

San Francisco Bay Conservation and Development Commission

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July 15, 2024

Capitol Corridor Joint Powers Authority
Attn: South Bay Connect DEIR
2150 Webster Street, 3rd Floor
Oakland, CA 94612
Via E-mail: info@southbayconnect.com

SUBJECT: Comments on the Draft Environmental Impact Report for the Capitol Corridor South Bay Connect Project; BCDC Inquiry File No. MC.MC.2024.01

To Whom It May Concern:

Thank you for the opportunity to comment on the Draft Environmental Impact Report (DEIR) for the Capitol Corridor South Bay Connect Project (Project), State Clearinghouse No. 2020060655, published in May 2024 by the Capitol Corridor Joint Powers Authority. The Notice of Availability and DEIR were received by our office on May 29, 2024.

The San Francisco Bay Conservation and Development Commission (BCDC) is providing the following comments as a responsible agency with discretionary approval power over aspects of the Project, as described below. BCDC will rely on the Final EIR when considering its approvals for the project, and we appreciate this opportunity to comment on the information and analyses presented in the DEIR. The Commission itself has not reviewed the DEIR; the following comments are based on BCDC staff review of the DEIR, the McAteer-Petris Act (Title 7.2 of the California Government Code), and the *San Francisco Bay Plan* (Bay Plan).

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

BCDC is a State planning and regulatory agency with permitting authority over San Francisco Bay, the Bay shoreline, and Suisun Marsh, as established in the McAteer-Petris Act and the Suisun Marsh Preservation Act. 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 (Government Code Section 66632). Additionally, BCDC establishes land use policies for the Bay as a resource and for development of the Bay and shoreline in the Bay Plan, which provides the basis for the Commission's review and actions on proposed projects.



Portions of the Project may be located within the following areas of BCDC's permitting jurisdiction:

- In the San Francisco Bay, being all areas subject to tidal action, including the marshlands lying between mean high tide and five feet above mean sea level; tidelands (land lying between mean high tide and mean low tide); and submerged lands (Government Code Section 66610[a]); and
- In the shoreline band, consisting of all territory located between the shoreline of the Bay and 100 feet landward of and parallel with the shoreline (Government Code Section 66610[b]).

Based on the information provided in the DEIR, portions of the project that may be within the Commission's jurisdiction include (from north to south):

- Estudillo Canal/Flood Control Channel
- Heron Bay
- San Lorenzo Creek
- Bockman Canal/Canal 1
- Oro Loma Marsh
- Sulphur Creek
- New Alameda Creek/Lower Alameda Creek
- Alameda County Flood Control District Line F-1; Zone 5 (near Central Ave. in Newark)

Note that these are preliminary and that the project proponent would be expected to review each of these locations and any additional locations that may be subject to tidal action to determine whether a permit is needed before construction can take place. To facilitate future review of the Project in areas potentially within BCDC's jurisdiction, please ensure that all symbols and lines presented on figures in the Final EIR are clearly labeled, including any bodies of water, particularly Figures 2-2 through 2-10.

Project Description

Based on the DEIR, we understand that the Project will include the following components:

1. The relocation of the Capitol Corridor passenger service from the Union Pacific Railroad (UPRR) Niles Subdivision to the UPRR Coast Subdivision between the rail junction at Elmhurst (Oakland, CA) and the rail junction at Newark, CA.
2. Rail alterations, expansions, and infrastructure improvements within the Project Corridor on the Coast Subdivision, and at junction points at Elmhurst (in Oakland, California) and Newark, California. This may include including track and civil improvements, as well as:
 - a. Ballast, track, bridge and structure improvements, including replacements and modifications, between Elmhurst and Newark.
 - b. New sidings and retaining walls of varying heights intermittently along most of the corridor.
3. At-grade crossing improvements such as new or modified active warning devices, or roadways improvements such as: improvements to the roadway profiles, paving, curbs, gutters, sidewalks, signage, and striping to conform to the proposed new track profile. Additional at-grade crossing improvements include modifications such as interconnected roadway traffic signals and signage.
4. Grade separated crossing improvements at seven existing grade-separated crossings, some of which require pier protection, as well as abutment modification at grade-separated crossings at State Route 84.
5. A new intermodal station on the Coast Subdivision at the existing Ardenwood Park-and-Ride, within the City of Fremont, except for the south pedestrian overcrossing (within City of Newark jurisdiction). The proposed Ardenwood Station will provide a new passenger platform with a pedestrian overcrossing. The proposed passenger facility would be configured to include a center boarding platform located between the tracks. The proposed north pedestrian overcrossing would be approximately 42 feet high. The platform would have grade-separated access across the tracks.
6. Construction of additional parking northwest of the passenger rail station on a currently vacant parcel, initially consisting of a surface parking lot with the potential for the construction of a two-level parking garage.

