

# San Francisco Bay Conservation and Development Commission

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Governor's Office of Planning & Research

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City of Oakland Bureau of Planning  
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Oakland, CA 94612  
ATTN: Peterson Vollmann, Planner IV

## STATE CLEARINGHOUSE

**SUBJECT: Comments on the Waterfront Ballpark District Project Draft Environmental Impact Report (City of Oakland Case File Number ER18-016; SCH 2018112070)  
BCDC Inquiry File No. MC.MC.7415.025**

Dear Mr. Vollmann:

Thank you for the opportunity to comment on the Draft Environmental Impact Report (DEIR) for the Waterfront Ballpark District Project (Project), State Clearinghouse No. 2018112070, published on February 26, 2021, by the City of Oakland. The Notice of Availability and DEIR were received by our office on February 26, 2021.

The San Francisco Bay Conservation and Development Commission (BCDC or Commission) is providing the following comments as a responsible agency, for purposes of the California Environmental Quality Act (CEQA), with discretionary approval power over aspects of the Project, as described below. BCDC will rely on the Final EIR when considering its approvals for the project, and we appreciate this opportunity to comment on information, analyses, and findings in the DEIR that are relevant to BCDC's jurisdiction and authority. The Commission itself has not reviewed the DEIR; these comments have been prepared by staff and are based on the McAteer-Petris Act (Title 7.2 of the California Government Code [Government Code]), the *San Francisco Bay Plan* (Bay Plan), and the *San Francisco Bay Area Seaport Plan* (Seaport Plan) in relation to CEQA requirements for the Project.

## SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

BCDC is a State planning and regulatory agency with permitting authority over San Francisco Bay, the Bay shoreline, and Suisun Marsh, as established in the McAteer-Petris Act and the Suisun Marsh Preservation Act. 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 (Government Code Section 66632(a)). Additionally, BCDC establishes land use policies for the Bay as a resource and for development of the Bay and shoreline in the Bay Plan, which provides the basis for the



Commission's review and actions on proposed projects. BCDC also maintains the Seaport Plan, a special area plan incorporated by reference into the Bay Plan, that coordinates regional port planning and development within designated port priority use areas along the Bay shoreline.

The Project site is partially located within two areas of BCDC's permitting jurisdiction:

- Bay Jurisdiction: In the 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 (Government Code Section 66610(a)); and
- Shoreline Band Jurisdiction: In the shoreline band consisting of all territory located between the shoreline of the Bay, as described above, and 100 feet landward of and parallel with the shoreline (Government Code Section 66610(b)).

BCDC's Bay jurisdiction includes all areas formerly subject to tidal action that have been filled since September 17, 1965. Since 1965, BCDC has authorized fill at Howard Terminal for the provision of water-oriented port facilities, including much of the current wharf; these filled areas are considered to be within the Bay jurisdiction (see also 14 CCR § 10710). The shoreline band jurisdiction includes all areas within 100 feet landward of the Bay jurisdiction.

Additionally, the Project site is located within BCDC's Oakland port priority use area, as designated in the Bay Plan and Seaport Plan. BCDC has designated areas determined necessary for future port development as port priority use areas to reserve them for cargo handling or related uses. Within port priority use areas, sites for marine terminals are identified and reserved specifically for cargo handling operations. Howard Terminal is designated in the Seaport Plan as a container terminal.

## PROJECT UNDERSTANDING

The Project has been proposed by the Oakland Athletics and would include the construction of a new multi-purpose waterfront Major League Baseball stadium and mixed-use development that includes residential, office/commercial, retail, performance venue, and hotel components, as well as public recreation and open space areas. Development of the Project would involve the demolition of all existing buildings and structures on the Project site, with the exception of Fire Station 2 and four cranes, which would be incorporated into the Project.

The Project would be constructed in two phases. Phase I would include the stadium and the residential, office, retail, restaurant, hotel, and recreation and open space uses proposed east of Market Street. Phase II would include the remainder of the site. Construction is anticipated to involve fill to raise the elevation of the site, stabilization of new and existing fill, and hazardous material remediation and mitigation.

In addition to Phases I and II of the proposed Project, the Project proponent is considering a Maritime Reservation Scenario (MRS), which, if it occurs, would take the place of the proposed Phase II development. As part of the Exclusive Negotiation Term Sheet between the Oakland Athletics and the Port, the Port has established a 10-acre "Maritime Reservation Area" at the



southwest corner of Howard Terminal for up to approximately 10 years from the approval date of the Exclusive Negotiating Agreement (May 13, 2019). At any point during the reservation period, the Port may terminate the Project proponent's development rights to some or all of the reservation area for the expansion of the Inner Harbor Turning Basin. In the MRS, up to 10 acres of the Maritime Reservation Area would be removed from the Project site to accommodate the expansion of the Inner Harbor Turning Basin. Although the Project site's footprint would be smaller, the development itself would still consist of the same mix of uses, number of units, and building square footage as the proposed Project, but with less open space area.

### **Required BCDC Actions**

The Project would require two separate actions from the Commission. The Commission would need to remove the port priority use designation from the Project site in order for the Project to proceed, as the proposed uses are not consistent with the current designation's requirements. If the designation is removed, the Project would then require a Major Permit from the Commission. The permitting process would require the Commission to consider the Project's consistency with the Bay Plan and McAteer-Petris Act, following review by the Commission's Design Review Board (DRB) and Engineering Criteria Review Board (ECRB). The permit application would be heard by the Commission at a publicly noticed hearing.

### **Significance of Assembly Bill 1191**

The Commission's decisions regarding the Project are also subject to the provisions of Assembly Bill (AB) 1191 (Bonta, 2019). Per AB 1191, the Commission must determine whether the Project site is no longer required for port priority use and deemed free of the port priority use area designation within 140 days following the certification by the City of Oakland of a project-level EIR for the Project. Additionally, AB 1191 provides that if the Oakland Athletics have not entered into a binding agreement with the Port by January 1, 2025 that allows for the construction of the proposed development, then the port priority use designation shall be automatically reinstated on the site.

AB 1191 specifies conditions under which the Commission may approve a permit for the Project and some conditions which modify certain requirements which would otherwise apply to the Commission's consideration of the permit application for the Project under the McAteer-Petris Act. AB 1191 allows the Commission to find that the Project is a water-oriented use within the meaning of Section 66605(a) of the McAteer-Petris Act if it meets certain conditions related to the use of the Bay as a design asset for the proposed stadium and other buildings proposed in BCDC's Bay jurisdiction. AB 1191 also allows the Commission to authorize a permit for the Project if it would provide a substantial quantity of high-quality open space and public access and significant onsite and offsite bicycle and pedestrian improvements, notwithstanding the findings and declarations established in subdivisions (b), (c), (d), and (f) of Section 66605 of the McAteer-Petris Act or Bay Plan policies "Fills in Accord with Bay Plan," "Fill for Bay-Oriented

Commercial Recreation and Bay-Oriented Public Assembly on Privately-Owned or Publicly-Owned Property,” and “Filling for Public Trust Uses on Publicly-Owned Property Granted in Trust to a Public Agency by the Legislature,” so long as the Project is otherwise consistent with all other applicable BCDC laws and policies.

## COMMENTS ON THE DEIR

Staff has prepared the following comments on the contents of the DEIR. Comments are focused on providing points of information related to BCDC policies and procedures cited in the DEIR, comments on analyses and findings related to resources under BCDC’s authority, comments on the overall analysis presented in the DEIR in terms of CEQA requirements, and notes on additional information that will be expected from the Project proponents as part of BCDC’s permitting process. Note that BCDC previously submitted a response to the City of Oakland’s Notice of Preparation for the Project during the public scoping period, dated January 14, 2019, and comments herein may note the DEIR’s responsiveness to issues raised in that letter.

## General Comments

### PHASE II AND THE MARITIME RESERVATION SCENARIO

Discussion of Phases I and II of the Project, as well as of the MRS, in relation to one another raises concerns about the adequacy of the environmental analysis for both Phase II and the MRS. An EIR must include an analysis of the environmental effects of a future phase of a project if: (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future phase will likely change the scope or nature of the initial project or its environmental effects. (*Laurel Heights Improvement Ass’n v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 396.)

In relation to the Project, Phase II and the MRS satisfy both of these conditions. The MRS is a reasonably foreseeable consequence of the Project should the Port exercise its right to utilize the Maritime Reservation Area for the Inner Harbor Turning Basin expansion that it is currently studying. The fact that authorization for the MRS would be required of the Port rather than the City should not be dispositive of whether the MRS is a reasonably foreseeable consequence of the Project or not. Given that implementation of the MRS, if it occurs, would result in up to 10 acres being removed from the current Project footprint, it seems self-evident that the MRS would change the scope and nature of the Project and its environmental effects, especially with respect to the provision of open space and recreational public access.

