



Midpeninsula Regional  
Open Space District

R-19-12  
Meeting 19-02  
January 23, 2019

## AGENDA ITEM 8

### AGENDA ITEM

Local/County Permit Exemptions - Legislative Proposal for 2019

### GENERAL MANAGER'S RECOMMENDATIONS *den*

1. Receive additional information regarding the proposed permit exemption legislation.
2. Authorize the General Manager to initiate a spot bill, in light of impending legislative deadlines, to keep the option of pursuing this bill open during the 2019-20 State Legislative Session.
3. Direct the General Manager to return to the Board with case studies of current permitting hurdles and definitions of work that would be exempted, as well as further information and direction on the scope of the bill, to confirm Board support for this legislative effort.

### SUMMARY

On December 4, 2018, the Legislative, Funding, and Public Affairs Committee (LFPAC) considered pursuing a state legislative proposal during the 2019-20 State Legislative Session that would permit the Midpeninsula Regional Open Space District (District) to receive certain exemptions from local and county permits. LFPAC unanimously referred the item to the full Board for approval.

On January 9, 2019, the full Board heard the legislative proposal for the first time. While several Board members expressed strong support, other Board members requested additional information to consider more completely the proposal and its implications. Ultimately, the Board directed the General Manager to return to the Board to review and confirm the scope of the bill relating to local and county permit exemptions, to receive definitions of the types of proposed exempted projects, and a more complete understanding of the redundant permitting processes that currently exist. The General Manager is preparing to return to the Board on February 13, 2019 to present case studies of permitting hurdles and a list of project type definitions for work that would fall under the proposed permitting exemption. This upcoming meeting will be an opportunity for the Board to reconfirm its delegation of authority for the General Manager to continue pursuing this exemption. Based on the timeline in both Table 1 and the Next Steps section below, the General Manager also expects to bring forward to the Board a more detailed look at the initial bill language in early March, which will provide yet another opportunity for the Board to reconfirm its support for the legislative proposal.

The proposed bill, initiated by the District, would seek to exempt multi-county open space districts covered under Section 5500 of the Public Resources Code from permits required by local or county jurisdictions for habitat restoration projects, maintenance projects, fuels management projects, and minor site improvements. The bill is in a preliminary development stage awaiting Board consideration and more substantive feedback from the potential bill author, partner agencies, and stakeholders. Authorizing the General Manager to broaden negotiations and dialog at this time will provide the necessary window (approximately 4 weeks) to work through potential stakeholder concerns and details of the bill. This will ensure that any bill introduced will have Board support and the greatest chance of success due to the early support and buy-in by partners and stakeholders.

## DISCUSSION

As the District considers legislative avenues to lower project costs and reduce project delivery times, it must work within the process deadlines established by the State Legislature. One avenue that provides more time to work out bill details and build consensus is called a “spot bill.” Spot bills are useful when bill sponsors and lawmakers have not yet fully fleshed out proposed legislation, but need to meet legislative deadlines. These placeholder bills initially contain non-substantive provisions that are replaced at a later date. This year, spot bills must be introduced by February 22 with 30 days to amend them (March 25) with more concrete language.

The process provides the ability for the District to work with a bill author to submit a spot bill and work between now and late March with the Board, partner agencies, and stakeholders to refine the bill concept in order to introduce a beneficial bill that provides benefit to the District and does not elicit undue opposition. Board authorization for the General Manager to initiate a spot bill and proceed with negotiations at this time will help ensure these deadlines are met. Based on the timeline in both Table 1 and the Next Steps section below, the General Manager expects to bring forward to the Board a more detailed look at the initial bill language in early March to confirm the Board’s final Go-No Go decision.

For nearly 50 years, the District has continuously demonstrated its expertise in effective resource stewardship and land management. Unfortunately, the District regularly faces overlapping and redundant jurisdictional permitting processes at the local, county, state, and federal levels that increase project costs and extend delivery times, creating an excessive financial burden on the public taxpayer. Examples of projects that have experienced redundant permitting challenges include:

- Monte Bello Open Space Preserve (OSP) – White Oaks Trail Realignment
- Monte Bello OSP – Stevens Creek Nature Trail Bridges
- Pulgas Ridge OSP – Dusky Footed Woodrat Trail
- Russian Ridge OSP – Ancient Oaks Connector Trail
- Russian Ridge OSP – Silva Driveway associated with Mindego Gateway improvements
- El Corte de Madera Creek OSP – Watershed Protection Program

Attachment 1 illustrates the actual project timeline for the Ancient Oaks Connector Trail, which saw an approximately one year delay due to San Mateo County permitting issues.

