

CALIFORNIA STATE LANDS COMMISSION
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Governor's Office of Planning & Research

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STATE CLEARINGHOUSE

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File Ref: SCH #2019029113

Joshua McMurray,
Community Development Director
Community Development Department
3231 Main Street
Oakley, CA 94561

VIA REGULAR & ELECTRONIC MAIL (mcmurray@ci.oakley.ca.us)

Subject: Draft Environmental Impact Report (Draft EIR) for the Oakley Logistics Center Project, Contra Costa County

Dear Mr. McMurray:

The California State Lands Commission (Commission) staff has reviewed the subject Environmental Impact Report (EIR) for the Oakley Logistics Center Project (Project), which is being prepared by the City of Oakley (City). The City, as the public agency developing the area of the former DuPont Chemical Manufacturing Plant and is proposing to approve the Project is the lead agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.). The Commission is a trustee agency for projects that could directly or indirectly affect sovereign land and their accompanying Public Trust resources or uses.

Commission Jurisdiction and Public Trust Lands

The Commission has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways. The Commission also has certain residual and review authority for tidelands and submerged lands legislatively granted in trust to local jurisdictions (Pub. Resources Code, §§ 6009, subd. (c); 6009.1; 6301; 6306). All tidelands and submerged lands, granted or ungranted, as well as navigable lakes and waterways, are subject to the protections of the common law Public Trust Doctrine.

As general background, the State of California acquired sovereign ownership of all tidelands and submerged lands and beds of navigable lakes and waterways upon its

admission to the United States in 1850. The state holds these lands for the benefit of all people of the state for statewide Public Trust purposes, which include but are not limited to waterborne commerce, navigation, fisheries, water-related recreation, habitat preservation, and open space. On tidal waterways, the State's sovereign fee ownership extends landward to the mean high tide line, except for areas of fill or artificial accretion or where the boundary has been fixed by agreement or a court. On navigable non-tidal waterways, including lakes, the state holds fee ownership of the bed of the waterway landward to the ordinary low-water mark and a Public Trust easement landward to the ordinary high-water mark, except where the boundary has been fixed by agreement or a court. Such boundaries may not be readily apparent from present day site inspections.

Commission staff is presently analyzing the extent of its jurisdiction and interest in the subject property and negotiating with the Project developer to settle all issues surrounding title to the subject property.

This letter is not intended, nor should it be construed as, a waiver or limitation of any right, title, or interest of the State of California in any lands under its jurisdiction.

Project Description

The Project proponent (North Point Development) proposes to develop the former DuPont manufacturing plant encompassing a 143.3-acre Project site. The entire subject property consists of approximately 375.7 acres; however, the logistics center would only develop on approximately 143.3 acres within the southwest portion of the property. The remaining 232.4 acres of the subject property would remain natural, less some potential soil borrowing on areas that are both immediately adjacent to the 143.3-acre Project site and outside of any wetland or marsh areas.

The Project proponent's objectives and needs are as follows:

- **Project Objective 1:** Develop a logistics center with approximately 2,000,000 sf of Class A industrial light warehousing, e-commerce fulfillment, distribution, and light manufacturing space consisting of five buildings.
- **Project Objective 2:** Redevelop the former DuPont site with a robust logistics center that provides nearly 2,000 jobs for the region.
- **Project Objective 3:** Implement a key focus in the Oakley General Plan to develop industrial and like distribution uses on the site.
- **Project Objective 4:** Implement the City's vision in the General Plan to develop this site as a primary employment center.
- **Project Objective 5:** Allow the sensitive area designated "Delta Recreation" on the property to remain in its natural state.

The proposed Project would include construction of five buildings across the Project site ranging in size from 150,000 square feet (sf) to 642,960 sf for a total of approximately 1,985,304 sf. The proposed Project would include demolition of the existing structure and utility remnants and construction of the proposed buildings over two phases. Specific uses for the proposed buildings would be subject to site-specific development standards in the proposed Planned Unit Development.

