

# San Francisco Bay Conservation and Development Commission

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April 25, 2022

Sent via email to: [sherie.george@sfgov.org](mailto:sherie.george@sfgov.org)

Sherie George, Environmental Coordinator  
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**SUBJECT: Comments on the Waterfront Plan Draft Environmental Impact Report  
San Francisco Planning Case No. 2019-023037ENV  
State Clearinghouse No. 2020099002**

Dear Sheri George:

Thank you for the opportunity to comment on the Draft Environmental Impact Report (DEIR) for the Waterfront Plan (Project), State Clearinghouse No. 2020099002, published on February 23, 2022, by the City of San Francisco Planning Department. The Notice of Availability and DEIR were received by our office on February 23, 2022.

The San Francisco Bay Conservation and Development Commission (BCDC or Commission) is providing the following comments as a responsible agency, for purposes of the California Environmental Quality Act (CEQA), with discretionary review authority over projects that could result from the approval of the DEIR, as described below. BCDC will potentially rely on the Final EIR to support BCDC's planning and regulatory work along the San Francisco waterfront, and we appreciate this opportunity to comment on information, analyses, and findings in the DEIR that are relevant to BCDC's jurisdiction and authority. These comments have been prepared by Commission staff and are based on the McAteer-Petris Act (Title 7.2 of the California Government Code [Government Code]), the *San Francisco Bay Plan* (Bay Plan), the *San Francisco Bay Area Seaport Plan* (Seaport Plan), and the *San Francisco Waterfront Special Area Plan* (Special Area Plan) in relation to CEQA requirements for the Project.

## 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(a)). 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.



## PROJECT SUMMARY

The Waterfront Plan would update and amend the Waterfront Land Use Plan (1997) and its policies that guide the use, management, and improvement of the 7.5 miles of properties owned and managed by the Port, from Fisherman's Wharf to India Basin. The Waterfront Plan would not immediately result in new development, but provides new goals, policies, and procedures related to maritime, diversity of activities and people, public access and open space, urban design and historic preservation, transportation and mobility, sustainability, and resiliency.

## COMMENTS ON THE DEIR

Staff has prepared the following comments on the contents of the DEIR. Comments are focused on providing points of information related to BCDC policies and procedures cited in the DEIR, comments on analyses and findings related to resources under BCDC's authority, comments on the overall analysis presented in the DEIR in terms of CEQA requirements, and notes on additional information that may be helpful for future development projects as part of BCDC's permitting process.

### General Comments

#### WATERFRONT PLAN AREA

The Project area encompasses 7.5 miles of developed, urbanized waterfront that extends from the curved, northeast shore adjacent to Aquatic Park in Fisherman's Wharf to Heron's Head Park near India Basin in the southeast. Land uses within the Project area include commercial, residential, recreational, park, industrial, maritime, and public uses. The Project area is divided into two areas: Northern Waterfront and Southern Waterfront and include five subareas.

The Project area is located within BCDC's permitting jurisdiction:

- Bay Jurisdiction: In the 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 (Government Code Section 66610(a)); and
- Shoreline Band Jurisdiction: In the shoreline band consisting of all territory located between the shoreline of the Bay, as described above, and 100 feet landward of and parallel with the shoreline (Government Code Section 66610(b)).

BCDC would like to clarify that the Project Location Map (Figure 2-1) does not fully represent the policies described in this DEIR. The policies and activities in the plan, including maritime activities, water recreation, and water-oriented transportation for example, must occur within open water, beyond the shoreline and overwater structures. Please see comments related to Biological Resources for further detail.

BCDC confirms that the DEIR accurately cites Port's jurisdiction articulated with Bay Plan Maps 4 and 5 that include Port Priority Use Areas at China Basin (Piers 48 and 50), Central Basin (Pier 68), and surrounding the Islais Creek Channel (Piers 80, 90, 92, 94, and 96). Bay Plan Map Policies are also correctly noted, including Policy 27, which states at Fisherman's Wharf, "improve and expand commercial fishing support facilities. Enhance public access to and economic value of Fisherman's



Wharf area by encouraging development of a public fish market,” which is repeated in Plan Map 5 Policy 29. Plan Map 4 also includes Policy 26, regarding the San Francisco Waterfront Special Area Plan, which states “see special area plan for detailed planning guidelines for the shoreline between the east side of Hyde Street Pier and the south side of India Basin,” which is repeated in Plan Map 5 Policy 24. Finally, Plan Map 5 Policy 23 states for the Port of San Francisco, “See the Seaport Plan. Some fill may be needed.” And Bay Plan Plan Map 4 includes “Commission Suggestion A” for a “possible scenic transit system from Ocean Beach to China Basin.”