However, the extent and level of environmental impacts analysis with respect to the MRS, and the evidence upon which this analysis is predicated, appears to be inadequate to justify the conclusion reached for many of the resource areas analyzed within the DEIR that environmental impacts under the MRS would be essentially the same as under the “baseline” Project proposal. This is particularly so for Section 4.8 Hazards and Hazardous Materials and 4.14 Recreation, as discussed more specifically within those sections of this comment letter.

The project-level of analysis of Phase I of the Project compared to the less-detailed analysis of both Phase II (also referred to as “Buildout” in the DEIR) and the MRS within the DEIR suggests that the City has taken the approach of preparing a Program EIR for Phases I and II, and the MRS variant of the Project. However, the City has not clearly indicated that it has taken such an approach, and as currently drafted the DEIR does not appear to fully satisfy the requirements for undertaking a Program EIR under CEQA. In light of the above, BCDC staff believes the DEIR should be revised to make clear that it constitutes a “first-tier,” project-level EIR for purposes of Phase I and that the City and the Port will subsequently tier their later environmental review for Phase II and the MRS, respectively, off of the DEIR when entitlements are necessary for these phases of the Project (Pub. Res. Code § 21094; 14 CCR § 15152(h)(3)).

A Program EIR is appropriate for, among other things, “a series of actions that can be characterized as one large project” and are related either geographically or “as logical parts in the chain of contemplated actions.” (14 CCR § 15168(a)(1)-(2).) Furthermore, “A program EIR will be most helpful in dealing with later activities if it provides a description of planned activities that would implement the program and *deals with the effects of the program as specifically and comprehensively as possible.*” (*Id.* § 15168(c)(5) (emphasis added).)

Importantly, “where individual projects are, or a phased project is, to be undertaken and where the total undertaking comprises a project with significant environmental effect, the lead agency *shall prepare a single program EIR* for the ultimate project as described in Section 15168.” (14 CCR § 15165 (emphasis added).) Additionally, “where an individual project is a necessary precedent for action on a larger project, or commits the lead agency to a larger project, with significant environmental effect, *an EIR must address itself to the scope of the larger project.*” (*Id.* (emphasis added).)

Given that Phase I is a necessary precedent for and would commit the City to Phase II of the proposed Project, the City should make clear that the DEIR is to be understood as a Program EIR and further must evaluate the cumulative effect of the environmental changes that will result from the combined or ultimate Project (comprising Phases I and II). While Phases I and II of the Project will not necessarily commit *the City* to the MRS, Phases I and II are a necessary precedent for action on the MRS (that is, the MRS only exists at all on account of the proposed Project). On this basis, the Program EIR should also evaluate the cumulative effect of the environmental changes that will result from the combined or ultimate project of Phases I and II and the MRS.

#### MITIGATION MEASURES

Over the course of our review, staff has noted a number of mitigation measures that, while they may have a reducing effect on a given impact, are phrased in such a way that the reductions cannot be ensured, enforced, or quantified. Staff identifies some specific examples of these measures below but may have missed similar instances in topics outside our areas of focus.

This comment regarding mitigation measures actually pertains to three related, but distinct, issues. First, mitigation measures “must be fully enforceable” (Pub. Res. Code § 21081.6(b); 14 CCR § 15126.4(a)(2)). Second, distinct from the requirement that the mitigation measures actually be enforceable, they must also be *effective* in reducing the identified impact to a less than significant level (see generally Pub. Res. Code §§ 21002, 21100(b)(3)). However, as referenced above, due to hedging, non-binding, and/or ‘aspirational’ language, it is not apparent that at least some mitigation measures will actually be effective because implementation of the mitigation measures cannot be shown to be guaranteed. An example of a mitigation measure for which this deficiency was identified is Mitigation Measure BIO-1b, intended to address hazards from daytime light and glare, as further discussed in the Navigational Safety section of this comment letter.

Third, development of mitigation measures cannot be deferred to a future time (14 CCR § 15126.4(a)(1)(B)). While specific details of a mitigation measure may be developed subsequent to project approval when it is impractical or infeasible to include those details during the project’s environmental review, in such a situation the mitigation measure must at least identify both specific achievable performance standards and the types of potential actions that can achieve those performance standards (*Id.*). These standards are not met for at least some mitigation measures – for example, the proposal under Mitigation Measure LUP-1a requiring development of a Boating and Recreational Water Safety Plan and Requirements to address potential hazards posed by recreational watercraft, as further discussed in the Navigational Safety section of this comment letter.

BCDC recommends that the City review the mitigation measures in this DEIR with these issues in mind. If decision-makers and the public cannot be confidently assured through the wording of a given measure that it will be implemented successfully to reduce an impact, then the DEIR should not rely on that measure to make a finding of a less than significant impact.

#### **AB 1191**

Page 4.10-15 contains the following statement. “BCDC reviews permits for proposed projects in the shoreline band for consistency with the McAteer-Petris Act, the Bay Plan and the Seaport Plan, as amended by AB 1191.” This is not an accurate interpretation of the effect of AB 1191, as the bill did not amend either the Bay Plan or the Seaport Plan. This statement can be corrected by striking “as amended by AB 1191.”

#### **CURRENT VERSION OF THE BAY PLAN**

On page 4.14-8, the DEIR references the Bay Plan with a citation of “BCDC, 2011.” Note that the most current version of the Bay Plan is the May 2020 version,<sup>1</sup> which includes new Environmental Justice and Fill for Habitat Restoration policies adopted by the Commission in 2019. Prior to the revision, the most recent version available on the BCDC website was dated March 2012.

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<sup>1</sup> <https://www.bcdc.ca.gov/pdf/bayplan/bayplan.pdf>.



## Land Use Compatibility

Section 66602 of the McAteer-Petris Act declares seaports to be among certain water-oriented land uses along the Bay shoreline that are essential to the public welfare of the Bay Area, and requires the Bay Plan to provide for adequate and suitable locations for these uses to minimize the future need to use Bay fill to create new sites for these uses. Thus, the Bay Plan designates areas for various water-oriented priority land uses within its shoreline band jurisdiction, including sites designated for port priority use. Future development proposed in priority use areas must be consistent with policies in the Bay Plan related to those areas.

Consistent with the Bay Plan, the Seaport Plan designates areas determined necessary for future port development as port priority use areas to reserve them for cargo handling or related uses. Port priority use areas are reserved for regional maritime port use and include within their premises marine terminals and directly related ancillary activities such as container freight stations, transit sheds and other temporary storage, ship repairing, support transportation uses including trucking and railroad yards, freight forwarders, government offices related to port activity, chandlers, and marine services. Given the regional importance of seaports and the limited amount of suitable land available to serve this land use, the Seaport Plan calls for preserving the viability of areas designated for port priority use to continue to operate and grow as needed. For example, Seaport Plan General Policy 1 states, “Local governments and the Bay Area ports should protect port priority use areas for marine terminals and other directly related port activities through their land use planning and regulatory authority.”

BCDC has established a port priority use area at the Port of Oakland, and the Project site is included in this area. BCDC recognizes that the Port of Oakland plays a critical role in the region’s economy and supply chain and that it is the only port in the Bay Area that handles container cargo. Given the Port’s significance, and the limited supply of land in the Bay Area suited for marine terminal development, particularly container terminal development, any development near the Port should not impede the Port’s ability to operate safely and efficiently or hinder the Port’s ability to increase its capacity over time to accommodate future increases in cargo flows. Additionally, because the Port is a heavy industrial land use, any development in the vicinity should be able to coexist with the realities of heavy industrial activity, which often involve noise; frequent heavy truck traffic; the presence, use, and transport of hazardous materials; rail activity; and air pollution. It is with these considerations that BCDC reviewed the DEIR’s land use analysis.

## NAVIGATION SAFETY

As part of BCDC’s Seaport Plan update, staff and the Seaport Planning Advisory Committee (SPAC) have received public comment from the San Francisco Bar Pilots Association regarding concerns that stadium lighting, fireworks, and an increase in the numbers of recreational watercraft resulting from the Project could pose hazards for Bar Pilots navigating large ships through the estuary, including in the Inner Harbor Turning Basin adjacent to the Project site. These comments raise concerns related to the Bay Plan’s Navigational Safety Findings, including



Finding a) "...Providing for safe navigation greatly enhances the region's water-related industries;" Finding b) "Mariners operating in the Bay face difficult challenges such as increasing vessel traffic, physically restricted shipping lanes, frequent shoaling, rapid weather changes, fog, strong currents, and physical obstructions;" and Finding c) "Marine accidents that result in spills of hazardous materials, such as oil, can adversely affect a variety of Bay resources." The comments also raise the concern that an increase in collisions or other accidents or of related shipping delays resulting from these navigational hazards would compromise the ability of the port to function safely or effectively. Staff appreciates that DEIR Impact LUP-2 includes consideration of these potential impacts in the evaluation the Project's land use compatibility and has the following comments on the analysis and proposed mitigation measures.

