
San Francisco Bay Regional Water Quality Control Board

Sent via electronic mail: No hard copy to follow

February 7, 2022
WDID: 2 CW 433008
Place ID: 815608

Mr. Eric Jolliffe
USACE San Francisco District
450 Golden Gate Ave, 4th Floor
San Francisco CA 94102
E-mail: OaklandHarborTurningBasinsStudy@usace.army.mil

Subject: Comments on Oakland Harbor Turning Basins Widening Navigation Study Draft Integrated Feasibility Report and Environmental Assessment

Dear Mr. Jolliffe:

The San Francisco Bay Regional Water Quality Control Board (Water Board) appreciates the invitation to comment on the Draft Integrated Feasibility Report and Environmental Assessment Document with the comment period ending February 14, 2022. To date, the Water Board has participated in both the public meetings and the Regulatory Advisory Workgroup Meetings. Our previous verbal comments asked the Corps to take all suitable dredged sediment to beneficial reuse sites and we are extremely pleased that on page iv of the document's Executive Summary, the Corps commits to take all suitable material, as defined by the Dredge Material Management Office, to an approved beneficial reuse site as either cover or non-cover material. The Corps estimates approximately 1,676,000 cy of sediment will help San Francisco Bay adapt to future sea level rise resulting from climate change.

We ask that the Corps clarify whether a water quality certification (Certification) under Section 401 of the Clean Water Act (CWA) is required for this project and whether it intends to request one from the Water Board. Chapter 7, Table 57 indicates, "If applicable, a water quality certification for the project will be obtained after the feasibility phase, in the pre-construction design phase." This statement shows the Corp's is not certain if the Certification is required. However, Corps staff indicated via email on January 11, 2022, that the current plan is to not request a Certification because the project does not result in fill of federal waters. The Water Board believes a Certification is required for this project, and we ask to meet with the Corps to discuss the basis for the Corps' recent communication that no Certification is required.

This Project is subject to CWA section 402 because it will result in pollutants being discharged in stormwater during and after the project. During construction, 7.4 acres of land currently with industrial and commercial uses will be disturbed thereby creating the potential for sediment and other pollutants to be entrained in stormwater and subsequently discharged to waters of the U.S. Further, the project will make “minor, permanent alterations to upland drainage patterns at Howard Terminal.” Although CWA section 402 and National Pollutant Discharge Elimination System requirements relative to stormwater are discussed in Section 3.4.1 and 6.4.1, this CWA requirement and permit step were not mentioned in Section 7 as applying to the project. Projects that disturb one or more acres of soil are required to obtain coverage under the General Permit for Discharges of Storm Water Associated with Construction Activity [Construction General Permit Order 2009-0009-DWQ](#). This project could qualify for coverage under Statewide Construction General Permit; however, the magnitude of potential water quality impacts associated with stormwater discharges from the project may warrant an individual construction stormwater permit issued by the Water Board.

We also believe the Corps is subject to the Porter-Cologne Water Quality Control Act (Porter Cologne). The project as described is discharging or proposing to discharge waste that could affect water quality (Water Code section 13260), which triggers the requirement for a report of waste discharge. Under CWA section 313, federal agencies “engaged in any activity resulting, or which may result, in the discharge or runoff of pollutants . . . shall be subject to, and comply with, all Federal, State, interstate, and local requirements and administrative authority, and process and sanctions respecting the control and abatement of water pollution in the same manner as any nongovernmental entity.” (33 U.S.C. § 1323.) The Water Board intends to issue waste discharge requirements (WDRs) for this project. WDRs may be sought in a combined application for a Certification.

The Port of Oakland as described in section Chapter 8 is the local sponsor for the project. The local sponsor is responsible for funding 50 percent of the project design and 50 percent of project construction. In addition, the Port is the landowner for the affected land and according to information provided at the January 12, 2022, public meeting, is responsible for following requirements of California Environmental Quality Act (CEQA). Because of the above, we have determined that the Port of Oakland is a co-project proponent for the project and is also subject to both CWA and Porter Cologne. Therefore, the Port of Oakland shall co-apply with the Corps to receive Certification, NPDES permit, and WDRs for the project. These permits will ensure that best management practices are implemented to prevent spills and leaks of fuel, oil, soil, sediment, and other pollutants during the excavation, dredging, and transport of soil and sediment.

Should you have questions or concern, please send Kevin Lunde, of my staff, an email at Kevin.Lunde@waterbaords.ca.gov.

Sincerely,

Xavier Fernandez
Planning Division Manager

cc (via email):

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