

# San Francisco Bay Conservation and Development Commission

375 Beale Street, Suite 510, San Francisco, California 94105 tel 415 352 3600 fax 888 348 5190

State of California | Gavin Newsom – Governor | [info@bcdc.ca.gov](mailto:info@bcdc.ca.gov) | [www.bcdc.ca.gov](http://www.bcdc.ca.gov)

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## Via Email Only

Lina Velasco  
Community Development Director  
City of Richmond Planning Division  
450 Civic Center Plaza – 2<sup>nd</sup> Floor  
Richmond, CA 94804  
Email: [admin@pointmolateseir.com](mailto:admin@pointmolateseir.com)

Governor's Office of Planning & Research

**APR 16 2020**

**STATE CLEARINGHOUSE**

SUBJECT: Comments on the Point Molate Mixed-Use Development Project Draft Subsequent Environmental Impact Report (Draft SEIR), State Clearinghouse Number 2019070447; BCDC Inquiry File No. CC.RH.1101.1.

Dear Ms. Velasco:

Thank you for the opportunity to comment on the Draft SEIR for the Point Molate Mixed-Use Development Project (Project), State Clearinghouse Number 2019070447, distributed on February 21, 2020, and requested by our office on March 12, 2020. The proposed project includes a mixed-use development of approximately 80 acres, and includes the following: 1,260-2,040 medium- to high-density residential units; rehabilitation of a 374,572 square-foot area of existing historic buildings with approximately 20,000 square feet for retail and restaurants; an additional 20,000 square feet for retail or restaurant use within a 250,000 square-foot area; approximately 10,000 square feet for an onsite joint fire and police substation or other community service; approximately 193 acres of open space; construction of approximately 1.5 miles of Bay Trail with a vista overlook; a ferry terminal on an existing pier; new roads within the project site and widening of Stenmark Drive from the project to the I-580 ramps; and associated utilities and infrastructure improvements to serve the new development. Under the residential option for the project, the historic building area would include 473 residential units and the new construction would include approximately 307 units, while the commercial option would include 354,572 square feet of commercial uses within the historic building area, and 230,000 square feet for commercial uses within the new construction area.

The Commission is a responsible agency for this project and will rely on the final SEIR when it considers the project. We have prepared comments outlining specific BCDC issues that should be addressed either in the final SEIR or through the BCDC permitting process. Once we receive more details on the project, we will be able to provide more detailed responses, and can work closely with the project sponsors to ensure the project is consistent with the Commission's law and policies. Although the Commission itself has not reviewed the Draft SEIR, the staff comments are based on the McAteer-Petris Act and the Commission's San Francisco Bay Plan (Bay Plan).



**Commission Jurisdiction.** From reviewing the Draft SEIR, it appears that a portion of the project would be located within the Commission's jurisdiction. The Commission's jurisdiction includes both the Bay itself and the "shoreline band." The shoreline band extends 100 feet inland from and parallel to the Bay shoreline, that shoreline being defined as the line of mean high tide, or where there is tidal marsh, all areas five feet above mean sea level. Within its jurisdiction, Commission permits are required for activities including the placement of fill, substantial changes in use, and dredging. This project would require a major permit from the Commission, as stated in the Draft SEIR. Permits are issued if the Commission finds the activities to be consistent with the McAteer-Petris Act and the policies of the Bay Plan.

**Waterfront Beach, Park Priority Use Area.** Section 66602 of the McAteer-Petris Act states, in part, that certain water-oriented land uses along the bay shoreline are essential to the public welfare of the Bay Area, and that these uses include wildlife refuges, water-oriented recreation and public assembly, and, as such, the San Francisco Bay Plan should make provision for adequate and suitable locations for all these uses. In Section 66611, the Legislature declares "that the Commission shall adopt and file with the Governor and the Legislature a resolution fixing and establishing within the shoreline band the boundaries of the water-oriented priority land uses, as referred to in Section 66602," and that "the Commission may change such boundaries in the manner provided by Section 66652 for San Francisco Bay Plan maps."