- **Recreational watercraft.** To address potential hazards posed by recreational watercraft, the DEIR proposes Mitigation Measure LUP-1a requiring the Oakland Athletics to prepare a Boating and Recreational Water Safety Plan and Requirements. While such a plan could help to reduce the impact, the manner in which this mitigation measure is structured does not allow us to know at this time the degree to which the plan will actually be effective and would not allow for the reduction of the impact to be enforced. To improve the mitigation measure, BCDC recommends that the text of the measure include a definition of what would constitute an effective plan so that readers are able to understand what degree of impact the DEIR considers acceptable. Additionally, in its current phrasing, there is no guarantee in the measure that the development and implementation of a safety plan will achieve the desired results, even after subsequent revisions, signage, and safety patrols. For a mitigation measure to adequately reduce the impact below a level of significance, it should define the threshold of significance and clearly indicate how the proposed actions would be effective in achieving that threshold. Otherwise, it would be more conservative to consider the impact significant and unavoidable.
- **Daytime glare.** Regarding hazards from light and glare, the DEIR proposes Mitigation Measure BIO-1b, which requires the Project proponents to comply with the City of Oakland's Bird Safety Measures during project design and to prepare a Bird Collision Reduction Plan for approval by the Oakland Bureau of Building prior to approval of a construction-related permit. In reviewing this mitigation measure, it is not clear which actions would specifically address the issue of glare as experienced by crews in the channel, as the measure is written in terms of impacts on birds. The DEIR should have a more detailed description under Impact LUP-2 of the components of the measure that would reduce impacts from glare, how they would do so, and to what extent. Additionally, as the measure is currently worded, it does not appear to be an enforceable measure that could ensure the desired impact reduction. Many of the "mandatory" measures cited in



BIO-1b rely on language such as “minimize,” “avoid,” “to the extent feasible,” and “promote,” which cannot guarantee that the reduction of the impact is sufficient to reduce it below a level of significance. Therefore, it is not clear that the mitigated effects of daytime glare on navigation would be less than significant.

- **Nighttime glare.** BCDC requests the following additional information to provide context for the analyses conducted for nighttime glare.
  - In the discussion of Disability Glare, explain why the Veiling Luminance that would be acceptable to navigate on a local street with high pedestrian activity is the most apt benchmark for maritime navigation and note whether similar benchmarks have been developed specifically for maritime scenarios.
  - In the comparison of potential glare from sports lighting fixtures to existing high-mast lighting at existing active terminals, please describe the similarities and differences between the two types of lighting. Details that might affect a reader’s understanding of this comparison include number of lights, density of lighting, the design or style of lights, and how the lights are or will be positioned in relation to the channel. Please also state how the European standard definition of “obtrusive light” compares to lighting that would potentially impair a navigator in the channel.
  - In the comparison of the potential sport lighting to outdoor lighting in airport environments, please introduce what IES RP-37-15 refers to and why it would provide a reliable standard. Additionally, please describe the considerations that went into their 25,000 cd limit, if that information is available, to help readers understand how these numbers correlate to an impact. And please also provide a discussion about the similarities and differences in the navigation experience between an airplane and ship pilot so that a reader may know how applicable this standard is.
  - Additionally, BCDC requests that the DEIR provide more detail connecting how Mitigation Measure LUP-1b would reduce the effects of lighting on maritime navigators specifically, as the description of the measure in Section 4.1 does not include information that clearly relates the measure to this impact. Lastly, note that similar to other comments regarding mitigation, it is not clear how this measure is able to be enforced, thus ensuring that the impact of light and glare on navigation would be reduced below the threshold of significance.
- **Pyrotechnic events.** While the discussion about the potential effects of fireworks on navigation presents some information about the heights that fireworks would reach, it does not present any evidence that this would not affect the ability of a Bar Pilot to safely navigate the estuary during a fireworks display. The position that because a Pilot would be “looking down” to distinguish landmarks and objects in the water that their vision would

not be impaired by a pyrotechnical display that would be occurring overhead requires additional support to be acceptable. The analysis does not discuss how a series or pattern of fireworks in various colors and intensities would affect navigability, or how the repeated illumination of the landscape and return to darkness that would occur during and between explosions would affect a Pilot's ability to safely navigate the estuary. BCDC recommends that the City explore whether the San Francisco Bar Pilots' experience in the Bay Area and/or the experience of Bar Pilots of other port cities during past fireworks displays (such as those on New Year's Eve and Independence Day) could provide useful case studies for identifying what the actual impacts would be and whether mitigation would be required and/or effective.

#### CIRCULATION

As stated under Impact LUP-2 in the DEIR, "seaport operations are sensitive to traffic and truck delays, and a level of traffic congestion or vehicular delay that might be acceptable to typical residential or commercial development may result in a significant disruption to Seaport operations. A significant disruption could result in loss of business and imperil Seaport functioning." BCDC is considering circulation impacts to the extent that they could affect the functionality of the port priority use area, as well as in terms of Bay Plan Transportation Finding a), which states that "the reliable and efficient movement of people and goods around the Bay Area is essential for the region's economic health and quality of life."

- **Truck parking and movement.** The DEIR analyses make the assumption that ancillary uses currently taking place at Howard Terminal will relocate to other sites within the Port and region. Because the new sites of many of the uses are uncertain, the DEIR does not go into detail about potential outcomes of the relocation, including changes in vehicle miles traveled (VMT). Unfortunately, understanding these potential outcomes is important to understanding how the change in land use at Howard Terminal could affect Port operations. While the destinations of the relocating uses are not pre-determined, the DEIR should still account for this uncertainty in the environmental impact analysis and describe what the more likely effects might be. This would allow the City to meaningfully identify potential concerns and prepare mitigation measures to avoid potentially significant impacts.

In terms of truck parking, including overnight parking, short term parking, and container staging, the DEIR can consider where alternative truck parking sites currently exist in the region. Caltrans is currently conducting a statewide truck parking study and would be a potential source of information for this discussion. Additionally, the City should communicate with the trucking companies that service the Port for insight on what their expectations are in the event that they lose access to Howard Terminal.

The DEIR makes the claim that “all trucks currently making trips in/out of Howard Terminal will continue to make the same number of trips to and from the Seaport, to the same destinations within the Seaport, from their new locations.” If trucks must find parking outside of the Port, but are still assumed to be making the same number of trips, this would seem to indicate an increase in VMT, as parking would likely be taking place farther from the terminals. It is also possible that this condition would cause the number and/or nature of trips to change. To clarify the extent to which changing truck traffic patterns could impact the DEIR’s VMT and circulation-related compatibility analyses, the DEIR should provide a more detailed description of the types of parking and truck movements that take place at Howard Terminal. Only a portion of the parking is overnight parking; other uses include short-term parking and container staging, which do not have a designated relocation site at the Port. Short-term parking and container staging play important roles in the movement of cargo at the Port; thus, the circulation patterns for these uses should be considered in any Port-related transportation study. Providing this information would allow for a clearer picture of the likely impacts of relocation and whether any specific measures could be proposed to ensure that no adverse impacts would take place, even if the potential impacts are not fully known.

Additionally, the DEIR should consider whether there could be a cumulative impact related to truck parking, as over time, many of the locations at the port where truck parking and other ancillary uses currently take place—including the Roundhouse and Outer Harbor Berths 20-24—are anticipated to develop as active marine terminals and are considered as such in the 2019-2050 Bay Area Seaport Forecast (Cargo Forecast) prepared by The Tioga Group. Thus, the statement on page 3-61 that, based on the Cargo Forecast, the 15 acres of parking availability at the Roundhouse along with 15 acres of City-provided parking would be sufficient for meeting overnight parking needs through 2050 is not correct. Additionally, in the near term, the Port of Oakland is contemplating the development of a dry bulk terminal at Berths 20-22 that would displace existing parking and other ancillary uses. The DEIR should consider where those uses may be relocating, as it may affect the available capacity at those sites for uses relocating from Howard Terminal.

Lastly, the DEIR states that “the existing tenants and users of Howard Terminal are assumed to move to other locations within the Seaport..., the City, or the region where their uses are permitted under applicable zoning and other regulations;” however, the DEIR should consider the possibility that some amount of the relocated trucks may attempt to park illegally, whether knowingly or unknowingly, in the areas near the Port. This could include in West Oakland, which has historically been disproportionately affected by the environmental and health impacts of truck traffic to and from the Port and has been working to reduce the presence of trucks in the neighborhood. This is an environmental

justice issue related to air quality and safety, as well as to the compatibility issue of Port traffic congestion and merits a more detailed discussion of potential impacts and how the impacts would be avoided or mitigated.

