

San Francisco Bay Conservation and Development Commission

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September 30, 2019

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Governor's Office of Planning & Research

OCT 02 2019

STATE CLEARINGHOUSE

SUBJECT: Notice of Preparation of A Draft Supplemental Environmental Impact Report (#2001082058); BCDC Inquiry File No. MC.MC.7415

Dear Ms. Mukai:

Thank you for the opportunity to comment on the Notice of Preparation (NOP) of a Draft Supplemental Environmental Impact Report (SEIR) for the Eagle Rock Aggregates – Oakland Terminal Project, dated August 22, 2019. The NOP was received by our office on September 4, 2019.

The San Francisco Bay Conservation and Development Commission (BCDC) is a responsible agency for this project and will rely on the SEIR when considering approvals related to the project. While the description of the project in the NOP is not specific enough for BCDC staff to comment on every potential issue that could be raised with respect to BCDC's laws and policies, staff has prepared the following comments outlining issues under BCDC's jurisdiction that should be addressed as part of the SEIR and/or through the BCDC permitting process. The Commission itself has not reviewed the NOP; the following comments are based on BCDC staff review of the NOP and the McAteer-Petris Act, the *San Francisco Bay Plan* (Bay Plan), and the *San Francisco Bay Area Seaport Plan* (Seaport Plan).

Jurisdiction. The project site indicated in the NOP is within BCDC permitting jurisdiction. Per the McAteer-Petris Act, BCDC is responsible for granting or denying permits for any proposed fill; extraction of materials; or substantial changes in use of any water, land, or structure within the Commission's jurisdiction (California Government Code [CGC] Section 66632). Based on the NOP project description, relevant areas of BCDC jurisdiction for the project may include the following:

- San Francisco Bay, being all areas subject to tidal action, including tidelands (land lying between mean high tide and mean low tide) and submerged lands (CGC Section 66610[a]).
- A shoreline band consisting of all territory located between the shoreline of the Bay and 100 feet landward of and parallel with the shoreline (CGC Section 66610[b]).



As the proposed project includes a change in use on the project site and in the Bay, and portions of the project site may be located within the 100-foot shoreline band, the project may require a permit from the Commission. Approval of a BCDC permit will require consistency with the McAteer-Petris Act and the Bay Plan. In addition, the project site is located in an area designated by the Bay Plan as a port priority use area. Thus, the project will need to be consistent with the policies of the Seaport Plan, as well as the Bay Plan's Ports policies.

The SEIR should map and describe the elements of the project that would occur within BCDC permitting jurisdiction, distinguishing between the Bay and shoreline band jurisdictions, and note the presence of the port priority use designation. Note that per California Code of Regulations Section 10710, any "areas once subject to Commission jurisdiction remain subject to that same jurisdiction," including areas that may have been "filled or otherwise artificially altered." Thus, the SEIR should identify whether any portion of the proposed project would be located on Bay fill that was placed since 1965.

Land Use and Planning. Although the NOP notes that the Port does not anticipate the need for supplemental review for Land Use and Planning, the SEIR should clearly state how the project is consistent with Bay Plan and the Seaport Plan policies, and whether any conflicts would result in potentially significant environmental impacts.

- **San Francisco Bay Plan.** The Bay Plan establishes policies for development and resource conservation within BCDC's jurisdiction. Policies cover the protection of Bay resources, including fish, other aquatic organisms, and wildlife; water quality; and others, as well as issues related to development, such as climate change; fills; shoreline protection; water-related uses; appearance, design, and scenic views; public access; and mitigation.

The Bay Plan also identifies areas that the Commission has designated to be reserved for priority land uses on the Bay shoreline. As stated above, the project is located within a Bay Plan-designated port priority use area (see Bay Plan Map No. Five). Within a port priority use area, any proposed project must be consistent with the Bay Plan's Ports policies. The Ports policies state, in part, that port priority use areas should be protected for marine terminals and directly related ancillary activities, and that port planning and development should be governed by the policies of the Seaport Plan and other applicable policies of the Bay Plan.

The SEIR should identify the project's location in the port priority use area and note whether the project would conflict with any applicable land use policies of the Bay Plan. Bay Plan policies regarding specific environmental impacts are further discussed below.