ENVIRONMENTAL ANALYSES

The Commission's permitting process attempts to balance development with natural resource conservation and maximum feasible public access. Below are BCDC staff's questions and comments on the DEIR as well as relevant Bay Plan Policies, organized by environmental topic. Please note that the Bay Plan policies listed in this letter are not exhaustive. Rather, our intention is to identify a selection of applicable policies which the DEIR has not already acknowledged or considered in all applicable contexts.

Aesthetics

BAY PLAN POLICIES AND DESIGN GUIDELINES

The description of BCDC on p.3.2-3 includes a discussion of BCDC's public access policies and findings from 2001. However, the most recent versions of both BCDC's Public Access Design Guidelines and Public Access Signage Guidelines were published in 2005 (See [Design Guidelines: Guidelines | SF Bay Conservation & Development \(ca.gov\)](#)). Additionally, the Bay Plan (2020) includes several policies relevant to the proposed project that were not discussed in the regulatory setting on p.3.2-3. Consider revising this section to also include discussion of Bay Plan policies and findings from the Appearance, Design, and Scenic Views section, and consider the following policies, which are relevant to the Project:

- **Policy 6:** Additional bridges over the Bay should be avoided, to the extent possible, to preserve the visual impact of the large expanse of the Bay. The design of new crossings deemed necessary should relate to others nearby and should be located between promontories or other land forms that naturally suggest themselves as connections reaching across the Bay (but without destroying the obvious character of the promontory). New or remodeled bridges across the Bay should be designed to permit maximum viewing of the Bay and its surroundings by both motorist and pedestrians. Guard rails and bridge supports should be designed with views in mind.
- **Policy 7:** Access routes to Bay crossings should be designed so as to orient the traveler to the Bay (as in the main approaches to the Golden Gate Bridge). Similar consideration should be given to the design of highway and mass transit routes paralleling the Bay (by providing frequent views of the Bay, if possible, so the traveler knows which way he or she is moving in relation to the Bay). Guardrails, fences, landscaping, and other structures related to such routes should be designed and located so as to maintain and to take advantage of Bay views. New or rebuilt roads in the hills above the Bay and in areas along the shores of the Bay should be constructed as scenic parkways in order to take full advantage of the commanding views of the Bay.

PROPOSED PROJECT ELEMENTS

The following text is included on page 3.2-18: “None of the above-listed BCDC-managed lands or any public access would be affected by the proposed project. Likewise, the San Francisco Bay Trail, which generally runs along the shoreline, is not affected by the proposed Project. The San Francisco Bay Trail, at its closest point, is about a half mile from the Coast Subdivision.” Please note that the Bay Trail not only runs close to, but directly intersects the Coast Subdivision at several points, including intersections at Eden Shores Blvd, New Alameda Creek, Ardenwood Blvd, as well as a proposed section of the Bay Trail at Old Alameda Creek. Additionally, note that BCDC does not manage any lands as stated in the DEIR; rather, the “above-listed” lands may be located within BCDC jurisdiction and, if so, those components of the Project at those locations must be consistent with BCDC policies.

VISUAL CHARACTER AND QUALITY

Note that as part of BCDC’s review of visual impacts, we typically consider how a proposed project’s design would affect the public’s experience of the Bay. For this Project, we would consider whether the design could potentially deter members of the public from using public access areas, whether by affecting perceptions of safety or public-ness. Please consider assessing this aspect of visual character in Section 3.2.6.4. Otherwise, note that staff will review potential impacts with the project proponent at the time of permit application.

Biological Resources

REGULATORY SETTINGS

The section on page 3.5-8 describing BCDC’s laws and policies should be located in the State section of the Regulatory Settings rather than the Regional section. In this section, the DEIR references the Bay Plan with a citation of “BCDC 2021.” Note that the most current version of the Bay Plan is the May 2020 version, which includes new Environmental Justice and Fill for Habitat Restoration policies adopted by the Commission in 2019. Prior to the revision, the most recent version available on the BCDC website was dated March 2012. As part of the Regulatory Settings, please also acknowledge that the Bay Plan includes a number of specific policy sections related to biological resources, including Fish, Other Aquatic Organisms and Wildlife; Tidal Marshes and Tidal Flats; Subtidal Areas; and Mitigation. Please also see the attached suggested revisions to the boilerplate regulatory settings language used throughout the DEIR.

CRITICAL HABITAT

In Section 3.5.6.2, on page 3.5-53, the DEIR states that critical habitat for sturgeon occurs outside of the proposed Project footprint. However, this is not clear from Figure 3.5-2, which shows areas of critical habitat following waterways up to the rail line in the northern reaches of the Project near San Leandro. Please provide a more detailed and zoomed in diagram of the critical habitat in this area to support this finding.