BCDC understands that parking and congestion are no longer CEQA topics under Appendix G and are not part of the City of Oakland's CEQA significance criteria. However, both of these topics, considered in combination with the other circulation changes anticipated under the Project, are important to understanding how the Project could affect Port operations, and therefore to assessing land use compatibility. If, after examining the additional data suggested above, the DEIR is still unable to project the magnitude or nature of the impacts resulting from the displacement of ancillary uses from Howard Terminal, it should still provide a more thorough discussion about the uncertainties, whether significant impacts are possible, and how the City may avoid any potential significant impacts.

- **Projected cargo growth.** In May 2020, BCDC completed the Cargo Forecast for the ongoing Seaport Plan update. As the growth projected in the forecast is likely to translate into more freight movements, whether by rail or truck, please clarify whether a similar level of growth is captured in the models and assumptions used in the transportation analysis. Staff request that a brief discussion be added to show the two perspectives on freight demand and how they do or do not relate to one another. If the City finds that the growth projected in the cargo forecast is not reflected in the transportation demand models, then BCDC would be concerned that a potential source of truck or rail traffic is missing from the DEIR analysis.
- **3<sup>rd</sup> Street Corridor.** Staff noted that the Project proposes to incorporate transit, bicycle, and pedestrian routing on the 3<sup>rd</sup> Street corridor, which is also designated as the heavyweight truck corridor. The DEIR should consider any potential safety hazards or traffic impacts that may result from this combination of roadway users.
- **West Oakland Community Action Plan.** In Section 4.15.1 of the DEIR, in the list of Planned Transportation Network Changes, staff noted that there is only one entry under the West Oakland Community Action Plan (WOCAP). BCDC has reviewed this plan and found strategies related to transportation improvements and truck management that may warrant inclusion here.<sup>2</sup> The WOCAP was developed by the West Oakland community and the Bay Area Air Quality Management District to address air quality concerns in the neighborhood, many of which are related to its proximity to the Port. As this is a land use

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<sup>2</sup> <https://www.baaqmd.gov/community-health/community-health-protection-program/west-oakland-community-action-plan>.

compatibility issue that is closely related to the land use compatibility discussion around the Project, staff recommends incorporating more of the findings and strategies into the DEIR analysis and mitigations wherever appropriate.

#### AIR QUALITY

As stated in Section 4.10 of the DEIR, the extent to which air pollutant emissions would expose new residents to substantial health risks could indicate a fundamental conflict with nearby or adjacent land uses and the need for mitigation.

- In the air quality analyses in Section 4.2, Impact AIR-2 (operational impacts), Impact AIR-1.CU (cumulative regional air quality impacts associated with criteria pollutants), and AIR-2.CU (cumulative health risk to sensitive receptors) were all found to be significant and unavoidable. It is not entirely clear how Impact LUP-2 finds that the same air quality impacts would be considered less than significant and not a fundamental land use conflict in terms of potential health risks. As discussed in the next bullet point, LUP-1c, as it is written, does not demonstrate how siting and buffers would reduce potential impacts below a threshold of significance. Additionally, the analysis states that while background levels of pollutants and TACs at the Project site pose health risks to proposed on-site sensitive receptors and would be significant and unavoidable under cumulative conditions, they would be reduced “to the extent feasible” with listed mitigation measures. However, “to the extent feasible” does not automatically equate to “to below a level of significance.” For this impact to be considered less than significant, the analysis needs to quantify exposure to harmful pollutants in projected with-Project conditions, describe potential health risks and define a level of significance for exposure to risks, and demonstrate how any exposure above that level of significance will be mitigated.
- Mitigation Measure LUP-1c requires the use of land use siting and buffering strategies to reduce potential air quality impacts for sensitive receptors. While the proposed strategy and overall principle of using thoughtful siting and design could reduce air quality impacts, this mitigation measure must also include a means of quantifying the impact reduction of these strategies or the strategies used in the final site plan in order to assume that it would help reduce the impact below a level of significance. While “scientific evidence indicates” that strategies in CARB’s Technical Advisory can decrease exposure to air pollution, the mitigation measure is not clear that a given combination of these strategies would decrease exposure by a certain amount in order to reduce significance. Defining the level of significance would help to establish a target for this mitigation measure to achieve.
- Mitigation Measure AIR-2d seeks to reduce diesel truck emissions. In addition to the strategies already included, this measure should provide for a comprehensive truck parking strategy.

- The conclusion to the air quality analysis for Impact LUP-2 states “... the Project would not interfere with adjacent Port, rail, or industrial operations, and would not result in a fundamental land use conflict in this regard.” This is not the appropriate conclusion for this impact analysis, as the impact being discussed is the potential for the Project to site sensitive uses in an area where air quality could expose the site’s users to health risks, not necessarily whether the Project’s air quality impacts would affect neighboring industrial operations. Please reconsider this conclusion, particularly in light of the above comments.

#### OTHER NOTES

- In Figure 4.10-4, it may be useful for the discussion to include labels for BCDC’s current Bay and shoreline band jurisdictions.
- Page 4.15-56 includes the following statement: “(including the Roundhouse parking adjacent to Howard Terminal).” Please note that the Roundhouse is not adjacent to Howard Terminal, but rather is on the other side of Schnitzer Steel.
- On page 4.10-56, make the following addition: “...minimum necessary to accomplish the purpose, there is no upland alternative....” BCDC also suggests citing Government Code Section 66605 as the source for these requirements as the Government Code provides additional details and includes requirements not listed in this paragraph.
- On page 4.10-57, the DEIR characterizes the new fill associated with the Project as “a small amount of permanent Bay fill from the relocation and construction of stormwater and drainage, as needed, and the limited addition of in-water piles for the reinforcement of waterfront areas.” However, as BCDC’s Bay jurisdiction extends into existing fill at the Project site, which was placed subsequent to the creation of BCDC, including much of the wharf, any fill occurring on those areas—such as fill to raise the elevation of the site—would also be considered new Bay fill (14 CCR § 10710).

#### Sea Level Rise

The Bay Plan includes a Climate Change section, which recognizes the various ways climate change and related rises in sea level could affect the communities in BCDC’s jurisdiction, particularly through sea level rise and flooding. Findings and policies in this section establish a basis for evaluating projects based on their resiliency to projected rises in sea level. In BCDC’s letter in response to the NOP, staff advised the City to incorporate an analysis of sea level rise vulnerabilities and impacts in the DEIR, as well as provide a description of adaptation measures planned for the Project and their potential effects. In BCDC’s review of the DEIR, staff found references to sea level rise in Section 4.9. The following comments seek to improve the quality of the background information and analysis provided this section. Additionally, BCDC urges the City to incorporate the findings from the sea level rise analysis in other areas of the DEIR, as a number of other resource areas could potentially be affected.



**BCDC CLIMATE CHANGE POLICIES AND ADAPTING TO RISING TIDES**

Please note that some of the references to BCDC's Climate Change Policies and the Adapting to Rising Tides (ART) program is incorrect.

On page 4.9-7, the DEIR states (emphasis added):

"The projections in Table 4.9-1 are similar to, though somewhat higher than, BCDC's most recent consideration of sea level rise (e.g., BCDC's 2017 ART Bay Area Sea Level Rise Analysis and Mapping Project), which is **based upon the 2013 California State guidance for sea level rise projections** described above. According to the 2013 study, the State's range for sea level rise relative to 2000 levels was for an increase of between 0.4 to 2.0 feet by 2050 and 1.4 to 5.5 feet by 2100 (BCDC, 2017). Although BCDC's ART analysis and mapping **used the older sea level rise projections**, BCDC acknowledges that the more recent 2018 OPC guidance will help local agencies update their analysis and decision-making (BCDC, 2019a)."

This statement is inaccurate and misrepresents BCDC's work and the methodology used. The 2017 Mapping Project is not based on the State Guidance or projections. The inundation mapping conducted for that report was based on Water Surface digital elevation model (DEM) and Land Surface DEM. The 2017 mapping data does not provide a probability or expected timing of future sea level rise, but instead created maps that show where increased water levels will impact the Bay shoreline and inland areas based on the two DEM layers.