- **San Francisco Bay Seaport Plan.** The Seaport Plan coordinates the planning and development of Bay port terminals and expands upon the Bay Plan's port policies. The Seaport Plan guides BCDC's regulatory decisions on permit applications, consistency determinations, and related matters for proposed development projects at the Bay's

ports. The Seaport Plan includes general policies regarding allowable uses and permitting in port priority use areas, and the development of marine terminals for various cargo types, as well as port-specific policies. The project is located in the area identified as the Port of Oakland Outer Harbor Area terminal on Figure 4 of the Seaport Plan, which is listed in Table 11: Port of Oakland Future Facilities as designated for container cargo. Because the proposed project is a dry bulk terminal rather than a container terminal, the following policies should be noted for the SEIR:

- *Marine Terminals Policy 2.* Future marine terminals should be developed for the type of cargo specified in Part II of this plan at each port and port priority use area. If a port or terminal operator proposes to use a terminal for a cargo other than that designated in the Seaport Plan, the project proponent must demonstrate to the Seaport Planning Advisory Committee that the proposed project does not prevent Bay Area ports from achieving adequate cargo throughput capability to meet the 2020 projections. In reviewing such requests, the Seaport Planning Advisory Committee should make use of the cargo monitoring data that will be collected as part of the implementation of this plan (see Responsibilities of Other Agencies in Part III of this plan).
- *Container Terminals Policy 4.* Container terminals may be used for bulk cargo or combined bulk and container cargo until the terminal is needed for container cargo shipping, provided the non-container cargo use would not impair the current or future use of the terminal for container shipping.
- *Bulk Terminals Policy 2.* Proposed changes in port use of designated marine terminals, e.g., from bulk to container use, should be reviewed by the Seaport Planning Advisory Committee, and should be permitted without an amendment of the Seaport Plan as long as the change in use does not detract from the regional capability to meet the projected growth in cargo.

Additionally, any development of a bulk terminal in the port priority use area will be required to provide minimum amounts of backland specified in Bulk Terminals Policy 3. The SEIR should describe the applicable Seaport Plan policies and state whether the project would be consistent with those policies.

Note that BCDC is currently in the process of updating the Seaport Plan. As part of this process, a new cargo forecast is being prepared for the period through 2050. The project team should review the updated forecast as part of project development and the SEIR analysis. A draft of the forecast can be viewed at:

<https://www.bcdc.ca.gov/seaport/CargoForecastDraftFinal.pdf>. The final forecast is anticipated by the end of 2019.

Hydrology and Water Quality. The SEIR's hydrology and water quality analysis should refer to the Bay Plan's policies when considering the potential significance of any impacts. In particular, the analysis should discuss relevant policies in the Water Quality, Climate Change, Safety of Fills, and Shoreline Protection sections of the Bay Plan, which include but are not limited to the following:

- **Water Quality.** Water Quality policies in the Bay Plan include requirements that water pollution be "prevented to the greatest extent feasible" (Policy 1); that water quality "should be maintained at a level that will support and promote the beneficial uses of the Bay as identified in the Regional Water Quality Control Board's Water Quality Control Plan" and "should be protected from all harmful or potentially harmful pollutants" (Policy 2); that "new projects should be sited, designed, constructed, and maintained to prevent or minimize the discharge of pollutants into the Bay" (Policy 3); that projects in an area polluted with toxic or hazardous substances "will not cause harm to the public, to Bay resources, or to the beneficial uses of the Bay" (Policy 4); and, to protect the Bay from nonpoint source pollution, that "new development should be sited and designed consistent with standards in municipal stormwater permits and State and regional stormwater management guidelines," and "to offset impacts from increased impervious areas and land disturbances" (Policy 6). The SEIR should discuss how construction of the proposed project would be consistent with the Bay Plan's policies and, given the potential for the project to result in pollutant and sediment runoff due to the presence of industrial uses and aggregate stockpiles on the site, should discuss the significance of any impacts during the project's operating life. As the NOP did not specify whether the aggregate stockpiles would be covered or open-air, the SEIR should provide this detail in its project description and discuss whether the storage method could have significant impacts on water quality.
- **Climate Change and Flood Hazards.** Climate Change policies in the Bay Plan include requirements that planning for shoreline areas or larger shoreline projects should include preparation of a risk assessment by a qualified engineer that takes into account "the best estimates of future sea level rise" and current and planned flood protection (Policy 2); that within areas determined through a risk assessment to be "vulnerable to future shoreline flooding that threatens public safety, all projects... should be designed to be resilient to a mid-century sea level rise projection" (Policy 3); and that if a proposed project is likely to remain in place longer than mid-century, "an adaptive management plan should be developed to address long-term impacts... using the best available science-based projection for sea level rise at the end of the century" (Policy 3). As of September 2019, the best available science-based projections for sea level rise can be found in the State of California's 2018 Sea-Level Rise Guidance, available at: http://www.opc.ca.gov/webmaster/ftp/pdf/agenda_items/20180314/Item3_Exhibit-A_OPC_SLR_Guidance-rd3.pdf.

