

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 | www.bcdc.ca.gov

July 5, 2022

Via Electronic Mail Only: Turningbasins@portoakland.com

Jan Novak
Environmental Programs and Planning Division
530 Water Street
Oakland, CA 94607

Governor's Office of Planning & Research

Jul 5 2022

STATE CLEARINGHOUSE

SUBJECT: Notice of Preparation of a Draft Environmental Impact Report for the Oakland Harbor Turning Basins Widening Project; SCH #2022050647

Dear Mr. Novak,

Thank you for the opportunity to comment on the Notice of Preparation (NOP) of a Draft Environmental Impact Report (DEIR) for the proposed Oakland Harbor Turning Basins Widening Project at the Port of Oakland (Port) in Oakland, California, dated May 31, 2022, and received via email on May 31, 2022. The purpose of the Port's proposed action is to increase the width of the Inner Harbor Turning Basin (IHTB) and Outer Harbor Turning Basin (OHTB) to allow vessels that are 1,310 feet in length with a 19,000 TEU (20-foot equivalent) capacity, to turn around more efficiently. Given that enlarging the turning basins will enable larger ships to call on the Port more frequently, which may significantly affect the quality of the human and aquatic environment, the cumulative impacts of the proposed project on human and aquatic health should be carefully assessed in the DEIR and the DEIR should also describe how the Port intends to manage the additional cargo throughput and additional container storage.

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

Commission Jurisdiction.

The project site indicated in the NOP is within BCDC permitting jurisdiction. Per the McAteer-Petris Act, BCDC is responsible for granting or denying permits for any proposed fill; extraction of materials; or substantial changes in use of any water, land, or structure within the



Commission's jurisdiction (California Government Code [CGC] Section 66632). Based on the NOP's project description, relevant areas of BCDC jurisdiction for the project may include the following:

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

As the proposed project includes a change in use on the project site and in the Bay, and portions of the project site may be located within the 100-foot shoreline band, the project would require a major permit from the Commission. Approval of a BCDC permit will require consistency with the McAteer-Petris Act and the Bay Plan. The DEIR should map and describe the elements of the project that would occur within BCDC permitting jurisdiction, distinguishing between the Bay and shoreline band jurisdictions, and note the presence of the port priority use designation, where applicable. We look forward to reviewing the Port's permit application for the proposed project.

Commission Law and Bay Plan Policies Relevant to the Project. The following list of laws and policies are applicable to this project, but may not include all applicable policies. We recommend you review the McAteer Petris Act and the Bay Plan and consider the needs for analysis related to this law and plan when developing the DEIR.

1. **Bay Fill.** Section 66605 of the McAteer-Petris Act states that fill in San Francisco Bay should "only be authorized when": (1) the public benefits from the fill clearly exceed the public detriment from the loss of water area and should be limited to water-oriented uses (such as ports, water-related industry, airports, bridges, wildlife refuges, water-oriented recreation and public assembly) ... or minor fill for improving shoreline appearance or public access to the Bay; (2) no upland alternative location is available for the project purpose; (3) the fill is the minimum amount necessary to achieve the purpose of the fill; (4) the nature, location and extent of any fill will minimize harmful effects to the Bay; and (5) the fill should be constructed in accordance with sound safety standards (See Safety of Fills Section below). It appears from the NOP that a new bulkhead would be installed in San Francisco Bay as part of the project. Thus, the DEIR should indicate any locations of new fill, the proposed method of fill, the approximate volume and surface area of the Bay to be filled, as well as the uses associated with the proposed new fill for each specific area.
2. **Fish, Other Aquatic Organisms and Wildlife.** The policies in this Bay Plan section address the benefits of fish, other aquatic organisms and wildlife, and the importance of protecting the Bay's subtidal habitats, native, threatened, or endangered species, and species that are candidates for listing as endangered or threatened. Policy No. 1 requires that the Bay's subtidal habitats are to be conserved, restored and increased "to the greatest extent feasible." The DEIR should address how the construction and use of the proposed project would meet these policies and avoid or minimize impacts to special-status species and

habitat in the Bay. Please also provide a detailed analysis of the potential impacts to fish and wildlife that may result from the additional number of ultra large container vessels anticipated to be transiting through the Bay to and from the Port.

- 3. Water Quality and Dredging.** Per Water Quality Policy 1 and Dredging Policy 2 of the Bay Plan, Bay water pollution should be prevented to the greatest extent feasible and sediment to be dredged must meet the water quality requirements of the San Francisco Bay Regional Water Quality Control Board. Sediments proposed for dredging should be sampled and sediment quality tested based on the recommendations of the Dredged Material Management Office (DMMO), in order to ensure that dredged sediments meet the water quality requirements for placement. Therefore, the DMMO should review the sampling and analysis plan and testing results as part of the normal sediment suitability determination process.