From reviewing the Draft SEIR, it appears that most of the project would be in a Waterfront Beach, Park Priority Use Area. Pursuant to the Commission's authority under the McAteer-Petris Act and the Bay Plan, development within Waterfront Park Priority Use Areas must be consistent with the Bay Plan Recreation policies that describe appropriate uses and other considerations for development and management of waterfront parks. Therefore, any proposals for placing fill, extracting materials, or changing the use of any land, water, or structure within those areas that are designated for Waterfront Park, Beach Priority Use in the Bay Plan must be developed and managed in a manner consistent with the Recreation policies in the Bay Plan, in addition to the other applicable policies of the McAteer-Petris Act and the Bay Plan. The Draft SEIR notes that portions of the Modified Project, including mixed use and residential buildings, are inconsistent with Bay Plan Recreation Policies, as well as the designated Waterfront Beach, Park Priority Use Area at this location. The final SEIR should include the process under which the project sponsors plan to undergo to resolve these inconsistencies. For instance, if the project sponsors plan to seek an amendment to the Bay Plan priority use designation for this site, this should be indicated in the final SEIR.

### **Commission Law and Bay Plan Policies Relevant to the Project**

1. **Bay Plan Map Policy.** The Draft SEIR includes a mention of Bay Plan Map No. 4, which includes the following enforceable policy for the Former Naval Fuel Depot at Point Molate: "Develop for park use. Landward of Western Drive should be developed consistent with recreation policy 4-b. Provide trail system linking shoreline park areas and vista points in



hillside open space areas. Provide public access to historical district with interpretation of this resource. The Point Molate Pier should be re-used for water-oriented recreation and incidental commercial recreation. Encourage water-oriented recreation, including mooring facilities for transient recreational boats, excursion craft and small watercraft. Protect existing eelgrass beds.”

Bay Plan Map No. 4 also identifies Western/Winehaven Drive as a Scenic Drive. The Bay Plan Appearance Design, and Scenic Views Policy No. 14 states: “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. In this regard, particular attention should be given to all waterfront locations, areas below vista points, and areas along roads that provide good views of the Bay for travelers, particularly areas below roads coming over ridges and providing a ‘first view’ of the Bay.” The Draft SEIR recognizes that the modified project is inconsistent with this policy, but states that the Bay Plan is inconsistent with the Reuse Plan for the project site outside of BCDC’s jurisdictional boundaries (page 160). In the Final SEIR, please clarify how the project sponsors plan to reconcile these inconsistencies.

2. **Bay Fill.** Section 66605 of the McAteer-Petris Act sets forth the criteria necessary to authorize placing fill in the Bay and certain waterways. It states, among other things, that further filling of the Bay should only be authorized if it is the minimum necessary to achieve the purpose of the fill and if harmful effects associated with its placement are minimized. According to the Act, fill is limited to water-oriented or minor fill for improving shoreline appearance or public access and should be authorized only when no alternative upland location is available for such purpose. The Draft SEIR states that the existing pier will be utilized, and that the total surface area of the pier will not increase. Furthermore, the Biology section of the report states that the project will not result in extraction of filling directly into the Bay (page 334). In the final SEIR, please clarify exactly what uses are proposed on the pier, as several uses were mentioned throughout the document including a water taxi and kayak launch. Please also clarify whether the entire pier or portion of it are proposed for public use. Depending on the amount of net total fill proposed to rehabilitate the pier and the uses proposed on fill, the Commission may require that fill be removed elsewhere on the waterfront to mitigate the amount of new fill proposed.
3. **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 residential- or commercial-focused mixed-use development including as many as 2,040 dwelling units and more than 600,000 square feet of commercial uses will by definition 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 at the site, maximum feasible public access consistent with the project is to be provided. The Draft SEIR noted that the project sponsors are still considering two options, a residential-focused and a commercial-focused option. As this is determined, the final SEIR

should include more detailed information on the proposed public access amenities throughout the project. The Draft SEIR lists general amenities including "...trails, picnic areas, restroom facilities, and park amenities consistent with those found in regional parks in Alameda and Contra Costa counties..." However, BCDC's determination of maximum feasible public access consistent with the project will require a better understanding of the public access amenities proposed as part of the development. The Draft SEIR also lists the expected densities of the proposed dwelling units, and states that the project is not likely to induce substantial unplanned population growth in the area. However, as part of BCDC's analysis of the project's public access components, the anticipated number of new residents resulting from the project as well as the expected increase in visitation rates from members of the public coming from outside of the project site will be necessary to make a determination.