As stated in the 2017 report, "the SLR [sea level rise] inundation maps produced as part of this project have the flexibility to be interpreted and applied to ever-changing SLR projections and do not require adoption of specific SLR amounts to be useful." The 2017 mapping data includes spatial mapping data for a range of scenarios (not projections) that include Mean Higher High Water (MHHW), which is the baseline elevation at a given shoreline, plus a rise in sea level from 12 inches to 108 inches, with 10 water levels in total.<sup>3</sup> In addition to each of those water levels, the mapping data also includes how Extreme Tides (Storm Surge) would additionally raise water levels with a 1-year to 100-year storm (seven water levels in total). The 2017 mapping data provided the basis for BCDC's interactive ART Bay Area Shoreline Flood Explorer.<sup>4</sup>

Similarly, page 4.9-30 of the DEIR states, "BCDC's most recent analysis of sea level rise (e.g., its 2017 ART Project) used OPC's 2013 sea level rise projections, which fall between OPC's 2018 low and medium-high risk aversion projections." Note that BCDC's most recent analysis of sea level rise impacts and consequences is in the 2020 ART Bay Area Report. Additionally, neither the 2017 study cited in the DEIR nor the 2020 ART Bay Area Report use or depend on sea level rise projections and do not provide projections tied to timelines. This line should be deleted.

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<sup>3</sup> Water level refers to Total Water Level (TWL), the combination of tides, storm surge, and sea level rise at the shoreline.

<sup>4</sup><https://explorer.adaptingtorisingtides.org/explorer>.

In the same paragraph, the statement “as compared to BCDC’s ART mapping, which considered up to 5.5 feet” should also be deleted, as the source of this number is not clear, and the statement is incorrect. The 2017 mapping study includes 10 total water levels that show flood maps up to 108 inches Total Water Level (TWL).

On page 4.9-13, the DEIR states that BCDC “has regulatory jurisdiction over the Bay shoreline.” This should read “over the Bay and the Bay shoreline.” To ensure clarity, the DEIR should specify that the requirements for sea level rise vulnerability and risk assessments are established in the Climate Change Policies of the Bay Plan, specifically Climate Change Policies 2 and 3.

On page 4.9-33, remove “and is above the guidance range (2.6-5.5 feet) from BCDC,” as the BCDC mapping study does not give guidance or a range of projections connected to a time horizon.

Also on page 4.9-3, note that the reports listed in the second paragraph on BCDC are not “within BCDC jurisdiction,” and it is not clear what “within BCDC jurisdiction” is intended to mean in this context. ART studies are non-regulatory, planning level studies that are not exclusive to any jurisdiction. Staff suggests this replacement:

BCDC’s Adapting to Rising Tides (ART) program provides resources and support to local jurisdictions on sea level rise adaptation planning. The following reports in this area that were conducted or supported by the ART program include: *Adapting to Rising Tides Alameda County Subregional Project* (BCDC, 2019b), *Oakland/Alameda Resilience Study* (BCDC, 2016), *Capitol Corridor Joint Powers Authority Sea Level Rise Vulnerability Assessment* (2014),<sup>5</sup> and *the Adapting to Rising Tides Bay Area: Regional Sea Level Rise Vulnerability and Adaptation Study* (2020).<sup>6</sup>

The Capital Corridor study identifies vulnerabilities along the rail corridor, including vulnerabilities of specific assets, such as railroad tracks at grade, railroad signal systems, railroad bridges, stations, and the Oakland Maintenance Facility. The report also includes Focus Areas, including Oakland. The project area is adjacent to the railroad tracks and as a networked system, impacts from flooding in one location would impact the entire network.

The ART Bay Area Study evaluates flooding exposure and consequences to four regional systems: transportation networks, vulnerable communities, priority development areas (PDAs), and priority conservation areas (PCAs). The project area is within an area identified by the ART Bay Area report as a “regional hot spot,” meaning that it contained multiple regional assets with among the highest consequences of impact from sea level rise. This hot spot was driven by impacts to the Downtown and Jack London Square PDA and impacts to existing, future, and

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<sup>5</sup> [http://www.adaptingtorisingtides.org/wp-content/uploads/2015/04/CCJPA-SLR-Vulnerability-Assessment\\_Final.pdf](http://www.adaptingtorisingtides.org/wp-content/uploads/2015/04/CCJPA-SLR-Vulnerability-Assessment_Final.pdf).

<sup>6</sup> - [http://www.adaptingtorisingtides.org/wp-content/uploads/2020/03/ARTBayArea\\_Regional\\_Transportation\\_Final\\_March2020\\_ADA.pdf](http://www.adaptingtorisingtides.org/wp-content/uploads/2020/03/ARTBayArea_Regional_Transportation_Final_March2020_ADA.pdf).

growth in residential housing units and growth in job units, as well as impacts to the Port of Oakland, Jack London Ferry Terminal, and adjacent communities with significant social vulnerability and contamination burden vulnerability from flooding.

As part of the ART Bay Area report, the Howard Terminal (project) was considered part of the Port of Oakland in the “Seaports” analysis. This analysis includes consequences from flooding of dollar value of exports and imports of seaports and identifies the Port of Oakland as having the highest dollar value of exports and imports impacted by flooding starting at 52 inches Total Water Level (TWL) and increasing through 108 inches TWL. High level adaptation strategies were identified in the report. Additionally, Local Vulnerability Assessments were conducted with this project being within the “San Leandro” Local Assessment.<sup>7</sup>

Note that none of the ART studies contain policies or regulations; they are informational products with planning-level studies that provide initial analyses for use by local governments in their planning efforts. All relevant climate change policies and requirements are located in the Bay Plan and are not reflected in ART studies. Policy references that should be cited in the DEIR’s Regulatory Setting include the policies in the Climate Change section, Safety of Fills Policy 4, and policies in the Shoreline Protection section. BCDC is in the process of preparing a guidance document for the Bay Plan’s Climate Change Policies that may be a useful resource for the DEIR preparers. A draft of this document is currently available online at <https://www.bcdc.ca.gov/BPA/1-08/San-Francisco-Bay-Plan-Climate-Change-Policy-Guidance.html>. The final draft is anticipated to be available in June 2021. Additionally, BCDC staff is available to discuss both the ART studies and the Bay Plan’s Climate Change Policies with preparers of the EIR to ensure accurate representation.

#### FLOODING IMPACTS

The DEIR addresses flood impacts related to sea level rise under Impact HYD-5. BCDC has the following comments on this analysis.

- **Mapping.** The HYD-5 impact analysis, as well as the Environmental Setting for Section 4.9, should include mapping that illustrates the flood levels and locations described in the text. The current style of analysis makes it challenging for readers of the DEIR to verify the elevations and water levels at the various sites discussed or to view all potential impacts at the Project site holistically and in relation to surrounding land uses. Ideally, figures would show the variation between existing conditions and the other scenarios studied. Site-specific sea level rise mapping is a necessary component of a complete Project-level sea level rise analysis and should be included and referenced in the revised EIR.
- **H++ Scenario.** On page 4.9-7, staff suggest removing the clause “sea level rise is not currently following the H++ scenario.” The H++ scenario is intended to depict the potential consequences of runaway/extreme ice loss in Antarctica in a way we can understand.

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<sup>7</sup> [http://www.adaptingtorisingtides.org/wp-content/uploads/2020/03/OLU\\_H-SanLeandro.pdf](http://www.adaptingtorisingtides.org/wp-content/uploads/2020/03/OLU_H-SanLeandro.pdf).

While this loss is not considered “likely” right now, the occurrence would cause sea levels to rise at much faster rates. The current rate does not suggest that the H++ scenario is probable, but the rate is increasing and there is uncertainty about when the increase will stop. The rate of sea level rise is unlikely to be consistent; therefore, we cannot assume that future rates of sea level rise are going to be the same as they are today. Rather, it is *expected* that the rate of sea level rise will continue to accelerate with existing and future warming.<sup>8</sup>

- **Changes in flood hazards.** Impact HYD-4 discusses the Project’s potential to place structures within a 100-year flood hazard area, which could impede or redirect flood flows, exposing people of structures to significant risk of loss, injury, or death. This analysis should consider the ways in which areas that would be affected by a 100-year storm would change over the life of the Project as a result of sea level rise. Mapping with the Bay Area Flood Explorer shows that in its current configuration, the Project site would experience flooding along the wharf, at the Peaker Power Plant and Fire Station 2, throughout the area proposed for Phase II residential and commercial development, and on portions of the area proposed for the stadium at 66 inches TWL. One of the scenarios that corresponds to this water level is a 100-year storm surge at 24 inches of sea level rise, which is comparable to the State Guidance 22.8 inches above MHHW for Medium-High Risk Aversion with High Emissions for 2050.<sup>9</sup> Figure 1 is a screenshot of the Flood Explorer at 66 inches TWL to illustrate the potential hazard. To make proper use of the DEIR’s sea level rise analysis, the HYD-4 impact discussion should use information such as that provided by the Bay Area Flood Explorer to assess how projected 100-year flood flows could potentially be altered by the preliminary grading plan and where the flows will be directed around development and off of the raised site, as well as any mitigation that may be required. One potential concern would be if flows are directed onto neighboring site, such as Schnitzer Steel, in a manner that could contribute to the mobilization of hazardous materials into the community or stormwater system.

