open Space District

R-21-121  
Meeting 21-28  
September 22, 2021

## AGENDA ITEM 5

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Regional Water Quality Control Board Permit Fees for the Open Space Maintenance and Restoration Program

### GENERAL MANAGER'S RECOMMENDATION *den*

Authorize the General Manager to pay a one-time permit application fee to the Regional Water Quality Control Board for the Open Space Maintenance and Restoration Program in amount not-to-exceed \$75,000.

### SUMMARY

The Midpeninsula Regional Open Space District (District) obtains environmental permits for ongoing maintenance, operations, and construction activities that may affect protected waters and species. The District utilizes a mix of “programmatic” permits that cover many routine activities within District boundaries and “individual” permits that cover specific, non-routine projects. Staff have been working with regulatory staff from the US Army Corps of Engineers (Corps), US Fish and Wildlife Service (USFWS), Regional Water Quality Control Board (RWQCB), and California Department of Fish and Wildlife (CDFW) to refine a programmatic permitting approach for all routine land management activities described as the District’s Open Space Maintenance and Restoration Program (MRP). The RWQCB has a one-time permit application fee for this 5-year permit that covers the Open Space Maintenance and Restoration Program, which may cost up to \$75,000. Authorizing the General Manager to pay this one-time fee will allow the RWQCB to process the permit. There are sufficient funds in the adopted Fiscal Year 2021-22 (FY22) project budget to cover the cost of the recommendation.

### DISCUSSION

This permit application to the RWQCB supports the District’s routine land management activities that falls within the MRP, including road and trail maintenance, Integrated Pest Management, the Wildland Fire Resiliency Program, and habitat restoration projects. The District has had a permitting agreement with the RWQCB since 2010. In 2018, the RWQCB required the District seek a similar agreement with the Corps to support their joint authorities under the Clean Water Act in order to renew the permitting agreement. In support of this new permitting agreement with the Corps (called a Regional General Permit), District staff developed a consolidated program (MRP) for all State and Federal environmental permitting agencies. The MRP provides a comprehensive approach to all covered activities with respect to protected waters and species. The permit applications to each agency are to be submitted concurrently in order to address any comments holistically within the MRP and between agencies.

RWQCB permit fees can only be estimated at this time based on the scale and elements of the proposed program; the exact cost will be determined by RWQCB staff once the materials are submitted for their review. The current estimate is \$55,000. By authorizing the General Manager to approve a permit fee payment in an amount not-to-exceed \$75,000 in advance of the final cost calculation, the District will be able to expediently process the payment and avoid the anticipated fee increases that are scheduled for October/November. In addition to the one-time permit application fee, additional annual permit fees are estimated to be approximately \$2,500.

In July of 2018, the Board of Directors (Board) authorized the General Manager to enter into a contract with Horizon for the first phase of work to determine the best programmatic environmental permitting approach for the District for a total not-to-exceed amount of \$99,734 (R-18-90). In April of 2019, the Board authorized the General Manager to amend the contract with Horizon to undertake the second phase of work of obtaining the necessary permits for an amount not-to-exceed \$799,563 (R-19-54). Their scope of work does not include the permit application fee.

### FISCAL IMPACT

The FY22 adopted budget includes \$265,000 for the Programmatic State and Federal Environmental Permitting project 80034-44-100000. There are sufficient funds in the project budget to cover the recommended action.

<b>Programmatic State and Federal Environmental Permitting 80034-44-100000</b>	<b>Prior Year Actuals</b>	<b>FY22 Adopted</b>	<b>FY23 Projected</b>	<b>FY24 Projected</b>	<b>Estimated Future Years</b>	<b>TOTAL</b>
<b>Total Budget:</b>	<b>\$420,404</b>	<b>\$265,000</b>	<b>\$65,000</b>	<b>\$0</b>	<b>\$0</b>	<b>\$750,404</b>
Spent-to-Date (as of 08/25/21):	(\$420,404)	\$0	\$0	\$0	\$0	(\$420,404)
Encumbrances:	\$0	\$0	\$0	\$0	\$0	\$0
Regional Water Quality Control Board Permit Fee:	\$0	(\$75,000)	\$0	\$0	\$0	(\$75,000)
<b>Budget Remaining (Proposed):</b>	<b>\$0</b>	<b>\$190,000</b>	<b>\$65,000</b>	<b>\$0</b>	<b>\$0</b>	<b>\$255,000</b>

The recommended action is not funded by Measure AA.

### BOARD AND COMMITTEE REVIEW

The Planning and Natural Resources Committee received an overview presentation of the Open Space and Maintenance Program on January 26, 2021 ([R-21-12](#)).

### PUBLIC NOTICE

Public notice was provided as required by the Brown Act.

## **CEQA COMPLIANCE**

The payment of a permit fee is not a project subject to the California Environmental Quality Act. The implementation of the program was analyzed in an Initial Study and Mitigated Declaration (IS/MND), which was circulated for comments on August 5, 2021 and public comment closed on September 7, 2021. One comment was received from the Department of Transportation (“Caltrans”), regarding potential temporary access impacts to the State Right of Way and noise concerns. These comments are sufficiently addressed in the IS/MND through mitigation measures TRANS-1 (ensures emergency vehicle ingress/egress is provided through District preserves, including notification to Caltrans as needed), and NOI-1 (ensures noise impacts to sensitive receptors and residences are minimized). These comments did not raise any significant new environmental impacts or result in any changes to the conclusions of the IS/MND. The Certification of the Open Space and Maintenance Restoration Program CEQA is scheduled for the September 22, 2021 Board meeting.

## **NEXT STEPS**

Should the Board approve the General Manager’s recommendation, staff will submit the RWQCB permit application, work with RWQCB staff to determine the application fee, and pay the permit application fee. Negotiations on the permit will follow with the RWQCB and other agencies.

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