Dredging Policy 3 and 4 together require that in Bay disposal is reduced and beneficial reuse of dredged sediment is maximized. Furthermore, sediment dredged during this widening project is considered new work dredging (see Subtidal Areas Section below), which necessitates placement at a beneficial reuse site in alignment with the LTMS program. To meet these policies, please clarify how the project intends to maximize beneficial reuse of dredged sediment.

Furthermore, Dredging Policy 9 states that, “to protect underground freshwater reservoirs (aquifers): (a) all proposals for dredging or construction work that could penetrate the mud “cover” should be reviewed by the San Francisco Bay Regional Water Quality Control Board and the State Department of Water Resources; and (b) dredging or construction work should not be permitted that might reasonably be expected to damage an underground water reservoir. Applicants requesting permission to dredge should provide additional data on groundwater conditions in the area of construction to the extent necessary and reasonable in relation to the proposed project.” Therefore, please provide data on groundwater conditions within and near the action area so that we can confirm the project will not damage any aquifers.

- 4. Subtidal Areas.** Subtidal Areas Policy 1 states, “Any proposed filling or dredging project in a subtidal area should be thoroughly evaluated to determine the local and Bay-wide effects of the project on: (a) the possible introduction or spread of invasive species; (b) tidal hydrology and sediment movement; (c) fish, other aquatic organisms and wildlife; (d) aquatic plants; and (e) the Bay's bathymetry. Projects in subtidal areas should be designed to minimize and, if feasible, avoid any harmful effects.” The proposed project involves new work dredging of subtidal habitat that has not been subject to dredging in the recent past. Therefore, the benthic community is considered to be relatively undisturbed and well-developed in these areas. The DEIR should evaluate the new-work dredging impacts to subtidal habitat and provide mitigation for such impacts.
- 5. Environmental Justice and Social Equity.** In 2019, the Commission adopted a Bay Plan Amendment to include Environmental Justice and Social Equity polices and is committed to eliminating disproportionate adverse economic, environmental, and social project impacts caused by Commission approvals, actions and activities, particularly in disadvantaged and

vulnerable communities. As outlined in Policy 3, project applicants should meaningfully “involve potentially impacted communities for major 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.”

As you’re aware, the Port of Oakland is immediately adjacent to West Oakland, a community of approximately 25,000 people. West Oakland is considered a vulnerable community, and the residents face a disproportionate pollution burden that leads to negative health impacts. The Port, which moves the fourth highest international container volume in the U.S., is one of the reasons the community of West Oakland is overburdened by pollution. As such, the Commission is committed to ensuring the West Oakland community participates in the planning of this project to ensure their concerns are addressed and incorporated.

Air Quality. As you may be aware, West Oakland has higher rates of asthma, cardiovascular disease and premature death compared to the rest of Alameda County, which is an environmental justice issue. According to a 2019 *Owning Our Air* report by WOEIP and the Bay Area Air Quality Management District (BAAQMD), West Oakland is home to the highest levels of diesel particulate matter in the Bay Area and has higher concentrations of air pollutants like black carbon, NO and NO₂. Neighborhoods near the Port and Seventh Street experience three times the cancer risk from local pollution sources compared to neighborhoods farther away. The 2019 report also states that, “about 33 percent of diesel particulate matter comes from ocean-going vessels associated with the Port.” The DEIR should evaluate the anticipated cumulative increase in emissions the Bay Area could experience as a result of more ultra large container vessels transiting through the Bay in addition to the increase in emissions from larger ships idling within the Port. The DEIR should also assess the impacts of additional truck parking and idling, increased traffic, and resulting air quality impacts on adjacent and vulnerable communities that would occur as a result of this project.

The Commission’s 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.” Please discuss how the contaminated sediment issue will be address in relationship to vulnerable communities that may be impacted by the dredging or disposal of contaminated sediments.

As noted in Environmental Justice and Social Equity Policy 3, evidence of how community concerns were addressed should be provided to Commission staff, and per Environmental Justice and Social Equity Policy 2, Commission staff will continue to review the community engagement work conducted by the Port and provide feedback to ensure the engagement work is in alignment with these policies.

- 6. Climate Change.** Climate Change policies in the Bay Plan include requirements that planning for shoreline areas or larger shoreline projects should include preparation of a risk assessment by a qualified engineer that takes into account “the best estimates of future sea



level rise” and current and planned flood protection (Policy 2); that within areas determined through a risk assessment to be “vulnerable to future shoreline flooding that threatens public safety, all projects... should be designed to be resilient to a mid-century sea level rise projection” (Policy 3); and that if a proposed project is likely to remain in place longer than mid-century, “an adaptive management plan should be developed to address long-term impacts... using the best available science-based projection for sea level rise at the end of the century” (Policy 3). As of September 2019, the best available science-based projections for sea level rise were found in the State of California’s 2018 Sea-Level Rise Guidance, available at:

http://www.opc.ca.gov/webmaster/ftp/pdf/agenda_items/20180314/Item3_Exhibit-A OPC SLR Guidance-rd3.pdf.