BRIDGE IMPACTS

For the analyses in Sections 3.5.6.1, 3.5.6.2, and 3.5.6.3, please analyze the potential for in-water work associated with bridge construction to impact special-status species, habitats, and wetlands. Additionally, please discuss whether the additional shading caused by the expanded bridge fill would negatively affect any species or habitat.

MITIGATION

The Bay Plan's Mitigation policies provide direction for mitigating impacts to Bay natural resources (such as water surface area, volume, or circulation; aquatic organisms and habitat; subtidal areas; and tidal marshes and flats) that cannot be avoided. Please note the requirements for approaching mitigation as established in Mitigation Policy No. 1:

"Projects should be designed to avoid adverse environmental impacts to Bay natural resources such as to water surface area, volume, or circulation and to plants, fish, other aquatic organisms and wildlife habitat, subtidal areas, or tidal marshes or tidal flats. Whenever adverse impacts cannot be avoided, they should be minimized to the greatest extent practicable. Finally, measures to compensate for unavoidable adverse impacts to the natural resources of the Bay should be required. Mitigation is not a substitute for meeting the other requirements of the McAteer-Petris Act."

Mitigation Measure MM BIO-17 describes mitigating for permanent habitat impacts through in lieu fee payments to a mitigation bank. Please note Mitigation Policy No. 12, which states:

"The Commission may allow fee-based mitigation when other compensatory mitigation measures are infeasible. Fee-based mitigation agreements should include: (a) identification of a specific project that the fees will be used for within a specified time frame; (b) provisions for accurate tracking of the use of funds; (c) assignment of responsibility for the ecological success of the mitigation project; (d) determination of fair and adequate fee rates that account for all financial aspects of the mitigation project, including costs of securing sites, construction costs, maintenance costs, and administrative costs; (e) compensation for time lags between the adverse impact and the mitigation; and (f) provisions for long-term maintenance, management and protection of the mitigation site."

Please confirm that mitigation for any habitat impacts within BCDC's jurisdiction can be conducted in a manner consistent with the Bay Plan's policies on Mitigation.

BCDC PERMIT TYPE

On page 3.5-74, the DEIR anticipates either a BCDC major or regionwide permit will be required for the project. It would be more accurate to state that a BCDC permit will be required for work within the Commission's jurisdiction, and the type of permit will depend on the extent of that work. Note that there is a high likelihood that the appropriate permit type will be an administrative permit, and it is not clear whether one of the existing regionwide permits would cover the work proposed as part of the Project.

Geology and Soils**REGULATORY SETTING**

Please include BCDC's laws and policies in the Regulatory Setting for this environmental topic. The Bay Plan includes Safety of Fills policies which are relevant to the seismic stability of the proposed bridge structures.

MITIGATION MEASURES

Note that both mitigation measures described in this section are numbered MM GEO-1, and only one of them is described in detail. MM GEO-1: Geotechnical Investigation is mentioned on page 3.8-58, but is not included on page 3.8-64, which lists only MM GEO-1: Paleontological Resources Mitigation Plan (as referenced on page 3.8-63).

Hydrology and Water Quality**SILTATION AND IMPACTS ON FLOWS**

For Section 3.11.6.3(i), even with erosion control measures, there is potential for alterations to stream flows from new in-water structures to increase siltation on or off site by causing deposition of sediment traveling from upstream. Please review and revise this analysis to address this potential impact.

ALTERNATIVES AND MITIGATION FOR FILL

Findings on page 3.11-81 indicate that new bridge construction over the crossings of several creeks would have permanent impacts to the creeks, including partial blockage of flows. As is consistent with Bay Plan policies and BCDC regulations, staff strongly encourages exploration of design alternatives that would limit these blockages, which could adversely affect Bay sedimentation. Please review Bay Plan policies and findings related to altering flows into the Bay, including policies concerning Fresh Water Inflow (ex. policies 1 and 3), and policies concerning Water Quality in the Bay (ex. policies 2, 3, and 6).

Note that BCDC requires that "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" (Water Surface Area and Volume Policy No. 1), and that impacts to water surface area, volume, or circulation are impacts that should be mitigated (Mitigation Policy No. 1). Please assess whether these impacts have been avoided and



minimized to the extent feasible, and whether it is possible to achieve no net new fill for portions of the Project within BCDC's Bay jurisdiction.

CONTAMINANTS

Regarding findings for 3.11.6.4, please assess whether overtopping of the bridges and rail line during the 100-year storm has the potential to mobilize contaminants into the Bay.

