

# San Francisco Bay Conservation and Development Commission

375 Beale Street, Suite 510, San Francisco, California 94105 tel 415 352 3600 fax 888 348 5190

State of California | Gavin Newsom – Governor | info@bcdc.ca.gov | www.bcdc.ca.gov

***Via Email Only***

Governor's Office of Planning & Research

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**STATE CLEARINGHOUSE**

Arnica MacCarthy  
Caltrans District 4 Environmental  
P.O. Box 23660, MS 8B  
Oakland, CA 94623-0660  
Email: arnica.maccarthy@dot.ca.gov

**SUBJECT: Initial Study With Proposed Mitigated Negative Declaration of Marin State Route (SR) 37 Petaluma River Bridge Project, Marin County (SCH# 2022070088); BCDC Inquiry File No. MC.MC. 7415.026**

Ms. MacCarthy:

On July 28, 2022, the San Francisco Bay Conservation and Development Commission received a notice of Availability and Public Comment Period on the Initial Study with Proposed Mitigated Negative Declaration (IS/MND) for the State Route 37 (SR 37) Petaluma River Bridge Project (Project) in Marin and Sonoma counties, California at post mile 14.5 from the California Department of Transportation (Caltrans). Thank you for the opportunity to comment on the Draft IS/MND. The project includes rehabilitation of the bridge deck, replacement of the bridge fender system, new bridge scour protection (rock slope protection), and upgrading the bridge railings to meet current safety standards. According to the project description, the project would maintain the bridge structure in a reliable and serviceable condition. The project would not involve an increase in the number of highway lanes and Caltrans will preserve the existing alignment, but the project does involve a slight widening of the Petaluma River Bridge to accommodate the new railing system.

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 Draft IS/MND 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 Final IS/MND. The Commission itself has not reviewed the IS/MND; the following comments are based on BCDC staff review of the Draft IS/MND 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/MND project description, relevant areas of BCDC jurisdiction for the project include the following:

- San Francisco Bay, being all areas subject to tidal action, including tidelands (land lying between mean high tide and mean low tide), submerged lands, and tidal marsh (CGC Section 66610[a]). BCDC's Bay jurisdiction includes areas of tidal marsh up to, but not exceeding, five feet above Mean Sea Level.
- A shoreline band consisting of all territory located between the shoreline of the Bay, as defined above, and 100 feet landward of and parallel with the shoreline (CGC Section 66610[b]).
- Certain waterway along the Petaluma River in Napa and Sonoma Counties consisting of all areas subject to tidal action, including submerged lands, tidelands, and marshlands up to five feet above mean sea level, on, or tributary to the Petaluma River up to the confluence with Adobe Creek

The proposed project includes Bay fill in areas in and over the Bay or certain waterways, and 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, fishing area, etc.).

BCDC issued a programmatic maintenance permit, Permit No. M1987.042.06, that authorizes the maintenance of the existing state highways including repair, reconstruction, and replacement of bridge fenders, bridge bents, some minor additions of rip rap, and resurfacing of pavement on existing roads so long as the areas of the paved surfaces are not increased. However, this permit indicates that the intent of the permit is to cover projects that are categorically exempt from the need to prepare an environmental assessment or further CEQA documentation as section II.G "Environmental Review" states that "[p]ursuant to Regulation Section 11501, the project authorized by this amended permit is categorically exempt from the requirement to prepare an environmental impact report." Further, section II.A.2 under "Project Review" requires that if activities are determined to involve impacts to Bay resources or public access, or the work is of a significant scope and complexity that exceeds the intent of the



authorizations in the permit, BCDC may require an amendment to the permit or a new permit authorization. Because the project is not categorically exempt from CEQA and is likely to require additional measures for minimizing and mitigating the project impacts, the project likely requires further authorization through a new permit or an amendment to the existing permit. Once BCDC has a better sense of the amount of work and quantities within our jurisdiction, we can provide more guidance on the appropriate regulatory path for this project.

