



Midpeninsula Regional  
Open Space District

R-19-04  
Meeting 19-01  
January 9, 2019

## AGENDA ITEM 6

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District Legislative Proposals for 2019

### GENERAL MANAGER'S RECOMMENDATION

Direct the General Manager to pursue two legislative proposals as outlined in the staff report during the 2019-20 State Legislative Session.

### SUMMARY

On December 4, 2018, the Legislative, Funding, and Public Affairs Committee (LFPAC) considered two legislative proposals for the Midpeninsula Regional Open Space District (District) to pursue during the 2019-20 State Legislative Session. LFPAC unanimously referred both items to the full Board for approval.

The first bill, to be initiated by the 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 reduce the prevalence of Phytophthora contamination by regulating nurseries that supply plants to public agencies for land restoration work. Both bills are in a preliminary development stage awaiting Board consideration and early feedback from partner agencies.

### DISCUSSION

#### **Legislative Proposals for the 2019 Legislative Session:**

The following two legislative topics have arisen over recent months for District consideration as part of 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 as follows:

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 direction on 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 contract amendment. This work exceeds the current scope of the current legislative consulting contract, which does not cover District-initiated legislation. Since the District is not the primary sponsor for the Phytophthora legislation, costs to support this bill would be absorbed by the existing legislative consulting contract 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 reviewed by LFPAC on December 4, 2018. Through the course of the review, Committee members asked a number of questions about the proposals as noted below:

### Local/County Permit Exemption Proposal:

1. **Applicability of this bill to other jurisdictions.** Staff responded that the bill is in its formative stage, but conversations with other agencies, coupled with an analysis of state legislature politics would determine its ultimate scope.
2. **Applicability of this exemption to local jurisdictions and taking into account feedback from residents proximate to a project.** Staff responded that while the legislation is still in its formative stage, the District would include outreach to local residents consistent with its current public notification practices as a government agency.
3. **Will the District pursue state permit exemptions, too?** Staff responded that this legislation will only apply to county and local permitting cases within the scope defined, but may be pursued later if circumstances permit.

### Anti-Phytophthora Proposal:

1. **Is the District attempting to establish state-wide methodologies?** Staff responded that the legislation would provide an incentive for nurseries across the state to adopt current best management practices.
2. **Would neighboring land management agencies be required to purchase plants from restricted nurseries only?** Staff responded that no neighboring agency or landowner would be required to adopt best management practices. The legislation provides contracting incentives or other preferential considerations for nurseries that use best

management practices to limit Phytophthora contamination when working specifically with state agencies.

**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**

If the legislative proposal for Local and County Permit Exemptions were supported by the full Board, a legislative author would be approached to introduce the bill in February. With regard to the Anti-Phytophthora bill, staff would work with Senator Dodd's office, fellow co-sponsors, and bill supporters to advance the bill through the state legislature once it is introduced.

Responsible Department Head:

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