The proposed legislation would exempt multi-county open space districts covered under Section 5500 of the Public Resources Code from local and county permitting requirements in a manner similar to State Parks. In the State of California, the only districts to which this would apply are the Midpeninsula Regional Open Space District and East Bay Regional Park District (EBRPD).

Exemptions 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)
- Minor site developments (construction of narrow trails and pedestrian bridges).

This type of exemption is not intended to bypass opportunities for public notification or participation regarding District projects. The District's intent is to continue to provide opportunities for public participation and review of projects. Attachment 2 outlines a typical District project delivery process and highlights where the public would be notified and have the opportunity to review aspects of District projects.

One example of an existing, yet limited, permitting exemption is Santa Clara County's grading ordinance (C12-407). It exempts governmental agencies, including the District, from grading permit requirements provided the agency assumes full responsibility for the work, and the grading meets the County's land use requirements and does not create a hazardous condition, endanger adjacent property or cause a public nuisance. Under this exemption, the District remains responsible for complying with the Clean Water Act, working directly with the State Water Quality Control Board rather than through the County. The District's legislative proposal seeks to build upon this type of exemption across its entire jurisdiction.

### **Legislative Process:**

The legislative process is very fluid and bills may change – sometimes substantially – throughout the course of the session. With Board direction to proceed, the General Manager and staff will work with the District's legislative consultants to engage stakeholders and 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 through the Legislative Committee review process that the bill ceases to meet the original objectives. Opposition by stakeholder groups may also serve to dilute bill language or stop the bill from proceeding through the legislature.

Table 1 outlines the major milestones within the 2019 legislative calendar. It also marks the parts of the process that provide the best opportunity for the Board to receive updates and provide input. The Next Steps section outlines the more immediate District tasks that need to be performed to move the legislative proposal forward.

**Important Note:** The benefit of introducing a bill in this 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 consensus to move the bill to the Governor's desk.

**Table 1: 2019 State Legislative Calendar (attenuated)**

<b>Timeline</b>	<b>Activity</b>	<b>Best Opportunity for Board Input or Updates</b>
January 25	Last day to submit bill requests to legislative counsel	
<i>February 13*</i>	<i>Board meeting to review case studies and exemption definitions</i>	<b>X</b>
February 22	Last day to introduce bills – including spot bills	
March – April	Policy committee hearings - Spot bill must be amended no later than March 25 - All bills must be heard by Committees of the first house no later than April 26	<b>X</b>
May 17	Appropriations Committee Suspense File Hearing	
May 31	Last day to pass bills out of house of origin	
June – Early July	Policy committee hearings in second house	<b>X</b>
July 12 – August 12	Summer recess	<b>X</b>
August 30	Appropriations Committee Suspense File Hearing	
September 13	Last day to pass bills out of the Legislature	
October 13	Last day for Governor to sign or veto bills	

*\* Item not directly part of state legislative calendar, yet shown to note an additional important Board opportunity to reconfirm direction.*

## **FISCAL IMPACT**

The estimated cost of pursuing permit exemption legislation is \$5,000 per month, and would be handled by a sole-source contract amendment to the District's existing legislative consulting contract. This work exceeds the current scope of the current legislative consulting contract, which does not cover District-initiated legislation. 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 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 defined scope, but may be pursued later.

## 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 is supported by the Board, a legislative author will be approached to introduce a spot bill by February 22. This gives the District until March 25 to have the initial draft of legislation amended into the spot bill.

Proposed timeline of activity:

- **January – Early-February:**
  - Return to the Board with case studies and exemption definitions, reconfirm Board direction
  - Engage with San Mateo and Santa Clara County staff and elected officials to introduce the concept and understand potential areas of concern.
  - Engage with affected city staff and elected officials to understand areas of concern.
  - Engage with other affected PRC 5500 Districts – East Bay Regional Parks District – to ensure their concerns are addressed.
  - Engage with bill author’s staff to present bill idea and address their questions (e.g., local receptiveness, potential opposition, public participation opportunities during a project)
- **Mid-February** – Draft spot bill placeholder language submitted to state Legislative Counsel (actual draft language is due by March 25).
- **Before or on February 22** – Spot bill introduced
- **Mid-February – Early March** – Continue to engage with stakeholders to work out issues.
- **Prior to Mid-March** – Review draft legislation with the Board and receive final Board approval to proceed.
- **Mid-March** – Submit amended bill language to state Legislative Counsel.
- **Before or on March 25** – Amend spot bill with new language.