As we understand the project at the time of this letter, it appears that within BCDC jurisdiction, the project specifically includes repairs to the existing bridge (1,120 feet long by 67 feet four inches wide), which involves the replacement of the top deck surface with a deck overlay, replacement and upgrade of the railing system requiring a deck slab widening of one foot (6 inches on each edge of deck), replacement of the metal beam guard rail (MBGR) and Midwest Guardrail System (MGS), the replacement of the fender system around two bridge bents, pile driving, temporary use of barges that will require barge loading at Black Point Boat Launch, placement of new scour protection (in-Bay rock slope protection), temporary placement of in-Bay cofferdams, and the staging of equipment and closure of the Black Point Parking Lot during construction. Additionally, the project should coordinate with BCDC regarding construction staging within areas of existing and future public access, including potential impacts to non-motorized users of SR 37, 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 BCDC to authorize this work through a permit action.

## **Commission Law and Bay Plan Policies Relevant to the Project**

### **McAteer-Petris Act and Fill.**

The McAteer-Petris Act requires that projects be authorized when the area to be filled is the minimum necessary to achieve the purpose of the fill and the nature, location, and extent of the fill minimizes harmful effects to water quality and Bay habitats and wildlife. The specific quantities of work and fill, such as the amount and area of new scour protection at each bent, in the Commission's jurisdiction were not provided in the IS/MND. The quantities of work in the Commission's jurisdiction will be necessary for staff to evaluate the project and identify the appropriate regulatory approval for the project. There appears to be some inconsistencies in the document regarding how much the bridge will need to be widened. Specifically, there were different numbers in the cross-section (Section 2.3.1) and the text of the document for the amount of bridge widening that would occur. Please clarify the extent of widening on each side of the bridge and the total increase in width of the bridge in the Final IS/MND.

**San Francisco Bay Plan.** Although the IS/MND notes that Caltrans anticipates work only within the existing alignment of SR 37, the IS/MND should incorporate an evaluation of impacts identified within the Commission's jurisdiction and project consistency with the policies of the San Francisco Bay Plan (Bay Plan) discussed below. The Bay Plan establishes policies for development and resource conservation within the Commission's jurisdiction. Relevant policies



that cover the protection of Bay resources, including fish, other aquatic organisms, and wildlife; tidal marshes and tidal flats; subtidal areas; water quality; mitigation; and others, as well as issues related to development, such as recreation; appearance, design, and scenic views; public access; and transportation.

**Fish, Other Aquatic Organisms and Wildlife and Bay Habitats.** 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 be conserved, restored, and increased "to the greatest extent feasible." The IS/MND mentions that the new scour protection may result in 0.33 acres of permanent impacts, and approximately 0.5 acres of temporary impacts to Bay habitats and species and that any mitigation for these impacts will be worked out with USACE, Regional Water Quality Control Board, USFWS, CDFW, and NMFS. Please note that BCDC should also be included in these discussions as mitigation for impacts to the Commission's jurisdiction will also likely be required by BCDC. The IS/MND incorporates a number of best management practices for working next to the Petaluma River Bridge and BCDC will require minimization measures, such as the environmental work window, pile driving methods, and others, to ensure the project minimizes impacts to habitats and species within the Commission's jurisdiction. Additionally, the Bay Plan policies on Tidal Marshes and Tidal Flats and Subtidal Areas say that projects should avoid, minimize, and mitigate for impacts to these habitat areas. Please note that for any disturbed habitat areas that are restored following construction, there may be monitoring required to assess the success of the restoration and reseeded efforts. Caltrans may need to prepare and provide a Monitoring and Mitigation Plan to BCDC as part of the regulatory approval process.

**Water Quality.** The Bay Plan policies on Water Quality say that projects should be designed to minimize discharge of pollutants into the Bay and to promote beneficial uses of the Bay. The IS/MND mentions that there will be removal of sediment around each of the bents down to a depth of five feet below the ground surface so that rip rap scour protection can be placed around each of the bents to provide new scour protection. In the final IS/MND, please indicate where the excavated sediment would be placed. If there is any placement proposed within the Commission's jurisdiction, then this may require sediment testing prior to the excavation and placement activities.

**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." The Bay Plan policies on Public Access and Recreation also require that impacts to existing public access be minimized and that projects provide maximum feasible public access consistent with the project. As stated above, the construction of an improved Petaluma River bridge on SR 37 could impact existing public access pathways, circulation, and recreational areas, and impact the potential for future public access adjacent to and on the highway. The IS/MND 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 project site, maximum feasible public access consistent with the project is to be provided.