In addition, Bay Plan Safety of Fills Policy 4 states, in part, that “adequate measures should be provided to prevent damage from sea level rise and storm activity that may occur on fill or near the shoreline over the expected life of a project,” and that “new projects on fill or near the shoreline should either be set back from the edge of the shore so that the project will not be subject to dynamic wave energy, be built so the bottom floor level of structures will be above a 100-year flood elevation that takes future sea level rise into account for the expected life of the project, be specifically designed to tolerate periodic flooding, or employ other effective means of addressing the impacts of future sea level rise and storm activity” (Policy 4).

Thus, the SEIR discussion of flood hazards and the potential for flooding to result in the release of pollutants should include a description of the project site’s existing and future vulnerability to inundation and storm surge. To this end, the SEIR should identify the Mean Higher High Water line, the 100-year flood elevation, mid-and end of century sea level projections using the 2018 State of California Sea Level Rise Guidance, anticipated site-specific storm surge effects, and a preliminary assessment of the proposed project’s vulnerability to future flooding and sea level rise. In determining the significance of potential hydrological and water quality impacts, the SEIR should describe how the project has been designed to tolerate, adapt to, and/or manage shoreline flooding at the site to ensure the proposed project is resilient to mid-century sea level rise projections, and, if it is likely to remain in place longer than mid-century, how it can adapt to conditions at the end of the century. If shoreline protection is a part of this project or proposed mitigation for hydrological impacts, the SEIR should note whether the proposed protection is consistent with the Bay Plan’s Shoreline Protection policies.

Resources available to assist the preparers of the SEIR in the above assessments include Adapting to Rising Tides (ART) maps and data products developed by BCDC, including the Bay Shoreline Flood Explorer (<http://www.adaptingtorisingtides.org/maps-and-data-products/>), and the Sea Level Rise and Coastal Flooding Impacts Viewer developed by NOAA Coastal Services Center in collaboration with a number of other agencies and organizations (<https://coast.noaa.gov/slr/>).

Hazards and Hazardous Materials. The Bay Plan’s Water Quality policies also have relevance to the SEIR’s hazards and hazardous materials discussion. Given potential changes to truck and vessel transportation patterns in response to the project, the SEIR should address the potential for hazardous substances such as fuels to be released into the environment due to routine use or transportation, or potential upset or accident conditions.

In addition, the Bay Plan provides Navigational Safety and Oil Spill Prevention policies that state, in part, that “physical obstructions to safe navigation... should be removed to the maximum extent feasible” (Policy 1), and that marine facility projects should be “in compliance with oil

spill contingency plan requirements" (Policy 2). The SEIR should include a discussion of whether the project would have any impacts on navigational safety, and would meet oil spill contingency requirements of the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act.

Geology and Soils. Section 66632 of the McAteer-Petris Act defines fill as "earth or any other substance or material, including pilings or structures placed on pilings, and structures floating at some or all times and moored for extended periods, such as houseboats and floating docks." It is unclear from the NOP if the proposed project would require any filling of the Bay, or whether any portion of the proposed project would be taking place on fill. The SEIR should map and describe any areas of the project site subject to tidal action at any point since September 17, 1965 that have been subsequently filled, and describe in detail the proposed development, activity, and uses on these filled areas and consistency with the Commission's laws and policies. If any new fill is proposed as part of the project, the SEIR should also indicate the location of such fill, the proposed method of fill (e.g., solid earth, pile-supported structure, cantilevered structure), the approximate volume and surface area of the Bay to be filled, and the proposed development, activity, and uses of the newly filled area.

If new fill is proposed as part of the project or if portions of the project will be sited on existing fill, the SEIR should include a description of the Bay Plan's Safety of Fills policies, which include provisions that "no fill or building... be constructed if hazards cannot be overcome adequately for the intended use in accordance with criteria prescribed by the [Commission's] Engineering Criteria Review Board" (Policy 2); "strong-motion seismographs... be required on all future major land fills" (Policy 3); and "adequate measures... be provided to prevent damage from sea level rise and storm activity that may occur on fill or near the shoreline over the expected life of a project" (Policy 4). The SEIR should discuss the proposed project's consistency with these Bay Plan policies.

Section 66605 of the McAteer-Petris Act states that fill in San Francisco Bay should only be authorized when: the public benefits from the fill clearly exceed the public detriment from the loss of water area and should be limited to water-oriented uses or minor fill for improving shoreline appearance or public access to the Bay; no upland alternative location is available for the project purpose; the fill is the minimum amount necessary to achieve the purpose of the fill; the nature, location, and extent of any fill will minimize harmful effects to the Bay; and the fill should be constructed in accordance with sound safety standards. Thus, if fill is proposed as part of the project, the SEIR should establish that the proposed fill is consistent with the McAteer-Petris Act and any applicable Bay Plan policies related to fill.