## ATTACHMENTS

1. Ancient Oaks Trail Project Schedule
2. Project Delivery Checklist
3. MROSD Board Policy 1.11 – Positions on Ballot Measures and Legislative Advocacy

Responsible Department Head:  
Korrine Skinner, Public Affairs Manager

Prepared by:  
Joshua Hugg, Governmental Affairs Specialist

## Ancient Oaks Trail Planning Steps

Date	Task
August-11	Board approval of adding new project
August-11	Initiate CEQA
December-11	Initiate Trail Design
May-12	Amend Williamson Act Contract
June-12	Finalize CEQA; Board approves project
January-12	Contracted Tim Best (RFP)
April-12	Geotechnical Investigation - Bridges
April-14	Initial alignment surveys
June-12	Identify potential bridge locations
May-12	Draft bridge and footing design
June-12	Initial trail designs completed
Summer 2012	Review of Draft Designs, Crew meetings to revise bridge and trail plans
November-12	Final Draft Plans, Eng Geo Report
November-12	Submit Grading Permit Application
	SMC Geotech Review Sheet: add'l info
January-13	needed
January-13	Tim Best response to Geotech comments
February-13	SMC Planning Site Visit
March-13	SMC Request for C3 C6 Form
	Comment from SMC Public Works Diana
	Shu that 85% relative compaction not ok for
April-13	trail
April-13	Response from Tim Best re: compaction
	Diana Shu realizes county has no authority
April-13	over trails (no em access)
	SMC Planning Commission approval, with
June-13	conditions
December-13	Revise bridge plans per Peter's Creek Bridge
January-14	Submit Building Permit Application
February-14	Request early grading
	Tim Best revises EC plan to allow early
February-14	grading; resubmittal 1
	Receive SMC Plan Check Comments, revise
March-14	sheet S-2, resumbittal 2
	Resubmittal 3, revised drawings and calcs
March-14	updating code sections

Resubmittal 4, index, civils stamped, trail  
use clarified, parking lot clarification,  
switchback clarified, structural calcs, loads,  
wind analysis, calcs, general notes revised,  
April-14 walking surface slope and guardrails

April-14 Crew mobilizes, decides no early grading

May-14 Ready Letter Issued

May-14 Construction begins

September-14 Construction complete

Attachment 1 -- Ancient Oaks Trail Project Schedule

ANCIENT OAKS TRAIL ACTUAL WORKFLOW TIMELINE																																																												
2011					2012					2013							2014																																											
Aug	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Feb	Mar	Mar	Apr	Apr	May	May	Jun	Jul	Aug	Sep	Sept	Sep	Oct																											
Board approval of adding new project Initiate CEOA					Initiate Trail Design Contracted Tim Best (RFP) Amend Williamson Act Contract Geotechnical Investigation - Bridges Draft bridge and footing design Finalize CEOA; Board approves project					Review of Draft Designs, Crew meetings to revise bridge and trail plans Initial trail designs completed Identify potential bridge locations SMC Request for C3 C6 Form SMC Planning Site Visit Tim Best response to Geotech comments SMC Geotech Review Sheet: addl info needed Submit Grading Permit Application Final Draft Plans, Eng Geo Report							Comment from SMC Public Works Diana Shu that 85% relative compaction not ok for trail Response from Tim Best re: compaction Diana Shu realizes county has no authority over trails (no em access) SMC Planning Commission approval, with conditions SMC Request for C3 C6 Form Tim Best response to Geotech comments SMC Geotech Review Sheet: addl info needed Revise bridge plans per Peter's Creek Bridge Request early grading Submit Building Permit Application								Resubmittal 4, index, civils stamped, trail use clarified, parking lot clarification, switchback clarified, structural calcs, loads, wind analysis, calcs, general notes revised, walking surface slope and guardrails Resubmittal 3, revised drawings and calcs updating code sections Receive SMC Plan Check Comments, revise sheet S-2, resubmittal 2 Tim Best revises EC plan to allow early grading; resubmittal 1 Crew mobilizes, decides no early grading Ready Letter issued Construction begins Geotech prepares final Forms Construction complete Tim Best prepares final inspection reports Final Building and Planning Permits																																			
																																	Planning					San Mateo County Permitting								Permitting								Construction				Final Permit		