#### WATERFRONT PLAN UPDATE AND CONFORMING AMENDMENTS

Section 2.F.5 of the DEIR contains a summary of proposed Special Area Plan amendments as part of the Bay Plan Amendment (BPA) application received by BCDC from the Port of San Francisco on August 11, 2017. Please clarify in the DEIR that this BPA application is pending and that the amendments listed here are proposed and still under consideration. The list of proposed SAP amendments is repeated in Section 3.B.2., State Plans and Policies. BCDC suggests removing this information from this section, since it does not reflect the current Special Area Plan required for the analysis of this DEIR.

### Environmental Effects

#### BIOLOGICAL RESOURCES

In addition to the Project Location Map mentioned in the general comment above, the Habitat Map (Figure 4.F-1 of the Biological Resources section) does not appear to represent the full area described in the Plan’s policies. Only terrestrial and overwater structures are shown, however, policies and activities in the Waterfront Plan, including topics related to enhancing the San Francisco Bay Water Trail, as well as ferry and water taxi service for example, would need to occur within open water – beyond the shoreline and overwater structures. Please revise the plan area and habitat map to better define the bayward extent of the Waterfront Plan and to account for biological resources that are within tidal marsh, tidal flat, and open water habitat where the Waterfront Plan will apply.

The “Critical Habitat” section on page 25 states: “A review of GIS-based habitat data for USFWS Critical Habitat for Threatened and Endangered Species shows that the Plan area is not located within designated critical habitat for any listed species.” A review of this dataset shows that the federally threatened green sturgeon (*Acipenser medirostris*) has designated critical habitat up to the elevation of mean higher high water (<https://www.fisheries.noaa.gov/inport/item/65369>). This includes areas below and adjacent to overwater structures within the Waterfront Plan area. Please revise this statement.

The DEIR Chapter 4.F.3 Regulatory Framework mentions the Bay Plan under “Local Regulations.” This section refers to the applicable policies related to Bay filling, but does not mention Bay Plan Policies related to biological resources. BCDC recommends adding reference to Bay Plan Findings and Policies concerning Fish, Other Aquatic Organisms and Wildlife in the Bay (Bay Plan Policies Part III) and indicating consideration of these policies throughout the DEIR’s impact analysis of the Waterfront Plan, such as Impact BI-8: Waterfront Plan would not conflict with any local policies or ordinances protecting biological resources.

The study area for the biological resources analysis includes a 250-foot buffer around the Waterfront Plan area to account for indirect impacts on biological resources that could occur with implementation of the Waterfront Plan. Aquatic resources described in the Section 4.F.2 included in the 250-foot study area, but no analysis was conducted to determine if the Waterfront Plan would result in significant impacts to aquatic resources beyond activities related to pile-driving. Construction activities such as riprap placement, fill, dredging/grading below MHHW, or pier maintenance as well as changes in use of overwater structures through changes in vessel mooring, realignment of overwater structures, or increased shading due to wharf use may impact special status fish or marine mammals or their habitat. The Waterfront Plan may result in impacts from these types of activities and thus, further analysis should be conducted to determine impacts to special status fish or marine mammals or their habitat. Additionally, all current biological resources mitigation measures should be reviewed to ensure that impacts from changes in use of overwater structures and the shoreline are accounted for.

Additional comments:

**Mitigation Measure M-BI-3: Fish and Marine Mammal Protection During Pile Driving:** On page 45 of the Biological Resources section there is mention of “implementation of in-water construction best management practices.” Those were not defined in the DEIR or affiliated documents. If these BMPs are sufficient to minimize direct and indirect impacts to less than significant please clarify what these BMPs are.

**Mitigation Measure M-BI-6: Avoidance of Impacts on Wetlands and Waters:** Please update the mitigation measure in the summary table (Page S-35) to include mention of BCDC’s permitting requirements alongside CDFW, Waterboard, and USACE.

**Mitigation Measures M-BI-3 and M-BI-6** also do not discuss impacts to marine species, habitat, wetlands, and waters as a result of changes in use of overwater structures and the shoreline, but rather, focuses on construction-related impacts. Impacts due to increased water-oriented use through wakes, shading, or increased turbidity could impact wetlands and waters in the Plan Area. Please revisit these mitigation measures to account for the long-term changes in use that may occur as a result of the Waterfront Plan.

**Impact BI-5: The Waterfront Plan would not have a substantial adverse effect the eelgrass bed sensitive natural community:** Eelgrass beds have been observed along the San Francisco waterfront within the Fisherman’s Wharf Plan Subarea (e.g., near Hyde Street Pier) and the Southern Waterfront Plan Subarea. Given the forward-looking nature of this plan, presuming that there is no eelgrass habitat that may be impacted based on surveys conducted most recently in 2014 seems like insufficient evidence to support the “no impact” level of significance. The Waterfront plan includes policies that could affect fill, shading, turbidity, or dredging the Bay within potentially suitable habitat for eelgrass. BCDC recommends that a mitigation measure to survey and if needed- avoid and mitigate for eelgrass bed sensitive natural communities should be included. This may occur on the project-level, however, noting “no impact” on the Waterfront Plan level does not reflect current conditions or adequately account for potential impacts of the Plan.