LAND USE

PRIORITY USE AREAS AND LAND USE POLICIES

The McAteer-Petris Act specifies that "certain water-oriented land uses should be permitted on the shoreline", and that "Priority use areas designated for such uses in the Bay Plan are to be reserved for them to minimize the need for future filling in the Bay for such uses" (BCDC, 2020). Additionally, please note that the project site abuts the Oro Loma Marsh Wildlife Priority Use Area, as designated in the Bay Plan. Please review Bay Plan policies and findings related to wildlife. Additionally, please consider the following geographically specific Bay Plan Policies:

- **San Leandro Shoreline Park System** - Protect and provide public access to shellfish beds offshore. (Bay Plan Map 6 Policy No. 3)
- **Hayward Shoreline** - Preserve interpretive center. Continue to manage for wildlife habitats and wildlife, and provide wildlife compatible recreation activities. Maintain trails and continue to provide environmental education. Gateway to Eden Landing Ecological Reserve. (Bay Plan Map 6 Policy No. 4)
- **Coyote Hills Regional Park** - Preserve multi-use public access along Alameda Creek Trail to Don Edwards San Francisco Bay National Wildlife Refuge and to Highway 84 toll plaza crossing. Preserve visitor's center, picnic areas, camping, multi-use trails and naturalist programs. Protect tidal wetlands and provide opportunities for wildlife observation and non-motorized small boat access. (Bay Plan Map 7 Policy No. 2)

CONSISTENCY WITH THE BAY PLAN

Given its relevance to Land Use in the Proposed Project Area, please incorporate the Bay Plan into Table 3.12-3. Additionally, on page 3.12-22, the following text is included in table 3.12-3: "changes to lands protected under the McAteer-Petris Act would not be applicable," and "The proposed Project would not encroach on lands that are protected under the McAteer-Petris Act." This text indicates a misunderstanding of the McAteer Petris act, because the Act does not "protect" lands, but rather ensures that a project in BCDC jurisdiction and in/along priority use areas are consistent with the provisions of the Act and the Bay Plan.

Recreation

PUBLIC ACCESS REQUIREMENTS

Ensuring maximum feasible public access to the Bay is one of BCDC's primary imperatives as a state agency. Therefore, the regulatory setting on p.3.17-3 should incorporate discussion of BCDC's laws and policies on this issue. In particular, note that Section 66602 of the McAteer-Petris Act states that "maximum feasible public access, consistent with a proposed project, should be provided." Public Access Policy No. 1 states, "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." Additionally, as noted elsewhere in the DEIR, Transportation Policy No. 4 states that "bridges over the Bay or certain waterways should include pedestrian and bicycle paths that will either be a part of the Bay Trail or connect the Bay Trail with other regional and community trails." Therefore, it is likely that public access will be a requirement of any BCDC permit for the Project. It may be appropriate to incorporate a public access proposal into the project description, a project alternative, or the analysis in Section 3.17.6.2 (the project would require the construction or expansion of recreational facilities). BCDC staff is available to consult on public access opportunities for portions of the project within the Commission's jurisdiction.

Additionally, please note that the first Bay Plan policy included in the regulatory setting on p.3.17-3 is intended to guide the Commission's decision-making and is less relevant as a policy to guide a project applicant's decision-making or environmental impact analysis. Please review the Bay Plan Recreation policies and findings for many relevant alternative policies, several of which of which are noted below.

ALAMEDA CREEK DETOUR PLAN

Wherever the Project contemplates a closure or detour of public access (such as the Bay Trail) within BCDC jurisdiction, BCDC should be included among public agencies consulted on potential trail detours or closures. More generally, for any closures or detours that would involve Bay Trail, whether inside or outside of BCDC jurisdiction, please consult with the Metropolitan Transportation Commission (MTC). This is relevant for measures such as Mitigation Measure MM REC-1: Detour Plan for the Alameda Creek Regional Trail.

Transportation

REGULATORY SETTING

The Bay Plan establishes policy "relevant to the analysis of transportation" within the extents of BCDC's jurisdiction. Policy 4 in the Bay Plan states: "Transportation projects on the Bay shoreline and bridges over the Bay or certain waterways should include pedestrian and bicycle paths that will either be a part of the Bay Trail or connect the Bay Trail with other regional and community trails. Transportation projects should be designed to maintain and enhance visual and physical access to the Bay and along the Bay shoreline." Please review the findings and

policies in the Bay Plan's sections on Transportation and Public Access and reference them in the Regulatory Setting for Section 3.18.

Additionally, MTC has been working on the Bay Trail Gap Closure Implementation Plan (<https://mtc.ca.gov/operations/regional-trails-parks/san-francisco-bay-trail/bay-trail-gap-closure-implementation-plan>). Please contact MTC staff to learn more about the plan and incorporate information into the Regional section of the Regulatory Setting as needed. Planned segments of the Bay Trail should be discussed in the assessment under Section 3.18.6.1.

