

# San Francisco Bay Conservation and Development Commission

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***Via Email Only***

Governor's Office of Planning & Research

August 10, 2021

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## STATE CLEARINGHOUSE

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**SUBJECT: BROOKLYN BASIN MARINA EXPANSION PROJECT DRAFT SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT SCH No. 2004062013 (BCDC Permit No. 2006.007.03)**

Dear Ms. Payne,

Thank you for the opportunity to comment on the Brooklyn Basin Marina Expansion Project (Expansion Project) Draft Supplemental Environmental Impact Report (DSEIR) on proposed project modifications to the 2009 Oak-to-Ninth Project that may affect public access to the San Francisco Bay and shoreline. This opportunity allows the San Francisco Bay Conservation and Development Commission (BCDC or Commission) to comment on aspects of the Expansion Project that we would be required to approve or deny through the exercise of our own regulatory authority under the McAteer-Petris Act and the California Code of Regulations.

### **I. PROJECT DESCRIPTION SUMMARY**

**Applicants.** Zarsion-OHP 1, LLC., Port of Oakland, City of Oakland

**Project.** The Expansion Project is proposed as a modification of the previously approved 64.2-acre project analyzed under the 2009 Oak-to-Ninth Avenue Environmental Impact Report (2009 EIR). The project modifications include a residential density increase of 600 units (for a project site total of up to 3,700 units), an update to the parking ratios, expansion of the approved marina infrastructure and operation (including increasing the number of slips by 158), increase in site area by approximately 10 acres of water surface to accommodate the expanded marina, and accommodations for an existing water taxi/shuttle service currently operating in San Francisco Bay.



**Location.** The Expansion Project site is bounded by Fallon Street and Jack London Square to the west, Embarcadero and Interstate 880 (I-880) to the north, the Oakland Estuary to the south, and 10th Avenue (generally) to the east. Estuary Park, the southern portion of Lake Merritt Channel (the channel), Clinton Basin, and the Ninth Avenue Terminal are included in the Project site, but approximately 4.72 acres of privately-held parcels along 5th Avenue are not included. The Project site consists of Alameda County Assessor's Parcel Numbers (APNs) 018-0430-001-14, 018-0460-004-06, -08, and -11, and 018-0465-002-06, -12, -15, -27, -29, and -30.

## II. BCDC'S ROLE

**Permitting Authority.** The McAteer-Petris Act of 1965 "empowers the Commission to issue or deny permits, after public hearings, for any proposed project that involves placing fill, extracting materials or making any substantial change in use of any water, land or structure" within its jurisdiction (California Government Code (CGC) § 66604). Note that "substantial change in use" includes projected changes to the type of use as well as intensity of use, e.g., substantial increase or decrease in population density or occurrence of an activity.

**BCDC Permit No. 2006.007.00.** On February 4, 2011, the Commission issued Permit No. 2006.007.00 for the "Brooklyn Basin Oak-to-Ninth Project" (Approved Project). Since 2011, this permit has been administratively amended on three separate occasions. The Expansion Project, as described in the DSEIR, would require a material amendment to the current BCDC permit, involving a public hearing and vote by the Commission. The concerns expressed in this letter will be among the factors considered when and if the Expansion Project proponents apply for an amendment to their permit.

## III. LAND USE, PLANS, AND POLICIES

Generally speaking, the Commission's permitting process attempts to balance development with natural resource conservation and maximum feasible public access. The Bay Plan policies listed in this letter are not exhaustive. Our intention is to identify a selection of relevant policies which the DSEIR has not already acknowledged or considered in all applicable contexts, or which have been updated since the 2009 EIR.

### **Bay Plan Policies on Public Access.**

- **Policy 1.** A proposed fill project should increase public access to the Bay to the maximum extent feasible, in accordance with the policies for Public Access to the Bay.
- **Policy 2.** In addition to the public access to the Bay provided by waterfront parks, beaches, marinas, and fishing piers, 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, whether it be for housing, industry, port, airport, public facility, wildlife area, or other use, except in cases where public access would be clearly inconsistent with the project because of public safety considerations or

significant use conflicts, including unavoidable, significant adverse effects on Bay natural resources. In these cases, in lieu access at another location preferably near the project should be provided. If in lieu public access is required and cannot be provided near the project site, the required access should be located preferably near identified vulnerable or disadvantaged communities lacking well-maintained and convenient public access in order to foster more equitable public access around the Bay Area.