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<sup>8</sup> <https://climate.nasa.gov/news/2680/new-study-finds-sea-level-rise-accelerating/>.

<sup>9</sup> <https://explorer.adaptingtorisingtides.org/about>.

**Figure 1: Project Site at 66 inches TWL**

Mitigation Measure HYD-2 requires that the Project be designed to ensure that new structures within a 100-year flood zone do not interfere with the flow of water or increase flooding. As it is written, the measure appears to suggest that the primary way of avoiding an impact is to raise floor elevations. It is not clear how this design approach would mitigate flood flows around the raised structures. BCDC recommends revising this mitigation measure to more clearly tie the actions in the measure to the impact being mitigated, and to consider additional ways in which a project may be designed to achieve the desired result. Additionally, the revised mitigation measure or an additional mitigation measure should address how the Project may need to adapt to accommodate changing flood conditions over the life of the Project in accordance with State Guidance and BCDC's Climate Change Policies.

Additionally, please note that to the extent that the Project's grading or structures could redirect flood flows, particularly contaminated flows, onto neighboring sites, it could cause environmental impacts in communities where environmental justice is a concern.

- Mitigation Measure HYD-3 requires development of a final adaptive management and contingency plan for sea level rise prior to the issuance of the first grading permit for the Project, and references the Tidal Datums and Sea Level Rise Design Basis Memorandum prepared by Moffatt & Nichol. The memorandum shows various grading options as adaptation measures, and the DEIR mentions site elevation as a means of adapting to future sea level rise. Staff would like to raise a few initial considerations for relying on the adaptation measures presented thus far. In terms of elevating the site, the City should consider how much weight the fill can handle to build the site upwards, and the extent to which elevation can protect the site before floods are inevitable, then ensure that adaptive strategies are triggered before that point is reached. Additionally, BCDC has not seen

mention in the DEIR whether the wharf would be adapted for sea level rise—note that maintenance or repairs on the wharf will become more difficult as the space between the water and the structure decreases.

- **Maritime Reservation.** In section 4.9, the DEIR includes the following conclusion for the MRS:

“The reconfigured Project site would become smaller, although the impacts relative to hydrology and water quality on the Project site would be the same as those discussed above for the proposed Project, since the surface and groundwater conditions would remain unchanged and development on the smaller site would be subject to the same regulatory framework protecting water quality.”

As stated under general comments, the analyses for the MRS need to be more detailed and show more of the rationale behind the conclusions provided in order to be acceptable. For this section, the analysis first must acknowledge that the MRS would mean a change in the physical condition of the site for which this Project is being planned, and it should identify how that change could result in differences in the types and degrees of impact before describing how the framework that reduces impacts to below a level of significance for the proposed Project would achieve the same result for the MRS. One potential issue that would need to be addressed is the difference in sea level rise resilience between the proposed Project and the MRS – whether it is a difference in site design and grading, or a difference in the Project’s approach to adaptation. If the Project will rely on a not-yet-complete adaptation plan to address potential flooding impacts from sea level rise in both scenarios, please discuss whether the differences in the site configuration would necessitate any differences in the content or formulation of the plan, or what strategies or thresholds/triggers may be appropriate to include in the plan. Based on these concerns, BCDC would expect a more detailed and methodical program-level analysis for this resource topic.

#### GROUNDWATER RISE

In reviewing the DEIR, BCDC did not find any reference to groundwater rise and its potential to affect the nature and severity of related impacts. Groundwater rise is likely to play a critical role in the severity of impacts in Section 4.6: Geology, Soils, and Paleontological Resources; 4.8: Hazards and Hazardous Materials; 4.9: Hydrology and Water Quality; and 4.16: Utilities and Service Systems, and should be thoroughly analyzed in each of those sections.



Groundwater rise is a concern for the Project site because the groundwater below it has a tidal interface. As sea levels rise, waters from the Bay will intrude on the aquifer underlying the site, raising the water table and salinity of the groundwater, affecting underground infrastructure, and eventually causing the emergence of groundwater and surface flooding.<sup>10</sup>

Groundwater beneath the project site has been documented in the DEIR as contaminated with chemicals of concern above environmental screening levels. Recent monitoring results cited in the DEIR have found that the groundwater contamination tends to be localized to specific points under the site and is not entering the harbor in appreciable amounts; based on this information, and the fact that there are no beneficial uses indicated for the Project site's groundwater other than dewatering, the DEIR declares that groundwater is not considered to pose a human health risk or a significant risk to the environment and large-scale groundwater remediation is not proposed (page 4.8-43). However, groundwater rise has the potential to mobilize contaminants in the site's groundwater, as well as contaminants in the overlying soils. It could also disrupt the caps or monitoring equipment placed to contain the site's contamination by increasing the buoyancy of underground remediation measures. The impact analyses in Section 4.8 should consider these potential impacts and how they will be addressed through coordination with the Department of Toxic Substances Control and mitigation.

From a hydrological perspective, emergent groundwater has the potential to cause flooding on the site behind planned shoreline structures, which the DEIR should address in Section 4.9. Additionally, the DEIR analysis should evaluate whether the site-wide planned groundwater and stormwater management infrastructure, including the cutoff wall and pumps systems, will be able to accommodate the volumes of groundwater that could emerge during storm events and as the water table rises.

Other impacts of a rising water table include a potential increase in the site's susceptibility to liquefaction during an earthquake event (analyze in Section 4.6) and potential damage to or overwhelming of the site's stormwater system (analyze in Section 4.16). This is not an exhaustive list, and the City should consider whether this process would affect impacts in other resource areas.

BCDC suggests the following resources for additional information on groundwater rise:

- Plan, Ellen, Kristina Hill, and Christine May. A rapid assessment method to identify potential groundwater flooding hotspots as sea levels rise in coastal cities. *Water*. 11, 2228 (2019). <https://www.mdpi.com/2073-4441/11/11/2228>.
- Befus, K.M., P.L. Barnard, D.J. Hoover, *et al.* Increasing threat of coastal groundwater hazards from sea-level rise in California. *Nat. Clim. Chang.* **10**, 946–952 (2020). <https://doi.org/10.1038/s41558-020-0874-1>.

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<sup>10</sup> [https://res.mdpi.com/d\\_attachment/water/water-11-02228/article\\_deploy/water-11-02228-v2.pdf](https://res.mdpi.com/d_attachment/water/water-11-02228/article_deploy/water-11-02228-v2.pdf).

## UTILITIES

In addition to groundwater rise impacts on underground utilities, surface effects of sea level rise could also impact the effectiveness of stormwater facilities. The analysis in Section 4.16 should consider whether stormwater infrastructure could be overwhelmed by increases in flood flows from rising sea levels or backups at the sewer outfalls.

## RECREATION

In Section 4.14, the analysis of Impact REC-1 states that the increase in demand for recreational resources that would accompany the proposed development would be met by the provision of public recreation areas and open space as part of the Project on the Project site, including the proposed 10-acre Waterfront Park. However, BCDC is concerned that there is no discussion in the DEIR about sea level rise adaptation for these public access and recreational amenities, particularly those bordering the Bay. The sketches included with the Moffat & Nichol memorandum show the public recreation areas at a lower grade than the rest of the site, suggesting that they will be among the first areas to experience sea level rise impacts. If the degradation or loss of these public recreation areas negatively affects the ability of residents and visitors to use the provided park space, it is possible they will choose to utilize other recreation areas in the city. Therefore, sea level rise should be incorporated into the analysis for Impact REC-1.

Note related Bay Plan policies: Public Access Policy No. 6 states that “public access should be sited, designed, managed and maintained to avoid significant adverse impacts from sea level rise and shoreline flooding.” Policy No. 7 states in part that “whenever public access to the Bay is provided as a condition of development, on fill or on the shoreline, the access should be permanently guaranteed... Any public access provided as a condition of development should either be required to remain viable in the event of future sea level rise or flooding, or equivalent access consistent with the project should be provided nearby.”

## Appearance, Design, and Scenic Views

As previously stated, the conditions in AB 1191 that would allow the Commission to consider the Project as a water-oriented use and that would allow the Commission to authorize the Project to include specific references to the design of the Project in relation to the Bay and the provision of scenic views from structures and public spaces. These conditions can be found in Section 9 of the bill and should be included in the Regulatory Setting section of Chapter 4.1 “Aesthetics Shadow and Wind.”