TRAIL IMPACTS

As previously noted, the Coast Subdivision intersects the Bay Trail and public access routes to the shoreline at several points. Information on existing and planned Bay Trail alignments can be sourced from MTC and can be viewed using this web tool:

<https://experience.arcgis.com/experience/817c5f3b503848deb44e83d337285fd6/>.

Additionally, it appears the Project would also intersect with a required public access facility to the South San Leandro Shoreline System at Lewelling Blvd, which is required by BCDC Permit No. M1992.057.02. Please describe all trail crossings in greater detail to resolve discrepancies and to demonstrate that the Project would not increase hazards due to a geometric design feature or incompatible uses, as discussed in Section 3.18.6.3.

DETOURS AND ROUTING

Please ensure that BMP TR-1: Transportation Management Plan includes consultation with BCDC for any detours or closures of public access facilities in the Commission's jurisdiction.

Sea Level Rise

STATE SEA LEVEL RISE GUIDANCE

Note that the State of California Sea Level Rise Guidance described on page 4-2 was recently updated in June 2024.

RESILIENCE TO 2050

From this analysis, it appears that the Project is not designed to be resilient to sea level rise at 2050, as a number of the locations analyzed in Table 4-5 would be expected to flood at projected elevations. Please provide a discussion as to why resiliency was not fully incorporated into the current project design and how resiliency through mid-century will be addressed moving forward.

GROUNDWATER RISE

The DEIR identified sea level rise as a flood risk using projections that include on BCDC climate guidance. The preparers should note, however, that sea level rise threatens water quality and may damage infrastructure not only through overland flooding, but also through possible shallow groundwater rise. Please review the Bay Plan Climate Change Policy Guidance section 5.2.4 for additional discussion of shallow groundwater rise, an underexplored coastal flood

hazard, which “could be as extensive or worse than that resulting from overland coastal flooding due to sea level” (BCDC, 2021).

CUMULATIVE PROJECTS

Please consider including the East Bay Dischargers Authority (EBDA)/Cargill MSS Pipeline Project in the list of cumulative impacts projects. The pipeline is planning to have a similar alignment as the Coast Subdivision and is planned for construction in the next 5 to 10 years

(<https://ebda.org/projects/cargill-partnership/>).

Conclusion

We appreciate your attention to the topics discussed above and for the opportunity to make the above comments on the DEIR. If you have any questions or concerns regarding this matter, please do not hesitate to contact me at (415)-352-3650 or by email at

katharine.pan@bcdca.gov.

Sincerely,

DocuSigned by:

Katharine Pan

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KATHARINE PAN

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Attachment 1: Redline Corrections

AESTHETICS

San Francisco Bay Conservation and Development Commission

The San Francisco Bay Conservation and Development Commission (BCDC) is a state commission in charge of the protection, enhancement, and responsible use of the San Francisco Bay. BCDC’s jurisdiction includes the Bay, a shoreline band extending inland 100 feet from the Bay’s shoreline, salt ponds, managed wetlands, and named waterways subject to tidal action. The San Francisco Bay Plan (BCDC 2020) states that “transportation projects on the Bay shoreline and bridges over the Bay or certain waterways should include pedestrian and bicycle paths that will either be a part of the Bay Trail or connect the Bay Trail with other regional and community trails. Transportation projects should be designed to maintain and enhance visual and physical access to the Bay and along the Bay shoreline.”

Per BCDC adopted public access findings and policies (2001), public access is an integral component of development and should consist of pedestrian and other non-motorized access to the Bay. A critical aspect is visual access for the public. Per BCDC, there are numerous shoreline areas without existing visual access to the Bay. Transportation facilities near the edge of the water should be designed as scenic parkways for slow moving recreational traffic. Transportation ROW should maintain and enhance visual access for its users and provide separated access to/from the shoreline.

Local Plans, Policies, and Regulations

The proposed Project would not remove or alter existing public access to the San Francisco Bay. In addition, the proposed Project would use existing railroad right-of way. BCDC does not require public access to be provided where” access would be clearly inconsistent with the project because of public safety considerations” (BCDC 2001), although alternative access elsewhere could be required if removed/alterd by a project. Limited project ROW and safety considerations would preclude incorporating new public access into the proposed Project. However, the proposed Project would provide enhanced visual access for passenger train riders by bringing them closer to the Bay along the Coast subdivision. This would provide previously inaccessible public views of the Bay.