#### **Bay Plan Policies on Recreation.**

- **Policy 3(a).** Recreational facilities, such as waterfront parks [and] marinas... should be consistent with the public access policies that address wildlife compatibility and disturbance.
- **Policy 3(b).** Marinas should be allowed at any suitable site on the Bay. Unsuitable sites are those that tend to fill up rapidly with sediment and require frequent dredging; have insufficient upland; contain valuable tidal marsh, or tidal flat, or important subtidal areas; or are needed for other water-oriented priority uses.
- **Policy 4(b).** In waterfront parks and wildlife refuges with historic buildings... physical and visual access corridors between inland public areas, vista points, and the shoreline should be created, preserved, or enhanced. Corridors for Bay-related wildlife should also be created, preserved and enhanced where needed and feasible.

**Marina Expansion.** While removal of existing docks in the Brooklyn Basin project area is authorized by the permit, construction of the proposed new docks would require additional BCDC approval. Among other factors, our analysis would scrutinize impacts to Bay views and the tidal marsh along South Park.

**Increased Residential Density and Tower Relocation.** When analyzing the impacts of increasing density by 600 units in Phases III and IV and relocating the towers from Parcels H and J to Parcels L and M, the DSEIR considers only the net effect on the project (the overall quantitative difference between the Approved Project and the Expansion Project). However, BCDC would need to evaluate each modification individually for maximum feasible public access and natural resource conservation. In addition to requiring approximate equivalency in the amount of fill that is added and removed throughout the overall project site, we would also require qualitative analysis of how each type of fill would impact its immediate surroundings. For example, although swapping a tower from Parcel H or J to Parcel L may not change the overall density burden of the project, its closer proximity to the tidal marsh along South Park may be more detrimental to wildlife or Bay views than there was previously. In the final SEIR (FSEIR), the preparers should also evaluate the impacts of each proposed modification individually within their respective proximal surroundings.

**Water Taxi Accommodations.** The DSEIR does not identify the ferry service that is currently operating or is expected to operate in the Brooklyn Basin. While BCDC is involved in discussions to potentially permit ferry services at various other Bay Area locations, we have not had specific discussions with ferry operators in the Brooklyn Basin. Any contemplation of fill for water taxi accommodations should include pursuit of a BCDC permit to operate that service.

#### IV. HYDROLOGY AND WATER QUALITY

##### Bay Plan Water Surface Area and Volume Policies.

- **Policy 1.** The surface area of the Bay and the total volume of water should be kept as large as possible in order to maximize active oxygen interchange, vigorous circulation, and effective tidal action. Filling and diking that reduce surface area and water volume should therefore be allowed only for purposes providing substantial public benefits and only if there is no reasonable alternative.
- **Policy 2.** Water circulation in the Bay should be maintained, and improved as much as possible. Any proposed fills, dikes, or piers should be thoroughly evaluated to determine their effects upon water circulation and then modified as necessary to improve circulation or at least to minimize any harmful effects.

##### Bay Plan Water Quality Policies.

- **Policy 1.** Bay water pollution should be prevented to the greatest extent feasible. The Bay's tidal marshes, tidal flats, and water surface area and volume should be conserved and, whenever possible, restored and increased to protect and improve water quality.
- **Policy 2.** Water quality in all parts of the Bay should be maintained at a level that will support and promote the beneficial uses of the Bay as identified in the San Francisco Bay Regional Water Quality Control Board's Water Quality Control Plan, San Francisco Bay Basin [...].
- **Policy 3.** New projects should be sited, designed, constructed and maintained to prevent or, if prevention is infeasible, to minimize the discharge of pollutants into the Bay [...].