The Draft EIR identifies the No Project (No Build) Alternative as the Environmentally Superior Alternative. The Project site is assumed to remain undeveloped under the Alternative and this alternative would not be preferred for the development of the logistics center project. Consequently, the impacts resulting from the proposed Project would not occur under the Alternative. However, leaving the site vacant with a dilapidated building and remnants of utility infrastructure could be considered urban blight.

Environmental Review

Commission staff requests that the City consider the following comments on the Project's Draft EIR, to ensure that impacts to State sovereign land are adequately analyzed for the Commission's use of the EIR to support any future Commission action related to the proposed Project.

General Comments

1. **Project Description**: A CEQA environmental document should be reviewed and edited by the lead agency to ensure accuracy and professionalism. This document does not appear to have an editor assigned to review for accuracy or professionalism. On pages 13, 21 and 76, the document refers to the "city of Davis". Also, on page 12 of the Project Summary, it identifies the past use of the site as "precious".

The Draft EIR must also identify the Commission as a potential owner of lands within the subject property. Commission staff requests submitting all copies of federal and State agency permits to ensure any future actions by the Commission are consistent with other permits.

2. **Public Agency Approvals**: The Commission, a public agency, has jurisdiction over sovereign waterways and identified filled lands of the State. There is a potential that portions of the proposed Project will encroach onto Public Trust lands and the Commission will require the Project proponent to address any impact or issue which will require an action from the Commission. Commission staff is presently negotiating with the Project proponent to resolve such concerns. The Commission will utilize the certified Final EIR from the City for any discretionary action.

Climate Change

3. **Greenhouse Gas (GHG)**: A GHG emissions analysis consistent with the California Global Warming Solutions Act (Assembly Bill [AB] 32) and required by the State CEQA Guidelines should be included in the Draft EIR. This analysis should identify a threshold for significance for GHG emissions, calculate the level of GHGs that will be emitted as a result of construction and ultimate build-out of the Project, determine the significance of the impacts of those emissions, and, if impacts are significant, identify mitigation measures that would reduce them to the extent feasible. For the proposed Project, it appears that the proposed Project construction emissions will

exceed identified thresholds. These thresholds will be amortized over a 25-year span to reduce the construction and operational emissions to a level below the 1,100 metric tons per year (CO_{2e}). A more extensive description and mitigation schedule for the impacts identified in the EIR should be provided in the certified EIR Mitigation Monitoring Program (MMP).

Biological Resources

4. Invasive Species: One of the major stressors in California waterways is introduced species. Therefore, the Draft EIR should consider the Project's potential to encourage the establishment or proliferation of aquatic invasive species (AIS) such as the quagga mussel, or other nonindigenous, invasive species including aquatic and terrestrial plants. For example, construction equipment brought in from long stays at distant projects may transport new species to the Project area via hull biofouling, or new species may be transported by soil in or on work and hauling vehicles. Marine and aquatic organisms attach to and accumulate on the hull and other submerged parts of a vessel. Plant invaders may disperse seeds from one area to another via dried mud and soils attached to vehicles from previous work areas. If the analysis in the Draft EIR finds potentially significant AIS and plant impacts, possible mitigation could include contracting vessels from nearby, or requiring contractors to perform a certain degree of hull and vehicle cleaning. The CDFW's Invasive Species Program could assist with this analysis as well as with the development of appropriate mitigation (information at <https://www.wildlife.ca.gov/Conservation/Invasives>).

Cultural Resources

5. Title to Resources: The Draft EIR should also mention that the title to all abandoned shipwrecks, archaeological sites, and historic or cultural resources on or in the tide and submerged lands of California is vested in the State and under the jurisdiction of the Commission (Pub. Resources Code, § 6313). Commission staff requests that the City consult with Staff Attorney Jamie Garrett should any cultural resources on state lands be discovered during construction of the proposed Project. In addition, Commission staff requests that the following statement be included in the EIR's MMP: "The final disposition of archaeological, historical, and paleontological resources recovered on state lands under the jurisdiction of the California State Lands Commission must be approved by the Commission."