Transportation. As the proposed project has the potential to alter transportation patterns to and from the site, the SEIR should discuss the potential increase in trips and any related impacts on safety and environmental quality on the site and in the surrounding area. Additionally, the SEIR should address whether transportation impacts would affect users of other roadways in the area, including residents of adjacent neighborhoods. The air quality and noise discussions of the SEIR should also discuss related impacts to those neighborhoods. Such an analysis would serve to inform BCDC of potential environmental justice concerns.

The SEIR should demonstrate that the proposed project will be able to accommodate projected truck traffic into and out of the site. If adequate parking to serve cargo-related traffic is not provided on-site, truck traffic could potentially use local roadways to park or idle while awaiting entry to the site. A backup of truck traffic outside of the project site could have negative impacts related to roadway safety, air quality, land use compatibility, noise, and non-motorized transportation in the vicinity of the site. Thus, the SEIR should discuss whether that projected truck traffic related to the proposed terminal has the potential to significantly impact surrounding neighborhoods and roadways.

The project site is located near a segment of the Bay Trail, which runs along Maritime Street. The segment can be viewed at <https://baytrail.org/baytrailmap.html>. The SEIR should discuss the potential for construction vehicles and operational truck traffic to impact users of the Bay Trail segment. If the project's site access improvements would affect the configuration of Maritime Street, the SEIR should discuss whether those improvements would pose a safety hazard for users of the Bay Trail segment. If analysis shows that an increase in truck congestion is possible as a result of the terminal's operations, the SEIR should discuss whether the increase in congestion would pose a safety hazard for users of the Bay Trail or otherwise affect the usability of the trail.

Aesthetics. Although the NOP does not anticipate a need for an aesthetics analysis, the SEIR should discuss whether the proposed development would have an adverse effect on a scenic vista, and whether it would conflict with Bay Plan policies governing scenic quality. The Bay Plan's Appearance, Design, and Scenic Views policies state, in part, that "all bayfront development should be designed to enhance the pleasure of the user or viewer of the Bay," and that "maximum efforts should be made to provide, enhance, or preserve views of the Bay and shoreline" (Policy 2); "structures and facilities that do not take advantage of or visually complement the Bay should be located and designed so as not to impact visually on the Bay and shoreline" (Policy 4); "to enhance the maritime atmosphere of the Bay Area, ports should be designed, whenever feasible, to permit public access and viewing of port activities" (Policy 5); and "views of the Bay from vista points and from roads should be maintained by appropriate arrangements and heights of all developments and landscaping between the view areas and the water" (Policy 14). The provision of public viewing areas or other public access as part of the proposed project is subject to the Bay Plan's Public Access policies. The SEIR should cite the Bay Plan in the regulatory settings for the aesthetics analysis and discuss the project's consistency with the above policies, including how the proposed project's design could affect views of and to the shoreline.

Mitigation. Any mitigations designed as part of the proposed project and any mitigation measures included in the SEIR should be consistent with the Bay Plan's Mitigation policies. The Mitigation policies state, in part, that projects should be designed to avoid adverse environmental impacts to Bay resources, and if adverse impacts cannot be avoided, they should be minimized to the greatest extent possible. The policies also include BCDC's requirements for planning compensatory mitigation projects.

Forthcoming Bay Plan Amendments. BCDC is currently in the process of completing two amendments to the Bay Plan that may be adopted by the time the proposed project enters the permitting process. Bay Plan Amendment (BPA) 1-17 Sea Level Adaptation in Habitat Projects is intended to address the need to place an increasing amount of Bay Fill for projects to restore and enhance natural habitat. Details regarding this amendment may be viewed on BCDC's website at <https://www.bcdc.ca.gov/BPAFHR/FillHabitat.html>. BPA 2-17 Social Equity and Environmental Justice is intended to address environmental justice and social equity issues at appropriate points in the BCDC permitting process. Details regarding this amendment may be viewed at <https://www.bcdc.ca.gov/ejwg/BPAEJSE.html>. BCDC urges the preparers of the SEIR to review materials on these two BPAs for any information that may be relevant to the environmental review of the proposed project.

We appreciate your attention to the topics discussed above and for the opportunity to make the above comments on the scope of the SEIR. If you have any questions or concerns regarding this matter, please do not hesitate to contact me at (415)-352-3650 or by email at katharine.pan@bcdc.ca.gov.

Sincerely,



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