The Bay Plan Public Access policies also provide that "[p]ublic access to some natural areas should be provided to permit study and enjoyment of these areas," recognizing that "some wildlife are sensitive to human intrusion... [and, f]or this reason, projects in such areas should be carefully evaluated in consultation with appropriate agencies to determine the appropriate location and type of access to be provided." The Draft SEIR references existing sensitive habitats, including tidal marsh salt marsh, sand dunes, native vegetation and offshore eelgrass beds. The Draft SEIR also lists the plans for consultation with the appropriate agencies, including but not limited to California Department of Fish and Wildlife, U.S. Department of Fish and Wildlife, National Marine Fisheries Service. The final SEIR should ensure the compatibility of the proposed public access with aquatic life, wildlife and plant communities presently at the site, as well as with the habitat creation and enhancement components of the proposed project. The Draft SEIR provided some information on the species and habitats at the project site, and the potential for significant adverse effects. In the final SEIR, please include this information within a regional context, identifying any siting, design, or management strategies that could be employed to avoid or minimize adverse effects on wildlife, and how the effects of public access on wildlife will be monitored over time to determine whether revisions of management strategies are needed.

For a Waterfront Park Priority Use Area, the Bay Plan Recreation Policy No.4.a. states in part that "[t]o assure optimum use of the Bay for recreation, [certain] facilities should be encouraged in waterfront parks..." including camping areas accessible by boat, boat docking and launching facilities, fishing facilities, trails [including the San Francisco Bay Trail and Bay Area Ridge Trail] for hiking and biking, picnic and swimming areas, small restaurants, interpretive and educational sites, vista points, beaches, services to accommodate public transit including for buses, and parking that does not diminish the character of the park. Additionally, this Bay Plan policy states, in part, "limited commercial recreation facilities, such as small restaurants, should be permitted within waterfront parks provided they are clearly incidental to the park use, are in keeping with the basic character of the park, and do not obstruct public access to and enjoyment of the Bay. Limited commercial development



may be appropriate (at the option of the park agency responsible) in all parks shown on the [Bay] Plan maps except where there is a specific note to the contrary.” The Draft SEIR states that the park will provide public access to the Bay, along the entire shoreline of the project site, and that the park will include a vista overlook, picnic areas, park recreation facilities, a paddle sport launch area, interpretive center, restroom facilities, and a potential public art and cultural exhibit location. The Modified Project has also taken over the development of a 1.5-mile segment of the San Francisco Bay Trail project that was previously approved by the City. The final SEIR should outline how recreational facilities that will be included in the proposed project support the character and community of the surrounding area, as well as a detailed explanation of the proposed commercial facilities and why they are incidental to park use. It should identify specific locations for public access improvements, including potential furnishings, signage, lighting, possible site programming, and other amenities. Lastly, the final SEIR should indicate what measures will ensure the public access areas permit barrier-free access for persons with disabilities to the maximum extent feasible and should outline the proposed maintenance program for public areas.

The Draft SEIR states that a new ferry terminal will be constructed as part of the proposed project. Bay Plan Recreation Policy No. 9 provides that “[f]erry terminals may be allowed in waterfront park priority use areas...provided the develop and operations of the ferry facilities do not interfere with current or future park and recreational uses, and navigational safety can be assured.” The final SEIR should include information on how the ferry terminal will be operate alongside the other existing and proposed uses of the area, with details on the proposed configuration of the terminal and the design of supporting facilities such as parking.

The project will require review by BCDC’s Design Review Board. It’s recommended that projects are reviewed by the Commission’s advisory boards at a time in the project development so that the project can consider the advice of the board prior to a permit application to the Commission.