7. **Safety of Fills.** According to the Bay Plan Dredging Policy 7, all proposed channels, berths, turning basins, and other dredging projects should be carefully designed so as not to undermine the stability of any adjacent dikes, fills or fish and wildlife habitats. The proposed expansion of the IHTB involves removal of terrestrial and aquatic sediment, which could impact the stability of adjacent fills and habitats, and therefore careful design is required. Per the Safety of Fills Policies 1 and 2, it is likely that any future structural engineering plans will need to be evaluated by BCDC’s Engineering Criteria Review Board.
8. **Shoreline Protection.** Shoreline Protection Policy 5 states in part that, “All shoreline protection projects should evaluate the use of natural and nature-based features ... and should incorporate these features to the greatest extent practicable. Therefore, the DEIR should evaluate possible modifications to the new bulkheads to include surface treatments that would provide invertebrate habitat benefitting aquatic organisms and other wildlife.
9. **Public Access and Appearance, Design, and Scenic Views.** The McAteer-Petris Act requires the Commission to ensure that any project within its jurisdiction provide maximum feasible public access to the Bay’s shoreline consistent with the project.” Public Access Policy 1 states in part that, “A proposed fill project should increase public access to the Bay to the maximum extent feasible.” The NOP mentions that a new bulkhead would be installed and new anchor tie backs, which the Commission considers to be new Bay fill. Given that new fill in the Bay is proposed, please describe any public access features that could be provided as part of the project.

Further, the Bay Plan’s Appearance, Design, and Scenic Views Policy 5 states in part that, “to enhance the maritime atmosphere of the Bay Area, ports should be designed, whenever feasible, to permit public access and viewing of port activities by means of (a) viewpoints (e.g., piers, platforms, or towers), restaurants, etc.” The DEIR should discuss whether the proposed project and associated increase in large container vessels calling on the Port would have an adverse effect on a scenic vista, and whether it would conflict with Bay Plan policies governing scenic quality. Please describe whether or not the Port plans to provide new viewing access to the waterfront or enhance any existing features to make them more accessible to the public. Understanding that public access with the Port’s operational areas maybe infeasible, please describe any potential in lieu public access opportunities that may be available.

10. **Mitigation.** Any mitigations designed as part of the proposed project and any mitigation measures included in the SEIR should be consistent with the Bay Plan's Mitigation policies. The Mitigation policies state, in part, that projects should be designed to avoid adverse environmental impacts to Bay resources, and if adverse impacts cannot be avoided, they should be minimized to the greatest extent possible. The policies also include BCDC's requirements for planning compensatory mitigation projects.
11. **Navigation Safety and Oil Spills.** We understand that the purpose of widening the turning basins is to increase navigational safety for very large containerships with a 19,000 TEU capacity. Per Navigational Safety and Oil Spill Policy 1, "Physical obstructions to safe navigation, as identified by the U.S. Coast Guard and the Harbor Safety Committee of the San Francisco Bay Region, should be removed to the maximum extent feasible when their removal would contribute to navigational safety and would not create significant adverse environmental impacts. Removal of obstructions should ensure that any detriments arising from a significant alteration of Bay habitats are clearly outweighed by the public and environmental benefits of reducing the risk to human safety or the risk of spills of hazardous materials, such as oil." Given the fact that 19,000 TEU container vessels carry 4.5 million gallons of fuel, and more of these would be coming into the Bay and calling at the Port, please explain how the risk of oil spills would be reduced and what oil spill prevention plans are in preparation.

We appreciate the opportunity to comment on the scope and contents of the DEIR. If you should have questions or concerns regarding this letter, please feel free to contact me at (415) 352-3646 or julia.kelly@bcdc.ca.gov. We look forward to working with the Port to further evaluate this proposed project.

Sincerely,



JULIA KELLY, PhD
Environmental Scientist

cc:

CA State Clearinghouse, state.clearinghouse@opr.ca.gov
West Oakland Environmental Indicators Project, Margaret.woeip@gmail.com
West Oakland Environmental Indicators Project, bbeveridge@woeip.org
Earthjustice, mghafar@earthjustice.org
Bay Area Air Quality Management District, ahsiao@baaqmd.gov
Bay Area Air Quality Management District, akirk@baaqmd.gov
US Environmental Protection Agency, Siu.Jennifer@epa.gov
US Army Corps of Engineers, OaklandHarborTurningBasinsStudy@usace.army.mil
Regional Water Quality Control Board, Kevin.Lunde@waterboards.ca.gov

JK/rc