BIOLOGICAL RESOURCES

McAteer-Petris Act of 1965

The McAteer-Petris Act established the Bay Conservation and Development Commission (BCDC) to prepare an enforceable plan to guide protection [and use](#) of the San Francisco Bay and its shoreline. BCDC requires that any person or governmental agency wishing to place fill in, or to extract materials exceeding \$20 in value from, or make any substantial change in use of any land, water, or structure within BCDC’s area of jurisdiction secure a permit from the BCDC (as well as any permit required from any city or county within which any part of the work is to be performed). BCDC regulates nearly all work, including grading, on land within 100 feet of San Francisco Bay shoreline (“shoreline band”), all areas subject to tidal action, such as sloughs and marshes, and certain designated waterways. [BCDC is a Coastal Zone Management Agency, and carries out its federal consistency responsibilities review according to the provisions of the](#)

Commented [PK1]: Please also review Appearance, Design, and Scenic Views policy section.

Commented [PK2]: It is unclear why this discussion is under Local Plans, Policies, and Regulations. BCDC is a State agency.

Commented [PK3]: Note that the report referenced here is not law or policy. Instead, please reference the Bay Plan’s Public Access policies and findings.

Coastal Zone Management Act ~~by reviewing federal projects much as it reviews permit applications.~~ The BCDC issues a variety of permits, and a permit must be obtained by any public agency or private owner holding shoreline lands before proceeding with development in the Commission's jurisdiction. ~~Four types of permits: major permits, administrative permits, emergency permits, and region-wide permits.~~

Commented [PK4]: For reference, BCDC issues major permits, administrative permits, notices of intent to proceed under regionwide and abbreviated regionwide permits, emergency permits, and permit amendments.

The agency's decision to grant or deny a permit for the project is guided by the McAteer-Petris Act's provisions and the standards set out in the San Francisco Bay Plan (Bay Plan) (BCDC 2020~~1~~). BCDC is authorized to regulate fill or dredge in the San Francisco Bay and development of the shoreline band. ~~The McAteer-Petris Act created broad circumstances under which a permit is required by providing that any person wishing to place fill, extract materials, or make any substantial change in the use of water, land, or structures within areas subject to BCDC's jurisdiction must obtain a permit.~~ The term fill is defined broadly to include not only earth and other materials, but pilings, structures placed on pilings, and floating structures. BCDC is authorized to issue a permit for fill in the Bay if it determines that the issuance of the permit would be consistent with the provisions of the Act and with the policies established for the Bay Plan or if BCDC determines that the activity to be permitted is necessary for the health, safety, or welfare of the public in the entire Bay Area. Pursuant to Section 66605 of the McAteer-Petris Act, BCDC must determine if the proposed fill in the Bay: (1) is for a water-oriented use and provides public benefits that outweigh the adverse impacts from the loss of open water areas; (2) there is no alternative upland location available for the proposed action; (3) the fill would be the minimum amount necessary to achieve the purpose of the proposed action; (4) the nature, location, and extent of fill minimizes harmful effects on the Bay; (5) the fill is constructed in accordance with sound safety standards.

The McAteer-Petris Act also provides that a permit must be obtained from BCDC prior to undertaking construction activities within the shoreline band jurisdiction. In addition, ~~for permitting purposes,~~ the McAteer-Petris Act requires that the San Francisco Bay Plan make provision for adequate and suitable locations for certain water-oriented land uses essential to the public welfare of the bay area by designating Priority Use Areas. Within the Commission's jurisdiction, development in these Priority Use Areas ~~allows for areas associated with the shoreline band to be designated by BCDC for priority uses. Within such areas, the proposed use~~ must be consistent with the priority uses specified for the designated area.

HYDROLOGY AND WATER QUALITY

McAteer-Petris Act (Gov. Code § 66600 et seq.)

[...]

For any locations confirmed to be within BCDC jurisdiction, the proposed Project would need to obtain the appropriate permit from BCDC. To obtain a permit for development within the shoreline band, the proposed Project must provide for maximum feasible public access to the Bay and the shoreline. BCDC also requires those portions of a project in San Francisco Bay and

the shoreline band to plan for and adapt to sea level rise caused by ~~global~~ climate change. BCDC ~~updated their~~ prepared the San Francisco Bay Plan Climate Change Policy Guidance (Guidance) in July 2021. The Guidance provides non-regulatory, but interpretive, information to assist in the development of prospective projects in relation to the requirements of the Climate Change policies ~~with permit applicants, local jurisdictions, and the public at large~~. Further discussion of sea level rise impacts as an aspect of the permit determination for the proposed Project is included in Chapter 4.

Commented [PK5]: Unclear what this means

LAND USE

San Francisco Bay Conservation and Development Commission

The San Francisco Bay Conservation and Development Commission (BCDC) is a state planning and regulatory agency, with regional authority over the San Francisco Bay, the Bay's shoreline band, and the Suisun March. The BCDC's authority derives from the following statute:

- McAteer-Petris Act (Gov. Code 66600-66694): Under the McAteer-Petris Act, the jurisdiction of the BCDC of the San Francisco Bay includes the San Francisco Bay itself (including all areas that are subject to tidal actions), a shoreline band of land extending inland for 100 feet from the shoreline of the San Francisco Bay, salt ponds, managed wetlands, and certain waterways consisting of all areas that are subject to tidal action on named tributaries that flow into the Bay.