4. **Subtidal Areas.** Policy No. 1 in this Bay Plan section establishes the method of evaluating proposed filling or dredging of subtidal areas and establishes that “[p]rojects in subtidal areas should be designed to minimize and, if feasible, avoid any harmful effects.” However, there are stricter standards for projects in scarce subtidal areas, and subtidal areas with an abundance and diversity of fish, other aquatic organisms and wildlife, including eelgrass beds. Policy No. 2 states in part that “[f]illing, change in use and dredging in these areas should therefore be allowed only if: (a) there is no feasible alternative; and (b) the project provides substantial public benefits.” The Draft SEIR states that the approximately 50 acres of eelgrass that exist within the project site, approximately 12%, will be avoided, but will be included in a pre- and post-construction survey. The final SEIR should mention the Bay Plan’s subtidal policies as they are not mentioned in the Biology Section of the Draft SEIR. The final SEIR should also address measures to be taken to avoid, minimize, or mitigate for impacts to anticipated impacts.

5. **Water Quality.** The policies in this Bay Plan section address water quality and require Bay water pollution to be prevented to the greatest extent feasible. New projects are required to be sited, designed, constructed and maintained to prevent or minimize the discharge of pollutants in the Bay by controlling pollutant sources at the project site, using appropriate construction materials, and applying best management practices. The Draft SEIR addressed how the construction and use of the proposed project would be designed to control stormwater runoff and pollution to the Bay, including litter management, and identified the role of the State and Regional Water Boards in reviewing and approving the project. It also stated that the project is not likely to decrease groundwater or interfere with groundwater supplies.
6. **Safety of Fills and Climate Change.** Climate Change Policy No. 1 states that, “risk assessment[s] should be prepared...based on the estimated 100-year flood elevation that takes into account the best estimates of future sea level rise and current flood protection and planned flood protection...for the proposed project or shoreline area. A range of sea level rise projections for mid-century and end of century based on the best scientific data available should be used in the risk assessment.” Policy No. 3 states that where such assessments show vulnerability to public safety, projects “should be designed to be resilient to a mid-century sea level rise projection” and an “adaptive management plan” be prepared.

In addition, Policy No. 4 in the Bay Plan Safety of Fills section states that structures on fill or near the shoreline should have adequate flood protection including consideration of future relative sea level rise as determined by qualified engineers. The policy states that, “[a]dequate measure 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.... 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.” These policies should be read in combination with Public Access Policy No. 5, which states in part, that public access areas “should be sited, designed, managed and maintained to avoid significant adverse impacts from sea level rise and shoreline flooding.” The Draft SEIR mentions sea level rise projections and the use of the Shoreline Flood Explorer for the project’s sea level rise analysis, and states that a small area, near the southern boundary, would be affected by 52 inches of water. In the final SEIR, the project sponsors should include the mean higher high water level, the 100-year flood elevation, the mid- and end-of-century sea level projections (preferably using projections based on the best-available science found in the State’s SLR guidance, available here: [http://www.opc.ca.gov/webmaster/ftp/pdf/agenda\\_items/20180314/Item3\\_Exhibit-A\\_OPC\\_SLR\\_Guidance-rd3.pdf](http://www.opc.ca.gov/webmaster/ftp/pdf/agenda_items/20180314/Item3_Exhibit-A_OPC_SLR_Guidance-rd3.pdf)), anticipated site-specific storm surge effects, and a

preliminary assessment of the project's vulnerability to future flooding and sea level rise. There should be mention of how the project has been designed to adapt to, tolerate, and manage sea level rise and shoreline flooding at the site to ensure the project is resilient to mid-century sea level rise projections, and how it can adapt to end of the century projections. If necessary, the final SEIR should indicate whether there are any proposed long-term adaptation strategies, and if they would have the potential to adversely affect or reduce in size public access areas, and methods for minimizing these effects. The Draft SEIR mentions large bioretention areas proposed for the shoreline. In the Final SEIR, please address whether these are resilient to sea level rise.

For the pier rehabilitation component of the project, the project may need to go before the Commission's Engineering Criteria Review Board (ECRB), which reviews projects "for the adequacy of their specific safety provisions, and make[s] recommendations concerning these provisions [and] prescribe[s] an inspection system to assure placement and maintenance of fill according to approved designs." The staff recommends that the project sponsor consult with the Commission's staff engineer, and if necessary, seek early guidance from the ECRB.