The visual appearance of the Bay and waterfront are considered unique, regionally significant resources. Bay Plan Appearance Design and Scenic Views Policy No. 2. states that: “All bayfront development should be designed to enhance the pleasure of the user or viewer of the Bay. Maximum efforts should be made to provide, enhance, or preserve views of the Bay and shoreline, especially from public areas, from the Bay itself, and from the opposite shore.” Policy No. 8 states, in part, that: “Shoreline developments should be built in clusters, leaving areas

open around them to permit more frequent views of the Bay.” Public Access Policy No. 13 states: “[t]he Public Access Design Guidelines<sup>11</sup> should be used as a guide to siting and designing public access consistent with a proposed project. The Design Review Board should advise the Commission regarding the adequacy of the public access proposed. The Design Review Board should encourage diverse public access to meet the needs of a growing and diversifying population.” Appearance Design and Scenic Views Policy No. 12. States that “[i]n order to achieve a high level of design quality, the Commission’s Design Review Board, composed of design and planning professionals, should review, evaluate, and advise the Commission on the proposed design of developments that affect the appearance of the Bay in accordance with the Bay Plan findings and policies on Public Access; on Appearance, Design, and Scenic Views; and the “Public Access Design Guidelines.”

The DRB advises the Commission for major projects along the shoreline using Bay Plan policies related to Appearance Design and Scenic Views, Public Access, and Recreation. To date, the DRB has reviewed the Project on three occasions. A project briefing took place on March 11, 2019. The first pre-application review occurred on October 7, 2019, and the second pre-application review took place on April 5, 2021. The second pre-application review occurred during the DEIR comment period and key concerns related to the impacts discussed in Chapter 3 “Project Description,” Chapter 4.1 “Aesthetics Shadow and Wind,” and Chapter 4.14 “Recreation” of the DEIR were raised during the review, as reiterated below.

#### SHIPPING CRANES

AES-1 discusses how the Project would not have a substantial adverse effect on a public scenic vista or substantially damage scenic resources. The DEIR discusses retention of the four shipping cranes for the Project, one of which, Crane X-422 is prone to historical significance. The cranes serve as a visual resource at the local setting since they can be seen from many publicly accessible vantage points throughout the City and is a key visual landmark along the Oakland Estuary. The Project intends to incorporate the cranes into the design of the public access areas within the Waterfront Park. If it is determined that the cranes are not feasible to be placed in this public access area, the DEIR states that they will be demolished. Please provide an analysis of what alternative location opportunities were explored to retain this critical visual resource and interpretive maritime structure for the site. The analysis should include an evaluation of Phase I, Phase II, and the MRS.

#### KEY VIEWPOINT ANALYSIS

Impact AES-2 for the DEIR analyzes how the Project would not substantially degrade the existing visual character or quality of the site. Building massing and street grid alignment are included as part of the analysis and visual simulations created from five viewpoint locations are shown on Figure 4.1-10. As part of the final EIR, please include an additional viewpoint location that includes the Market Street corridor. Howard Terminal is located at One Market Street; the

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[https://www.bcdc.ca.gov/planning/reports/ShorelineSpacesPublicAccessDesignGuidelinesForSFBay\\_Apr2005.pdf](https://www.bcdc.ca.gov/planning/reports/ShorelineSpacesPublicAccessDesignGuidelinesForSFBay_Apr2005.pdf).

terminus of the former Market Street Pier and aligns with the existing city street grid. Please analyze how the project would preserve and enhance the visual character of the Market Street corridor that connects the West Oakland neighborhood to the Bay shoreline.

### **Public Access and Recreation**

Section 66602 of the McAteer-Petris Act states, in part, “that maximum feasible public access, consistent with a proposed project, should be provided.” The construction of a Major League Baseball stadium and mixed-use development that includes residential, office/commercial, retail, performance venue, and hotel components, as well as public recreation and open space areas will bring more people to the site, and it will impact the existing nearby public access spaces. In addition to mitigating adverse impacts to existing public access areas and uses within the vicinity of the site, maximum feasible public access consistent with the project is to be provided.

### **PARKS, PLAZAS AND OPEN SPACE PROGRAM**

Bay Plan Public Access Policy No. 2 states in part that: “...maximum feasible access to and along the waterfront and on any permitted fills should be provided in and through every new development in the Bay or on the shoreline.” Policy No. 8 states in part that: “... improvements should be designed and built to encourage diverse Bay-related activities and movement to and along the shoreline, should provide barrier free access for persons with disabilities, for people of all income levels, and for people of all cultures to the maximum feasible extent....”

Section 4.14 includes the following conclusion for the MRS:

Taking into account a potential 19 percent reduction in open space as compared to the Project, the Project under the Maritime Reservation Scenario would continue to provide publicly accessible open space on approximately one-third of the site that would still be expected to absorb a substantial part of the demand from new residents, employees, and visitors. Impacts related to the demand for athletic fields and indirect demand for boating facilities would remain the same as the Project, as the service population and development program uses would remain the same. All other site conditions relative to recreation would remain the same as described for the proposed Project, and therefore the impacts, analysis and mitigation for the Maritime Reservation Scenario would be the same as those discussed above for the proposed Project

A similar conclusion was made for the cumulative analysis, which includes the Project and Brooklyn Basin, another mixed-use development project along the Oakland Estuary currently in construction. Assuming the MRS scenario, the two projects combined would bring 34.9 acres of open space to the area and would still be expected to absorb a substantial part of the demand.

The discussion of the MRS does not include sufficient evidence or analysis to arrive at this conclusion. The claim that when reduced by 19 percent, the open space area provided by the Project would be expected to “absorb a substantial part of the demand” from new users such that there would be no difference in impact, analysis, or mitigation between the MRS and the

proposed Project Phases I and II needs to be quantified and a program-level analysis needs to be performed. The analysis needs to walk through the rationale behind why providing less recreational space and a different program of recreational space for the same number and mix of users would not lead new residents, workers, and visitors to instead use other public recreation facilities such that accelerated deterioration of those facilities could take place. Please provide a comparative analysis of the recreation experience and public access amenities that would occur due to the reduction in open space for the MRS .

#### SAN FRANCISCO BAY TRAIL

Bay Plan Public Access Policy No. 10 states in part that: "Access to and along the waterfront should be provided by walkways, trails, or other appropriate means and connect to the nearest public thoroughfare where convenient parking or public transportation may be available." Recreation No. 3.a.[9] state in part that a project should "Complete segments of the Bay Trail where appropriate."

As discussed under Impact REC-1, an additional 1.25 miles of the Bay Trail would be included as part of the project to enhance the existing Bay Trail system. For the Final EIR, please expand upon Figure 4-14-1 "Parks and Open Space in the Project Vicinity" and provide information for how the Bay Trail program would be impacted on game/special event days versus and non-game days. Please analyze the impacts of possible Bay Trail closures and the frequency for which they may occur and identify alternate routes. The analysis should include an evaluation of Phase I, Phase II, and the MRS.

#### RECREATIONAL FISHING

Bay Plan Recreation Policy No. 1 states, in part: "Diverse and accessible water-oriented recreational facilities, such as launch ramps, beaches, and fishing piers, should be provided to meet the needs of a growing and diversifying population, and should be well distributed around the Bay and improved to accommodate a broad range of water-oriented recreational activities for people of all races, cultures, ages and income levels..." Policy No.3.e.(1) states in part that: "[w]here practicable, access facilities for non-motorized small boats should be incorporated into waterfront parks, marinas, launching ramps and beaches, especially near popular waterfront destinations."

BCDC has recently received public comments from the Oakland Asian Cultural Center, West Oakland Benefits for Equity, and West Oakland Environmental Indicators Project requesting that a fishing pier be incorporated into the Project design. The comments made the case that a public fishing pier would provide a culturally meaningful way for the Chinatown and West Oakland<sup>12</sup> communities to interact with the Bay: "[a]n accessible, well-designed and maintained fishing pier with cleaning facilities could become an anchor for neighbors to carry on the

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<sup>12</sup> West Oakland and Chinatown fall within the high and highest social vulnerability categories as analyzed with BCDC's online [Community Vulnerability and Mapping](#) tool. The City of Oakland also recognizes the vulnerability of these two neighborhoods in the [Oakland Race and Equity Baseline Indicators Report](#) (City of Oakland, 2019).

intergenerational culture and traditions of families fishing and appreciating nature together. It would provide a benefit for people who may not have the resources for, or be comfortable with, other forms of bay access such as boating.”<sup>13</sup> Though the lack of a new public fishing pier may not necessarily meet the thresholds of significance selected for Recreation under the DEIR, in light of relevant Bay Plan Recreation and Environmental Justice policies (discussed below), which will be relevant at the BCDC permit application stage of the Project, please analyze in the Final EIR the feasibility and potential inclusion of a fishing pier in the final Project design and implementation.