**HYDROLOGY AND WATER QUALITY**

Page 158 of the Initial Study states “The sea-level rise vulnerability zone is 108 inches above today’s high tide (mean higher high water). This includes 66 inches of sea-level rise plus 42 inches of tidal and storm surge, an upper-range scenario for end of century.” While these values are based on current San Francisco Planning Guidance, please note that BCDC currently considers the Ocean Protection Council Sea Level Rise Guidance (2018) as the best available science for selecting sea level rise projections, and an update to the Sea Level Rise Guidance is expected in 2023. Another notable recent source used by BCDC for regional sea level rise projections and compound flooding impacts is the 2022 NOAA Technical Report.

Additional comments:

**Impact HY-2: The Waterfront Plan would not substantially decrease groundwater supplies or interferesubstantially with groundwater recharge such that the Plan may impede sustainable groundwater management of the basin or conflict with a sustainable groundwater management plan.**

**Impact HY-3: The Waterfront Plan would not substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river or through the addition of impervious surfaces, in a manner that would result in substantial erosion, siltation, or flooding on or off site.**

Please note that the Project and subsequent projects should consider recent scientific studies that suggest remediation sites or other contaminated areas that experience shallow groundwater rise may adversely impact the Bay and the surrounding environment through the mobilization of contaminants. These impacts could be avoided or mitigated by proper remediation that does not allow for mobilization of contaminants due to a changing groundwater table. This is supported by Bay Plan Shoreline Protection Policy 8, which states “All contamination remediation projects in the Bay or along the Bay shoreline should integrate the best available science on sea level rise, storm surge, and associated groundwater level changes into the project design in order to protect human and ecological health by preventing the mobilization of contaminants into the environment and preventing harm to the surrounding communities.”

In response to the list of Projects on the State Hazardous Materials list, each of the projects on this list could be reviewed for current and future water quality, groundwater flooding, and contaminant mobilization impacts to the environment based on the emerging field of science incorporating shallow groundwater rise into flood impact analysis. Please note that BCDC’s Adapting to Rising Tides Program maintains this information on our website as a regional resource.

**AESTHETICS**

**Impact AE-1: The Waterfront Plan would not have a substantial adverse effect on a scenic vista, damage scenic resources, degrade the existing visual character or quality of public views of the site or its surroundings, or conflict with applicable zoning and other regulations governing scenic quality.**

The analysis of Impact AE-1 generally aligns with Bay Plan policies for Appearance, Design, and Scenic Views, as well as relevant Special Area Plan general policies and geographic vicinities policies as it applies to the subareas identified in the Waterfront Plan.

However, while the analysis states that the Waterfront Plan amendments would not require any changes to the height and bulk district for Port property, the proposed Project would amend the planning code by adding section 240.4 to create Waterfront SUD 4. The SUD would apply to Port piers and seawall lots in the Mission Bay and Southern Waterfront subareas that are not included in the Mission Rock, Pier 70, or Potrero Power Station SUDs. Furthermore, the DEIR states the planning code amendment would require waterfront design review process and procedures for future development on Port-owned properties in the Mission Bay and Southern Waterfront subareas.

BCDC would like to clarify that Implementation Requirement 3 in the Special Area Plan states:

*“Joint Design Review Process. To achieve a high level of design quality in waterfront development, ensure consistency in agency comments and requirements for the design of proposed waterfront projects, and to simplify and streamline the project review process, the Port and BCDC will establish a joint design review process for projects proposed within the area of the Special Area Plan. This joint design review process will entail joint meetings of BCDC’s Design Review Board and the Port and City’s Waterfront Design Advisory Committee. These two design groups will consider the design issues that are pertinent to the authority of each of the agencies, and advise BCDC, the Port and the City on design matters pertinent to each of the agencies’ authority.”*

Please note a formal joint design review process between the two agencies per this requirement has yet to be fulfilled. BCDC agrees with the approach that the newly created SUD resulting from the Waterfront Plan should require a waterfront design review process and the inclusion of the BCDC Design Review Board and staff in the development of this process would be critical to implementing the physical and visual transformation for subsequent projects within BCDC jurisdiction.

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## CONCLUSION

BCDC appreciates the opportunity to provide comments on this DEIR. Please continue to keep BCDC staff informed on developments in the environmental review and final approval of the Waterfront Plan. Additionally, BCDC staff is available to answer any questions about our comments of the DEIR if needed. Please direct any questions concerning the DEIR and this comment letter to Yuriko Jewett, Principal Waterfront Planner, at [yuriko.jewett@bcdc.ca.gov](mailto:yuriko.jewett@bcdc.ca.gov) or (415)-352-3600.

Sincerely,

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