

San Francisco Bay Conservation and Development Commission

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Via Email Only

April 30, 2022

Arnica MacCarthy
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SUBJECT: Initial Study With Proposed Negative Declaration of State Route (SR) 37 Capital Preventive Maintenance (CAPM) Pavement Project, Marin County (SCH 2022040025); BCDC Inquiry File No. MC.MC. 7415.026

Ms. MacCarthy:

Thank you for the opportunity to comment on the Initial Study with Proposed Negative Declaration (IS/ND) for the State Route 37 Capital Preventive Maintenance Project from Ignacio overhead crossing (U.S. Highway 101 junction) to the southwest approach of the Petaluma River Bridge totaling approximately 3.4 linear miles of highway. The IS/ND was received by our office on April 1, 2022. The project includes resurfacing and repairing the existing asphalt-concrete pavement; injecting polyurethane foam below the roadway to address settlement correction; replacing traffic loop detectors, and asphalt-concrete dikes; upgrading concrete barriers, guard rails, and curb ramps; installing enhanced wet/night visibility striping; adjusting and cleaning drain inlets; and providing vegetation control under guardrails and thrie-beam barriers. The project would not involve an increase in the number of highway lanes, and Caltrans will preserve the existing alignment.

The San Francisco Bay Conservation and Development Commission (BCDC) is a responsible agency for this project under CEQA when considering approvals related to the project components within BCDC jurisdiction. While the description of the project in the IS/ND is not specific enough for BCDC staff to comment on every potential issue that could be raised with respect to BCDC's laws and policies, staff has prepared the following comments outlining issues under BCDC's jurisdiction that should be addressed as part of the IS/ND. The Commission itself has not reviewed the IS/ND; the following comments are based on BCDC staff review of the IS/ND and the McAteer-Petris Act, and the *San Francisco Bay Plan* (Bay Plan).

Jurisdiction

Per the McAteer-Petris Act, BCDC is responsible for granting or denying permits for any proposed fill; extraction of materials; or substantial changes in use of any water, land, or structure within the Commission's jurisdiction (California Government Code [CGC] Section



66632). As defined in CGC Section 66632, "fill" means earth or any other substance or material, including pilings or structures placed on pilings, and structures floating at some or all times and moored for extended periods, such as houseboats and floating docks. For the purposes of this section "materials" means items exceeding twenty dollars (\$20) in value. Fill also includes structures cantilevered over the Bay. Based on the IS/ND project description, relevant areas of BCDC jurisdiction for the project may include the following:

- A shoreline band consisting of all territory located between the shoreline of the Bay and 100 feet landward of and parallel with the shoreline (CGC Section 66610[b]).

The proposed project does not include any Bay fill in areas in and over the Bay or Certain Waterways, but it may include work within the 100-foot shoreline band. Section 66602 of the McAteer-Petris Act states, in part, "that maximum feasible public access, consistent with a proposed project, should be provided." At the project site, there is a proposed Bay Trail alignment along SR 37, a Water Trail site at Black Point and other required recreational facilities (Black Point Boat Launch).

BCDC has issued a programmatic maintenance permit, Permit No. M1987.042.06, that authorizes the maintenance of the existing state highways including resurfacing, repair, and replacement of pavement surfaces on existing roads so long as the areas of the paved surfaces are not increased. The IS/ND should include discussion of potential impacts on existing and future public access, including potential impacts to non-motorized users of the State Route, such as bicycles and pedestrian, as well as to users of the Water Trail and other recreational facilities at Black Point. If there is work planned within these public access areas, it may be necessary for the Commission to authorize this work through a permit action.

Commission Law and Bay Plan Policies Relevant to the Project

San Francisco Bay Plan. Although the IS/ND notes that Caltrans anticipates work only within the existing alignment of SR 37, the IS/ND should incorporate an evaluation of impacts identified in the Bay Plan policies, and whether any conflicts would result in potentially significant environmental and public access impacts. The Bay Plan establishes policies for development and resource conservation within BCDC's jurisdiction. Policies cover the protection of Bay resources, including fish, other aquatic organisms, and wildlife; water quality; and others, as well as issues related to development, such as recreation; appearance, design, and scenic views; public access; and mitigation.

Fish, Other Aquatic Organisms and Wildlife. The policies in this Bay Plan section address the benefits of fish, other aquatic organisms and wildlife, and the importance of protecting the Bay's habitats, native, threatened or endangered species, and species that are candidates for listing as endangered or threatened. Policy No. 1 requires that the Bay's tidal marshes, tidal flats and subtidal habitat are to be conserved, restored and increased "to the greatest extent feasible."



Therefore, the IS/ND should incorporate best management practices for working next to the Petaluma River Bridge at its southwest approach and address how the construction methods and practices would avoid and minimize impacts to Bay resources through measures such as debris and runoff containment within the road's alignment next to the bridge and staging areas.

Transportation. The project site is located on a segment of planned, future Bay Trail, which runs along the shoulder of SR 37. Additionally, the project site includes Harbor Drive, which is the direct access to a Water Trail site at the Black Point Boat Launch. The segment can be viewed at <https://baytrail.org/baytrailmap.html>. The IS/ND should discuss the potential for increase in vehicle traffic, construction vehicles and operational truck traffic due to the improved reliability of the roadway to impact users of the Bay Trail segment and Water Trail site. In addition, the IS/ND states that the traffic management plan (TMP) would be developed to minimize potential effects from construction to motorist; however, it does not state whether the same measures would be applied to non-motorist users such as bicycles and pedestrians and whether the TMP would address the continuous circulation system to public access sites of the Water Trail and boat launch site. If temporary closures are scheduled during the roadway construction operations, the IS/ND should discuss the minimization of closures to public access sites, such as consideration of construction operations during non-daylight hours on sections of the road with direct access to the Water Trail, use of flaggers, or other methods. The TMP should also consider whether any increase in congestion during construction would pose a safety hazard for non-motorized users of the SR 37 shoulder or otherwise affect the usability of the Water Trail or parking areas for the Water Trail.

Public Access and Recreation. Section 66602 of the McAteer-Petris Act states, in part, "that maximum feasible public access, consistent with a proposed project, should be provided." As stated above, the construction of an improved highway along SR 37 could impact existing public access pathways, circulation, and spaces, impact the potential for future public access adjacent to and on the highway. The IS/ND should address the relation of the roadway improvements and the future Bay Trail and whether the project may preclude even in the short-term the accessibility by non-motorists along SR 37. In addition, to mitigate adverse impacts to existing public access areas and use at the site, maximum feasible public access consistent with the project is to be provided.

Environmental Justice and Equity. Bay Plan Policies on Environmental Justice and Social Equity are intended to address environmental justice and social equity issues at appropriate points in the BCDC permitting process. Details regarding this Bay Plan amendment (BPA) may be viewed at <https://www.bcdc.ca.gov/ejwg/BPAEJSE.html>. Outreach and engagement should be conducted by Caltrans to "meaningfully involve potentially impacted communities for major projects and appropriate minor projects in underrepresented and/or identified vulnerable and/or disadvantaged communities and such outreach and engagement should continue throughout the Commission review and permitting process." BCDC urges the preparers of the IS/ND to review materials on these two BPAs for any information that may be relevant to the environmental review of the proposed project.

Arnica MacCarthy
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We appreciate your attention to the topics discussed above and for the opportunity to make the above comments on the scope of the IS/ND. If you have any questions or concerns regarding this matter, please do not hesitate to contact me at (415)352-3670 or by email at rafael.montes@bcdc.ca.gov.

Sincerely,

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RM/mm