**Water Surface Area.** The marina expansion would require an additional 10 acres of water surface to be added to the Approved Project site. This means water that currently benefits from circulation would be at risk of deoxygenation, which may have an adverse impact on aquatic wildlife and vegetation. The FSEIR should analyze the impact that the placement of slips and boats will have on water circulation and the natural resources that rely on it. Per Water Surface Area and Volume Policy 1, the FSEIR should also analyze alternatives to the marina expansion that could make more efficient use of the water surface area.

**Sea Level Rise and Groundwater.** The DSEIR identified sea level rise as a flood risk and, using projections based on current tidal data and FEMA flood maps, concluded that sea level rise would not significantly impact the proposed Expansion Project. The preparers should note, however, that sea level rise threatens water quality not only through overland flooding, but also through possible groundwater contamination caused by saltwater incursions into fresh groundwater reservoirs. The FSEIR should include an analysis of the risk to groundwater contamination and groundwater rise caused by rising sea levels.

## V. BIOLOGICAL RESOURCES

### Bay Plan Policies for Tidal Marshes and Tidal Flats.

- **Policy 1.** Tidal marshes and tidal flats should be conserved to the fullest possible extent.
- **Policy 2.** Any proposed fill, diking, or dredging project should be thoroughly evaluated to determine the effect of the project on tidal marshes and tidal flats, and designed to minimize, and if feasible, avoid any harmful effects.
- **Policy 6.** Any habitat project should include clear and specific long-term and short-term biological and physical goals, success criteria, a monitoring program, and as appropriate, an adaptive management plan. Design and evaluation of the project should include an analysis of: (a) how the project's adaptive capacity can be enhanced so that it is resilient to sea level rise and climate change; (b) the impact of the project on the Bay's and local embayment's sediment transport and budget; (c) localized sediment erosion and accretion; (d) the role of tidal flows; (e) potential invasive species introduction, spread, and their control; (f) rates of colonization by vegetation; (g) the expected use of the site by fish, other aquatic organisms and wildlife; (h) an appropriate buffer, where feasible, between shoreline development and habitats to protect wildlife and provide space for marsh migration as sea level rises; (i) site characterization; (j) how the project adheres to regional restoration goals; (k) whether the project would be sustained by natural processes; and (l) how the project restores, enhances, or creates connectivity across Bay habitats at a local, sub-regional, and/or regional scale.
- **Policy 8.** The level of design; amount, duration, and extent of monitoring; and complexity of the adaptive management plan required for a habitat project should be consistent with the purpose, size, impact, level of uncertainty, and/or expected lifespan of the project. Habitat projects should have a funding strategy for monitoring and adaptive management [...].

**Marina Expansion Along South Park Wetland.** The marina expansion would place a long, 10-slip dock for the largest boats (up to 80 feet in length) along the wetland area in South Park (West). Although wetland enhancement in the South Park (West) subarea is a condition of BCDC Permit No. 2006.007.03, the DSEIR does not specifically outline the Applicants' current or future plan for wetland enhancement in this area. The report states that while the Port of

Oakland once maintained a program for this wetland called the Wetland Enhancement Project, there is currently no community or regulatory plan for it. The DSEIR lists a number of 2009 Mitigation Measures for wetland protection and restoration, including “The Oak to Ninth Project Mitigation and Monitoring Plan”, but does not indicate whether the Applicants have ever used those measures and, if so, which ones. Nor does it indicate the efficacy of any measures that may or may not have been taken. For this reason, the FSEIR should provide information on the Applicants’ program for the wetland enhancement and mitigation requirements and their progress.

**Tower Relocation.** The proposed relocation of one tower to Parcel L would place high population density in very close proximity to a tidal flat. The FSEIR should analyze the impact of the proposed tower on this wetland.