Hazards and Hazardous Materials

6. The Site has supported a mix of industrial uses since the mid-1950s and agricultural uses prior to then. From 1956 to 1999, DuPont/Chemours operated a chemical manufacturing facility at the Site that commenced with the manufacture of chlorofluorocarbon (CFC) products under the trade name Freon®. Tetra-alkyl lead anti-knock gasoline additive compounds (AKCs) were manufactured at the Site beginning in 1957, and titanium dioxide (TiO₂) production began in 1963. All three product lines have been closed and the manufacturing area has been demolished.

Consultants acting on behalf of DuPont/Chemours have remediated the Site under direction of the appropriate agencies. The remediation is scheduled to be completed by January 2020. DTSC issued a restrictive land use covenant for the manufacturing area only.

The Draft EIR should include a brief history of all the past activities that have occurred on the Site and describe the direction the City and the Project proponent are proposing to continue monitoring on the Site and how the development will impact the future monitoring and Site activities. The Draft EIR should also include a schedule and description of continued oversight on the proposed development and state which entity would be responsible for the monitoring and reporting on the Site.

7. Hydrology/Water Quality:

Sea-Level Rise: Climate change impacts, including sea-level rise, more frequent and intense storm events, and increased flooding and erosion, affect both open coastal areas and inland waterways in California. The subject facilities are located on the San Joaquin River in a tidally influenced site vulnerable to flooding at current sea levels and at a higher risk of flood exposure given projected scenarios of sea-level rise. The Site is identified by the Federal Emergency Management Agency as Zone AE. This Zone falls within the 100-year floodplain, which is considered an area at high risk for flooding. Commission staff recommends greater effort and mitigation measures be included in the development plan of the proposed Project to account for the potential impacts to future flooding events.

Mitigation and Monitoring

8. To avoid the improper deferral of mitigation, please ensure that mitigation measures included in the draft EIR avoid or reduce the identified impacts (especially those incorporating future plans) are presented as specific, feasible, enforceable obligations, or are presented as formulas containing "performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way" (State CEQA Guidelines, § 15126.4, subd. (b)).

Prior to final action on the EIR, the City should provide an MMP pursuant to State CEQA Guidelines section 15074, subdivision (d). The MMP should include methods for coordination, timing for implementation of mitigation measures and list all parties and/or agencies, in addition to the City, responsible for ensuring compliance and enforcement through permit conditions, agreements or other measures during each phase of the Project.

Other Section(s)

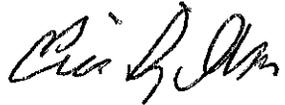
9. Environmental Justice: The Draft EIR does not state whether the City intends to discuss and analyze potential environmental justice related issues, including an assessment of public access and equity implications and who would bear the burdens or benefits from the proposed Project. Commission staff believes the Draft EIR, as an informational public document, is an appropriate vehicle to disclose and

discuss how the proposed Project would attain or be consistent with the City's equity goals and statewide policy direction.

Thank you for the opportunity to comment on the Draft EIR for the Project. We request that you consider our comments prior to certification of the Final EIR.

Please send copies of future Project-related documents, including electronic copies of the Final EIR, Mitigation Monitoring and Reporting Program, Notice of Determination, CEQA Findings and, if applicable, Statement of Overriding Considerations when they become available. Please refer questions concerning environmental review to Christopher Huitt, Senior Environmental Scientist, at (916) 574-2080 or christopher.huitt@slc.ca.gov. For questions concerning archaeological or historic resources under Commission jurisdiction, please contact Staff Attorney Jamie Garrett, at (916) 574-0398 or jamie.garrett@slc.ca.gov.

Sincerely,



Eric Gillies, Acting Chief
Division of Environmental Planning
and Management

cc: Office of Planning and Research
C. Huitt, Commission
N. Lavoie, Commission
M. Neal, Commission
J. Garrett, Commission