It also appears that other SHOPP projects, such as the SHOPP SR37 Capital Preventative Maintenance (CAPM) Pavement Project are similarly proposing the use of the Black Point Parking Lot as the staging area for construction equipment. The IS/MND should discuss the cumulative impacts of the closures of the Black Point Parking Lot for the Petaluma River Bridge Project and the CAPM Pavement Project and whether these two projects will result in the same closure period for the Black Point Parking Lot, or whether they will result in closures for different periods of time. The IS/MND should indicate the anticipate total closure period for the Black Point Parking Lot. Additionally, although the boat launch may be accessible outside of the barge operation periods, the IS/MND should address where recreational users of the boat launch are to park their vehicles and trailers during the period that the Parking Lot is closed. Please also identify if the fishing areas and access to the water around the bridge can be maintained during construction, or how the project may impact this activity. If there are impacts to fishing activities, the Final IS/MND should identify ways that such impacts can be minimized.

**Appearance, Design, and Scenic Views.** SR 37 is designated as a scenic drive in Bay Plan Map 1. In addition, the Bay Plan policies on Appearance, Design, and Scenic Views say that projects should be designed to enhance the pleasure of the user or viewer of the Bay, and that maximum efforts should be made to provide, enhance, or preserve views of the Bay and shoreline. Additionally, these policies say that “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” and that “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.” In the Final IS/MND there should be consideration of the potential impacts of the new railing system designs on views to the Bay. Additionally, as part of the regulatory approval process, BCDC will need to review the design of the railings to ensure that views impacts to the Bay are minimized.

**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/MND to review materials on

these two BPAs for any information that may be relevant to the environmental review of the proposed project.

**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 a barge loading area at the Black Point Boat Launch site and staging area at the Black Point Parking Lot, which are the direct access to the Water Trail site in this area. The segment can be viewed at <https://baytrail.org/baytrailmap.html>. The IS/MND mentions that the boat launch itself will be temporarily close and reopened after barge deployment, but that the parking lot will remain closed for the duration of construction. The IS/MND should discuss interim accommodations and parking for Water Trail users.

Additionally, the document should discuss the potential for increases in vehicle traffic, construction vehicles, and operational truck traffic due to the improved reliability of the roadway, and the associated impacts on users of the Bay Trail segment and Water Trail site. The IS/MND 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/MND 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.

**Mitigation.** As also discussed above, the IS/MND mentions that there may be 0.33 acres of permanent modifications and impacts to aquatic habitat as a result of the rip rap placed for scour protection. Additionally, there may be some take of fish associated with the pile driving activities, but this will need to be assessed once the details of the project and construction methods have been further worked out. It appears that the project may result in permanent impacts to habitats within the Commission's jurisdiction. Such impacts will likely need to be mitigated and Caltrans will need to work with BCDC staff to determine the appropriate mitigation for the project impacts. Generally, the Mitigation Policies of the Bay Plan indicate that onsite, in-kind restoration is preferred, but in lieu mitigation options may be considered if that is not feasible.

We appreciate your attention to the topics discussed above and for the opportunity to make the above comments on the scope of the IS/MND. If you have any questions or concerns regarding this matter, please do not hesitate to contact Rafael Montes at (415)352-3670 or by




Arnica MacCarthy  
CALTRANS District 4  
BCDC Inquiry File No. MC.MC. 7415.026

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email at [rafael.montes@bcdc.ca.gov](mailto:rafael.montes@bcdc.ca.gov), or Anniken Lydon at (415)352-3624 or by email at [anniken.lydon@bcdc.ca.gov](mailto:anniken.lydon@bcdc.ca.gov).

Sincerely,

DocuSigned by:  
  
CA403961512F409...

ANNIKEN LYDON

Bay Resources Program Manager

San Francisco Bay Conservation and Development Commission

375 Beale Street, Suite 510

San Francisco, California 94105

Tel: 415-352-3600

Fax: 888 348 5190

Email: [info@bcdc.ca.gov](mailto:info@bcdc.ca.gov)

Website: [www.bcdc.ca.gov](http://www.bcdc.ca.gov)

cc: State Clearinghouse, [state.clearinghouse@opr.ca.gov](mailto:state.clearinghouse@opr.ca.gov)

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