PUBLIC SERVICES AND RECREATION

San Francisco Bay Conservation and Development Commission

The BCDC was created by the California Legislature in 1965 under the McAteer-Petris Act in response to broad public concern over the future of the San Francisco Bay. The BCDC is a California state planning and regulatory agency with permitting regional authority over the San Francisco Bay and its shoreline. The McAteer-Petris Act (California Government Code 66600–66682) is the key legal provision under California state law that preserves the San Francisco Bay from indiscriminate filling and to regulate shoreline public access. The McAteer-Petris Act requires that any person or governmental agency wishing to place fill, to extract materials, or to make any substantial change in use of any land, water, or structure within the area of BCDC's jurisdiction must secure a permit from BCDC.

San Francisco Bay Plan

The San Francisco Bay Plan (BCDC 2020~~3~~) was prepared by the BCDC and adopted by the California Legislature in 1969. The BCDC is ~~the agency~~ designated to carry out the San Francisco Bay Plan. The plan provides a formula policies for developing the San Francisco Bay and its shoreline to their highest potential, while protecting the San Francisco Bay as an irreplaceable natural resource for the benefit of present and future generations. This plan contains policies

that the BCDC uses to determine whether permit applications can be approved for projects within the BCDC’s jurisdiction^s.

The following San Francisco Bay Plan policies are applicable to the proposed Project:

- Because of the continuing vulnerability of the San Francisco Bay to filling for transportation projects, the BCDC should continue to take an active role in San Francisco Bay Area regional transportation and related land use planning affecting the Bay, particularly to encourage alternative methods of transportation and land use planning efforts that support transit and that do not require fill. The Metropolitan Transportation Commission, the California Department of Transportation, the California Transportation Commission, the Federal Highway Administration, county congestion management agencies, and other public and private transportation authorities should avoid planning or funding roads that would require fill in the San Francisco Bay and certain waterways.
- Transportation projects on the San Francisco Bay shoreline and bridges over the San Francisco Bay or certain waterways should include pedestrian and bicycle paths that will either be a part of the San Francisco Bay Trail (Bay Trail) or connect the Bay Trail with other regional and community trails. Transportation projects should be designed to maintain and enhance visual and physical access to the San Francisco Bay and along the San Francisco Bay shoreline.

Commented [PK6]: Note this policy is directed towards the Commission rather than to project proponents.

San Francisco Bay Trail Plan

Senate Bill 100, which was passed into law in 1987, created the vision of the Bay Trail and directed ABAG to develop a plan for this regional trail system. The San Francisco Bay Trail Plan (Bay Trail Plan) (ABAG 1989), adopted by ABAG in July 1989, includes a proposed alignment, a set of policies to guide the future selection and implementation of routes, and strategies for implementation and financing. Since its inception, the Bay Trail Plan has enjoyed widespread support. The majority of counties and cities through which the Bay Trail passes have included the Bay Trail in general plans, specific plans, bicycle plans, and/or pedestrian plans. The BCDC considers the Bay Trail Plan in making determinations as to whether a project is consistent with their policies.

Commented [PK7]: Reference MTC/ABAG’s role in carrying out the Bay Trail plan.

SEA LEVEL RISE

4.1.1.1. Coastal Zone Management Act (16 U.S.C. §§ 1451 et seq.)

The objective of the Coastal Zone Management Act of 1972 is to “preserve, protect, develop, and where possible, to restore or enhance the resources of the nation’s coastal zone.” Coastal zone means “the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the lands therein and thereunder including the waters therein and thereunder), strongly influenced by each other and close to the shorelines of the several coastal states, and includes islands, transitional and intertidal areas, salt marshes, wetlands and beaches.” This act also requires projects to be planned, located, designed, and engineered for

the changing water levels and associated impacts that might occur over the duration of the development. Along the outer coast, ~~t~~The Coastal Zone Management Act is administered by the California Coastal Commission ~~in most areas within California~~; in the Bay Area, the Coastal Zone Management Act is administered by BCDC, as established by the McAteer-Petris Act. This act is described in the Local Plans, Policies, and Regulations Section (4.1.3), along with more details on BCDC climate change policies.