2011	Aug	Board approval of adding new project	Planning	
	Aug	Initiate CEQA		
	Sep			
	Oct			
	Nov			
	Dec	Initiate Trail Design		
2012	Jan	Contracted Tim Best (RFP)		
	Feb	Initial alignment surveys		
	Mar			
	Apr	Geotechnical Investigation - Bridges		
	May	Amend Williamson Act Contract		
		Draft bridge and footing design		
	Jun	Finalize CEQA; Board approves project		
	Jul	Identify potential bridge locations		
	Aug	Initial trail designs completed		
	Aug	Review of Draft Designs, Crew meetings to revise bridge and trail plans		
	Sep			
	Oct			
	Nov	Final Draft Plans, Eng Geo Report		
	Nov	Submit Grading Permit Application		
		Jan		SMC Geotech Review Sheet: add'l info needed
		jan		Tim Best response to Geotech comments
		Feb		SMC Planning Site Visit
Mar		SMC Request for C3 C6 Form		
Apr		Comment from SMC Public Works Diana Shu that 85% relative compaction not ok for trail		
Apr		Response from Tim Best re: compaction		
Apr		Diana Shu realizes county has no authority over trails (no em access)		
Jun		SMC Planning Commission approval, with conditions		

	Jul		Permitting	
	Aug			
	Sep			
	Oct			
	Nov			
2013	Dec	Revise bridge plans per Peter's Creek Bridge		
	Jan	Submit Building Permit Application		
	Feb	Request early grading		
	Feb	Tim Best revises EC plan to allow early grading; resubmittal 1		
	Mar	Receive SMC Plan Check Comments, revise sheet S-2, resumbittal 2		
	Mar	Resubmittal 3, revised drawings and calcs updating code sections		
	Apr	Resubmittal 4, index, civils stamped, trail use clarified, parking lot clarification, switchback clarified, structural		
	Apr	Crew mobilizes, decides no early grading		
	May	Ready Letter Issued		
	May	Construction begins	Construction	
	Jun			
	Jul			
	Aug			
2014	Sep	Construction complete		
	Sept	Geotech prepares final Forms		Final Permit
	Sep	Tim Best prepares final inspection reports		
	Oct	Final Building and Planning Permits		

## Project Delivery Checklist

**Key:** Opportunity for public review and participation  
Proposed permit exemption

- **Scoping**
  - Identify project goals
  - Identify concerns and issues
    - Identify District and public participation processes
    - Identify assistance needed
  - Determine funding source
  - Grant strategy planning
  
- **Project start up and orientation**
  - Form internal project team
  - Hire consultant team
    - RFP / proposal review / consultant selection
    - Board approval for contracts  $\geq$  \$50,000
    - Award / execute contract
  - Obtain background information
  
- **Inventory and analysis**
  - Prepare base map / topography survey
  - Inventory existing setting
  - Scope permitting and CEQA issues
  - Analyze opportunities and constraints
  - Prepare summary inventory and analysis report
  
- **Conceptual design / use and management planning**
  - Use and trail alignment planning / site planning / feasibility study
  - Alternative development
  - Develop permitting strategy
  - Preliminary cost estimate
  - Facilitate review and input process (multiple rounds of meetings)
    - Field staff input
    - Neighbor meetings
    - Community meetings
    - Committee meetings
    - Board workshops
  - Outreach to permitting agencies
  - CEQA
    - Prepare project description
    - If necessary, Board meeting to approve project description
    - Review for exemptions

- If not exempt, prepare environmental document
    - Comment period on environmental document
    - File notice of completion
  - Board review and approval
    - Approve project and certify environmental document
- **Design development / construction documentation**
  - Prepare schematic design drawings
  - Outreach to permitting agencies
  - Prepare 50% construction drawings (coordination set)
  - Prepare 95% construction drawings and details
  - Prepare technical specifications
  - Prepare cost estimates
  - District review
- **Permitting**
  - Pre-application consultation - during design development
  - Resource agency permits (State and Federal)
    - Prepare application / permit set
  - County / city permits
    - Prepare application / permit set
    - If necessary, Planning Commission and/or Board of Supervisors
- **Bidding**
  - Prepare 100% issued for bid construction drawings and specifications
  - Prepare bid package
    - Legal review
  - Advertise
  - Pre-bid meeting/tour
  - Bid opening
  - Preliminary submittals
  - Board award of contract
  - Award / execute contract
- **Construction**
  - Prepare 100% issued for bid construction drawings and specifications Pre-construction meeting
    - Verify final submittals
    - Notice to proceed
  - Contract administration
    - Invoices
    - Change orders
  - Jobsite coordination

- Preliminary / final walk-through and punch list
- Final acceptance
- Notice of completion
  
- **Project management and administration**
  - Grant administration
    - Notify participants of tracking requirements
    - Collect invoices / time records
    - Closeout grant
  - Consultant contract administration
  - Mitigation monitoring
  - Final accounting
  - Final filing

Midpeninsula Regional Open Space District

Board Policy Manual

<b>Positions on Ballot Measures and Legislative Advocacy</b>	<b>Policy 1.11 Chapter 1 – Administration and Government</b>
Effective Date: 4/13/16	Revised Date: N/A
Prior Versions: N/A	

**Purpose**

To establish a policy governing positions on local and state ballot measures/propositions and state and federal legislative advocacy. It is intended to cover all matters before the Legislature and the voters.