## VI. AESTHETICS, SHADOW, AND WIND

### Bay Plan Policies on Appearance, Design, and Scenic Views.

- **Policy 1.** [T]he shores of the Bay should be developed in accordance with the Public Access Design Guidelines.
- **Policy 2.** 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 4.** Structures and facilities that do not take advantage of or visually complement the Bay should be located and designed so as not to impact visually on the Bay and shoreline.
- **Policy 8.** Shoreline developments should be built in clusters, leaving open area around them to permit more frequent views of the Bay. Developments along the shores of tributary waterways should be Bay-related and should be designed to preserve and enhance views along the waterway, so as to provide maximum visual contact with the Bay.
- **Policy 10.** Towers, bridges, or other structures near or over the Bay should be designed as landmarks that suggest the location of the waterfront when it is not visible, especially in flat areas. But such landmarks should be low enough to assure the continued visual dominance of the hills around the Bay.
- **Policy 14.** 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.

**Marina Along Township Commons.** Using visual simulations of four viewpoints to evaluate the visual impact of the marina expansion, the preparers concluded that the addition of masted boats along the shoreline, while “noticeable,” would have a less-than-significant impact. They further concluded that the boats could even be viewed as a beneficial effect given their consistency with the existing “maritime character” of the project site. However, the visual simulations for the marina are not adequate in scale or proximity to capture the impacts of the marina on the adjacent park spaces or view corridors. Thus, the methodology used for the DSEIR is insufficient to dispel concerns that the proposed marina expansion would substantially degrade the existing visual character or quality of the site and its surroundings.

Additionally, while the Ninth Street Terminal was historically used for commercial shipping purposes, the current character of the shoreline is defined by an open water vista. The former Ninth Street Terminal has been converted to a successful waterfront park called Township Commons. The park sits partially over the Bay and provides sweeping vistas of the Bay across areas of open water. Park visitors who have enjoyed this attractive vista for nearly a year may find the appearance of tall masts clustered along the entire length of the wharf an obstruction that degrades the visual character of the park. Thus, the preparers should engage the local community in quantitative and qualitative studies to determine the visual impact of the marina expansion.

**Effect of Marina Expansion on View Corridors.** The BCDC permit for the Approved Project requires six dedicated view corridors throughout the Brooklyn Basin project site (as shown in Figure IV.A.1). Using the visual simulations described above, the DSEIR concludes that the look of clustered masts along the shoreline would not obstruct Bay views, and thus would not obstruct any of the dedicated view corridors. We have two contentions with this conclusion. Firstly, image location 15 is not framed on the center of the view corridor where the pathway opens up a view to the water. The visual simulations should reflect impacts to the view corridors. Secondly, the preparers’ conclusion makes the subjective assumption that the addition of clustered masts would not in fact be considered an obstruction. As discussed above, the masts could constitute a significant change in the character of the view, which may currently be valued by the public for its open nature. The FSEIR should give more consideration to the potential change in visual character from an open view of the water to a view dominated by marina infrastructure and boats. If this could be found to constitute a substantial adverse effect on the public scenic vista, the alignment of the docks shown in Figure III-6 would be considered an obstruction to the view corridors.

**Location of Towers.** BCDC has an interest in restoring, protecting, and enhancing visual public access to the Bay regardless of whether view corridors have been specifically dedicated for that purpose. The clustering of the towers may impact Bay views from public areas further inland where the public currently appreciates views of the Bay. Additionally, as shown in Figure III-4, the orientation of the proposed tower in Parcel M aligns the long side of the building parallel to the water. This could have a walling-off effect to the water rather than creating a visual

landmark that increases views of or attention to the Bay from surrounding areas. The DSEIR includes shadow studies of the proposed towers, but does not include 5 PM in the shading analysis. In the FSEIR, the preparers should also include visual simulations of the proposed towers from shoreline and inland locations.

**Design Alternatives.** For the reasons discussed above, the FSEIR should offer design alternatives for the marina expansion and tower relocation with BCDC's policies for Appearance, Design, and Scenic Views, and Tidal Marshes and Tidal Flats in mind.

Once again, thank you for providing BCDC an opportunity to comment on the Brooklyn Basin Marina Expansion Project. We hope these comments aid you in preparing the final SEIR. 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 via email [shruti.sinha@bcdc.ca.gov](mailto:shruti.sinha@bcdc.ca.gov).

Sincerely,

DocuSigned by:  
  
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