4.1.3.1. McAteer-Petris Act (Gov. Code § 66600 et seq.)

The McAteer-Petris Act was enacted September 17, 1965, and created the San Francisco BCDC as a temporary state agency charged with preparing a plan for the long-term use of the Bay. The act was amended in 1969 and established BCDC as a permanent agency. BCDC in 1972 incorporated sections of the McAteer-Petris Act to administer the policies of the CZMA by regulating the use of land and water in the coastal zone of San Francisco Bay, as stated above. ~~The act is a state law, but it is administered locally through BCDC.~~ BCDC regulates nearly all work, including grading, on land within 100 feet of San Francisco Bay shoreline (~~what BCDC calls~~ the shoreline band), all areas subject to tidal action, such as sloughs and marshes, and certain designated waterways. BCDC carries out ~~its “federal consistency” responsibilities~~ review by reviewing projects according to the provisions of the Coastal Zone Management Act ~~much as it reviews permit applications.~~ BCDC ~~issues four types of permits: major permits, administrative permits, emergency permits, and region-wide permits.~~ issues a variety of permits, and a permit must be obtained by any public agency or private owner holding shoreline lands before proceeding with development in the Commission’s jurisdiction.

Since the passage of AB 2094 in 2008, BCDC has been the state agency responsible for leading the Bay Area’s preparedness for, and resilience to, rising sea level, tides, and storm surge due to climate change. As required by AB 2094, the Bay Area Regional Collaborative (BARC) was formed as an association of the BCDC, MTC, ABAG, and BAAQMD. The bill also authorized BCDC, in coordination with local governments, regional councils of government, and other agencies and interested parties, to develop regional strategies, as needed, for addressing the impacts of, and adapting to, the effects of sea level rise and other impacts of global climate change on the San Francisco Bay and affected shoreline areas (AB 2094 Assembly Bill - AMENDED).

In 2011, BCDC adopted policies to require projects to be resilient to rising sea level through at least mid-century and beyond, given the project’s expected life. Just as important, the amendments directed that a regional adaptation strategy be developed by the Bay Area’s regional agencies.

Section 66632 of the Act requires that projects obtain permits from BCDC to fill, to extract materials, and to make substantial changes in use of land, water, or existing structures in the shoreline band. In determining whether to issue permits, BCDC looks to policies set forth in the act and in the San Francisco Bay Plan. In general, these policies authorize fill or excavation of

wetlands only for water dependent projects where no feasible upland alternatives exist, and only if wetlands impacts are mitigated.

4.1.3.2. San Francisco Bay Plan Climate Change Policy Guidance

BCDC requires those portions of a project in San Francisco Bay and the shoreline band to plan for and adapt to SLR caused by global climate change. BCDC ~~updated its~~ [prepared the](#) San Francisco Bay Plan Climate Change Policy Guidance (Guidance) [document](#) in July 2021. The Guidance provides non-regulatory, but interpretive, information to assist in the development of prospective projects in relation to the requirements of the climate change policies with permit applicants, local jurisdictions, and the public at large. **Climate Change Policy 2 – Risk Assessment of the Guidance states:**

When planning shoreline areas or designing larger shoreline projects, a risk assessment should be prepared by a qualified engineer and should be based on the estimated 100-year flood elevation that takes into account the best estimates of future SLR and current flood protection and planned flood protection that will be funded and constructed when needed to provide protection for the proposed project or shoreline area. A range of SLR projections for midcentury and end of century based on the best scientific data available should be used in the risk assessment. Inundation maps used for the risk assessment should be prepared under the direction of a qualified engineer. The risk assessment should identify all types of potential flooding, degrees of uncertainty, consequences of defense failure, and risks to existing habitat from proposed flood protection devices.

Climate Change Policy 3– Resilient to Mid-Century and Adaptable to End of Century states:

To protect public safety and ecosystem services, within areas that a risk assessment determines are vulnerable to future shoreline flooding that threatens public safety, all projects—other than repairs of existing facilities, small projects that do not increase risks to public safety, interim projects and infill projects in existing urbanized areas—should be designed to be resilient to a mid-century SLR projection. If it is likely the project will remain in place longer than midcentury, an adaptive management plan should be developed to address the long-term impacts that will arise based on a risk assessment using the best available science-based projection for SLR at the end of the century.

If a project has a short lifespan, BCDC Climate Change policies may potentially apply depending on the circumstances. The determination of whether a project is considered a “larger shoreline project” (Climate Change Policy 2) requiring a risk assessment depends more on a project’s physical characteristics (e.g., scale or intensity of use) than the life of a project. If a project is not required to prepare a risk assessment, a project may still be subject to other Bay Plan policies related to SLR and flooding, such as shoreline protection, safety of fills, and habitat projects. Coordination with other state and federal agencies, such as USACE, CDFW, and USFWS, would also occur during project review.

Commented [PK8]: This policy is from the Bay Plan. It is described in the guidance, but the source is the Plan and it’s an enforceable policy.

Commented [PK9]: This is also from the Bay Plan.