7. **Shoreline Protection.** The Bay Plan establishes criteria by which new shoreline protection projects may be authorized and by which existing shoreline protection may be maintained or reconstructed. Policy No. 4 requires that "all shoreline protection projects should evaluate the use of natural and nature-based features such as marsh vegetation, levees with transitional ecotone habitat, mudflats, beaches, and oyster reefs, and should incorporate these features to the greatest extent practicable. Ecosystem benefits, including habitat and water quality improvement, should be considered in determining the amount of fill necessary for the project purpose. Suitability and sustainability of proposed shoreline protection and restoration strategies at the project site should be determined using the best available science on shoreline adaptation and restoration." Policy No. 7 requires that, whenever practicable, native vegetation buffer areas should be used in place of hard shoreline and bank erosion control methods (e.g., rock riprap) where appropriate and practicable. New shoreline protection projects are also to avoid adverse impacts to natural resources and public access, and mitigation or alternative public access must be provided when avoidance is not possible.

The final SEIR should identify the approach the project will take in terms of shoreline armoring at the site and discuss where the use of vegetation in favor of hard shoreline protection would be appropriate and feasible along the 1.5-mile segment of the Bay Trail. The Final SEIR should catalog existing shoreline protection structures at the project site and identify where maintenance or reconstruction is required. Please also discuss the anticipated performance of the softer shoreline protection measures that are proposed for the project site, as well as an analysis of the potential to adversely impact natural resources or public access.

8. **Public Trust.** The public trust doctrine holds that navigable waters and tidal lands are the property of the state and must be protected for public use and enjoyment. The Bay Plan policies on public trust lands states, in part, that when taking actions on such land, the Commission “should assure that the action is consistent with the public trust needs for the area and, in the case of lands subject to legislative grants, would also assure that the terms of the grant are satisfied and the project is in furtherance of statewide purposes.” Public trust uses cited in the Bay Plan include commerce, navigation, fisheries, wildlife habitat, recreation and open space. The Draft SEIR states that part of the site includes lands subject to the public trust doctrine. The final SEIR should provide results of consultation with the State Lands Commission regarding the public trust needs for the area.
  
9. **Environmental Justice.** Our Commission recently approved several new Bay Plan policies around Environmental Justice and Social Equity. Policy 2 of the new Bay Plan Environmental Justice and Social Equity chapter states “...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.” Policy 3 says “[e]quitable, 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... Evidence of how community concerns were addressed should be provided.” Policy 4 states “[i]f 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.” Revised Public Access Policy 5 states “[p]ublic access that substantially changes the use or character of the site should be sited, designed, and managed based on meaningful community involvement to create public access that is inclusive and welcoming to all and embraces local multicultural and indigenous history and presence...” The updated policies go further to state that public access improvements should not only be consistent with the project, but also incorporate the culture(s) of the local community, and provide “...barrier free access for persons with disabilities, for people of all income levels, and for people of all cultures.”

The Draft SEIR mentions these new Environmental Justice and Social Equity policies, and states that there have been years of community outreach regarding the waterfront facilities proposed at the project site. However, the Draft SEIR does not include details on the feedback provided for the Modified Project at the community meetings, nor how the project sponsors incorporated that feedback into the modified project design. The final SEIR should identify the culturally-relevant community outreach and engagement efforts conducted for the Modified Project, and clarify how community concerns were addressed in the current project design.




Lina Velasco

April 16, 2020

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Thank you for providing the staff with an opportunity to review the Draft SEIR for the Point Molate Mixed-Use Development Project. We recognize the importance and scope of this project and hope these comments aid you in preparation of the final SEIR. We look forward to working with you and the project sponsors as the project is developed and through the permitting stage. If you have any questions regarding this letter or the Commission's policies and permitting process, please do not hesitate to contact me at 415/352-3654 or [morgan.chow@bcdc.ca.gov](mailto:morgan.chow@bcdc.ca.gov).

Sincerely,

DocuSigned by:  
  
264139F07B7E400  
MORGAN CHOW

Shoreline Development Analyst

cc: Lina Velasco  
Richmond Planning and Building Services Department  
State Clearinghouse  
1400 10<sup>th</sup> Street, #12  
Sacramento, CA 95814  
Via Email Only: [state.clearinghouse@opr.ca.gov](mailto:state.clearinghouse@opr.ca.gov)

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