This request is informed by the following Bay Plan policies:

- Recreation Policy 1 states, in part: “Diverse and accessible water-oriented recreational facilities, such as launch ramps, beaches, and fishing piers, should be provided to meet the needs of a growing and diversifying population, and should be well distributed around the Bay and improved to accommodate a broad range of water-oriented recreational activities for people of all races, cultures, ages and income levels...”
- Recreation Policy 3 states, in part: “Recreational facilities, such as waterfront parks, trails, marinas, live-aboard boats, non-motorized small boat access, fishing piers, launching lanes, and beaches, should be encouraged and allowed by the Commission, provided they are located, improved and managed consistent with” the standards specified as part of the policy.
- Environmental Justice and Social Equity Policy 2 states: “Since *addressing issues of environmental justice and social equity should begin as early as possible* in the project planning process, the Commission should *support, encourage, and request local governments to include environmental justice and social equity in their general plans, zoning ordinances, and in their discretionary approval processes*. Additionally, the Commission should provide leadership in collaborating transparently with other agencies on issues related to environmental justice and social equity that may affect the Commission’s authority or jurisdiction.” (Emphasis added).
- Environmental Justice and Social Equity Policy 3 states: “Equitable, culturally-relevant community outreach and engagement should be conducted by local governments and project applicants to meaningfully involve potentially impacted communities for major projects and appropriate minor projects in underrepresented and/or identified vulnerable and/or disadvantaged communities, and such outreach and engagement should continue throughout the Commission review and permitting processes. *Evidence of how community concerns were addressed should be provided*. If such previous outreach and engagement did not occur, further outreach and engagement should be conducted prior to Commission action.” (Emphasis added).

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<sup>13</sup> Oral and written comments presented at the March 26, 2021 SPAC meeting and the April 5, 2021 DRB meeting.



Given the above policies, the Project proponent should, at the very least, anticipate addressing the public comment regarding the requested fishing pier as part of the BCDC permit application process for the Project. In the event that the Project proponent decides to incorporate a pier into the design of the Project, BCDC would like to ensure that such a decision would already have been captured in the EIR analysis, including Impact REC-1 and any other relevant impact analyses were.

#### **WILDLIFE COMPATIBILITY**

Public Access Policy No. 4 states, in part, that “[p]ublic access should be sited, designed and managed to prevent significant adverse effects on wildlife.” To the extent necessary to understand the potential effects of public access on wildlife, information on the species and habitats of a proposed project site should be provided, and the likely human use of the access area analyzed. In determining the potential for significant adverse effects (such as impacts on endangered species, impacts on breeding and foraging areas, or fragmentation of wildlife corridors), site specific information provided by the project applicant, the best available scientific evidence, and expert advice should be used. In addition, the determination of significant adverse effects may also be considered within a regional context. Siting, design and management strategies should be employed to avoid or minimize adverse effects on wildlife, informed by the advisory principles in the Public Access Design Guidelines. Public Access Policy No. 15 states in part that: “the Commission should, in cooperation with other appropriate agencies and organizations, determine the location of sensitive habitats in San Francisco Bay and use this information in the siting, design and management of public access along the shoreline of San Francisco Bay.”

The DEIR claims that the impacts to biological resources would be less than significant, mainly due to the lack of biota currently found on the site. The site is currently urbanized with industrial, port, and ancillary uses which is not suspected to support any special status or species of concern. The DEIR states: “Following construction, the urbanized upland portions of the Project site would continue to provide little in terms of wildlife benefits.” While there is a list of sensitive and protected species for the Bay as a region, the DEIR fails to clearly identify which Bay area species have the potential to be impacted, discuss the likelihood of their presence or absence, or provide a map indicating the species’ proximity to Project construction and operations. It would be beneficial to see where known nesting sites are in the surrounding areas, to see if the species could move in, and to better visualize the potential lighting, sound (fireworks), and human disturbance impacts.

#### **Safety of Fills**

The Bay Plan includes a policy section on Safety of Fills to reduce the risk of life and damage to property from construction on filled lands in the Bay. Implications of these policies relate primarily to the analyses in Section 4.6 and Section 4.8 of the DEIR.

- **Role of the ECRB.** Since the proposed wharf improvements and the stadium structure are sited on previously filled lands still constituting BCDC's Bay jurisdiction (14 CCR § 10710), the ECRB has purview over the proposed project. The Regulatory Settings in Section 4.6 should include information on the Safety of Fills Policies and the ECRB. California Code of Regulations Title 14, Section 10271 cites that "the Board shall advise the Commission on problems relating to the safety of fills and of structures on fills." Additionally, the Bay Plan policies for Safety of Fills state, in part: "[t]he Commission has appointed the Engineering Criteria Review Board consisting of geologists, civil engineers specializing in geotechnical and coastal engineering, structural engineers, and architects competent to and adequately empowered to: (a) establish and revise safety criteria for Bay fills and structures thereon; (b) review all except minor projects for the adequacy of their specific safety provisions, and make recommendations concerning these provisions; (c) prescribe an inspection system to assure placement and maintenance of fill according to approved designs...." The ECRB was most recently briefed on the Project on March 25, 2021.
- **Maritime Reservation.** Section 4.8 includes this analysis of the MRS: "... All site conditions relative to hazards and hazardous materials would remain the same as described for the proposed Project, and therefore the impacts and analysis for the Maritime Reservation Scenario would be the same as those discussed above for the proposed Project," without any additional evidence or discussion specific to the MRS. Staff believes that additional evidence and a program-level discussion is warranted, not because the Project itself would result in the excavation and development of the turning basin, but because the site condition upon which the MRS variation of the Project is built would be potentially different. In the MRS, the buildings in both Phase I and Phase II would be closer to the water's edge, and that edge would have been created through the disturbance of fill and soil known to be contaminated. The open space area, similarly, would be located along an edge where contaminated fill would have been disturbed. The analysis needs to acknowledge the change in site condition and potential exposure to the development being proposed (in this case, the MRS); identify how these changes may result in different impacts or different levels of significance in impacts for the MRS compared to the proposed Project; identify ways that these foreseeable differences in potential impacts between the proposed Project and MRS could affect the way the development is planned, designed, and approved; and include mitigation for any potentially significant impacts.

## Environmental Justice

The State of California defines environmental justice as "the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies." In 2019, the Commission adopted Environmental Justice and Social Equity findings and policies into the Bay Plan (BPA 2-17), as well as Resolution 2019-07 to uphold a set of Environmental Justice and Social



Equity Guiding Principles. While environmental justice is not necessarily identified as a distinct resource area in and of itself to be analyzed under Appendix G of the CEQA Guidelines, many of the DEIR's topic areas touch on issues of environmental justice and it is clear that environmental justice can and does intersect with CEQA environmental impact analysis requirements.<sup>14</sup> Environmental Justice and Social Equity Policy 4 states: "If a project is proposed within an underrepresented and/or identified vulnerable and/or disadvantaged community, potential disproportionate impacts should be identified in collaboration with the potentially impacted communities. Local governments and the Commission should take measures through environmental review and permitting processes, within the scope of their respective authorities, to require mitigation for disproportionate adverse project impacts on the identified vulnerable or disadvantaged communities in which the project is proposed." BCDC identified issues related to environmental justice in our comments on air quality, circulation, flooding impacts, and public access and recreation, and noted them above.

In addition, BCDC has a comment on tribal cultural resources. The first of the Commission's Guiding Principles on Environmental Justice and Racial Equity is to "recognize and acknowledge the California Native American communities who first inhabited the Bay Area and their cultural connection to the natural resources of the region." Staff requests that Section 4.4 include additional ethnographic information about the tribes that have historically had a connection to the Project site. Additionally, based on the State of California Office of Planning and Research AB 52 and Tribal Cultural Resources in CEQA Technical Advisory, mitigation for the potential discovery of tribal cultural resources during construction should include some form of tribal consultation to determine the appropriate treatment of the resource, including the presence of a Native American monitor on the site to ensure that the agreed-upon treatment plan is correctly implemented.

## CONCLUSION

Once again, BCDC appreciates the opportunity to provide comments on this DEIR. As a responsible agency, BCDC will be using the Final EIR to inform the Commission's decisions on both Bay Plan Amendment No. 2-19 and, if a permit application is submitted, approval of a permit. Please continue to keep BCDC staff informed on developments in the environmental review and local approvals for the Project. Additionally, BCDC staff is available to answer any questions about our comments and to work and to share information with preparers of the DEIR wherever we can be of assistance.

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<sup>14</sup> See, e.g., [https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/ej\\_fact\\_sheet.pdf](https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/ej_fact_sheet.pdf), pp 2-6.

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Please direct any questions concerning the DEIR and this comment letter to Katharine Pan, Principal Shoreline Analyst, at [katharine.pan@bcdc.ca.gov](mailto:katharine.pan@bcdc.ca.gov) or 415/-352-3600. We look forward to future updates on the Project.

Sincerely,

DocuSigned by:  
  
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