**Definitions**

For the purposes of the *Positions on Ballot Measures and Legislative Advocacy* policy, the following terms and definitions shall be used:

*Measure* – may be included on a municipal, county, or district ballot and includes ordinances, initiatives, referenda, advisory measures, issuance or refunding of bonds, city or county charter amendments, or any other measure or proposition a legislative body may submit to the voters within the body’s jurisdiction.

*Ballot Proposition* – can be a referendum or an initiative measure that is submitted to the electorate for a direct decision or direct vote. Propositions may be placed on the ballot by the California State Legislature or by a qualifying petition signed by registered voters.

*Initiative* – power of the electors to propose legislation, and to adopt or reject them. Any proposed ordinance may be submitted to the legislative body by means of a petition.

*Referendum* – applies to the process for repealing newly enacted legislation. Within specified time limits, the electors may file a petition protesting the adoption of that legislation.

*Local Legislation* – typically ordinances, which are the laws of a city, charter, or district, often having the force of law, but only within the local jurisdiction.

*State or Federal Legislation* – bills or proposed legislation under consideration by the legislature at the state or federal level.

## Policy

1. Positions on Matters Before the Voters
  - a. From time to time the Board of Directors may be asked or may desire to take a position on local or state measures. The Board may consider taking a position on the measure/proposition if the measure/proposition:
    - i. Would directly impact the District's finances, responsibilities, legal authority, or operations; AND
    - ii. Is in line with or inconsistent with the District's mission and/or commitment to preserve open space within its boundaries and sphere of influence.The Board, by majority vote, may direct the General Manager to research the measure/proposition and return to the Board at a future meeting with information and a General Manager recommendation. At that time, the Board may vote to take a position on a measure/proposition.
  - b. Measures/propositions determined to not impact District business may nonetheless be analyzed by the General Manager when directed by a majority vote of the Board, of which the analysis report would include possible alternatives for Board action, but no position recommendation.
2. Local, State, and Federal Legislative Advocacy
  - a. The Legislative, Funding, and Public Affairs Committee (LFPAC) receives periodic updates regarding the District's legislative program. When LFPAC determines that proposed legislation may affect District business, it may direct the General Manager to prepare a recommendation for consideration by the full Board or where there is not adequate time to convene the full Board, may direct the General Manager to take action to support or oppose the legislation without full Board approval. In such cases, the General Manager or designee shall report to the Board any actions taken to support or oppose legislation at or before the next Board meeting.
  - b. When time is so short that neither the full Board nor LFPAC can be convened to consider positions to support or oppose local, state or federal legislation, the General Manager is authorized to take a position on behalf of the District if the legislation:
    - i. Is related to the District's mission; AND
    - ii. Would directly impact the District's business, such as project delivery, operations, finances, legal authority, or other District responsibilities; AND
    - iii. The position being taken is consistent/inconsistent with existing District policy, past action, or District Strategic Plan; OR
    - iv. The legislation carries other considerations that make it contrary to the District's interests.In such instances, the General Manager or designee shall report to the Board any actions taken to support or oppose the legislation at or before the next Board meeting.
  - c. Full Board action is required regarding legislation that is not clearly within the criteria listed above under Section 2.b. or guided by direction previously given by LFPAC.

3. Full Board action is required to support or oppose any type of grassroots advocacy action, such as social, political, or economic movements, that are not legislation.
4. Board members representing the District in their official capacity on regional or other bodies may, at his or her discretion, take actions based on the principles above consistent with previously approved Board positions and policies.
5. This policy is not intended to limit the prerogative of individual Board members from expressing their individual support for or opposition to any local ballot measure, State proposition, State or Federal legislation, or grassroots advocacy actions. However, in doing so, the member should clearly state they are speaking for themselves, and not in an official capacity on behalf of the Board or the District. Individual Board Members who take a position in support or opposition to ballot measure or legislation for which the Board has not previously taken a position are encouraged as a professional courtesy to include the language *for identification purposes only* parenthetically following their signature referencing their position on the Board.