

San Francisco Bay Conservation and Development Commission

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November 22, 2024

City of Belmont
1 Twin Pines Ln, Suite 310
Belmont, CA 94002
ATTN: Carlos de Melo, Community Development Director
Via E-mail: cdemelo@belmont.gov

SUBJECT: Comments on the Draft Environmental Impact Report for the 1301 Shoreway Project; BCDC Inquiry File No. SM.BM.2024.01

Dear Carlos,

Thank you for the opportunity to comment on the Draft Environmental Impact Report (DEIR) for the 1301 Shoreway Project (Project).

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.

BCDC Jurisdiction

The Project site is partially located within the shoreline band area of BCDC's permitting jurisdiction, 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]). The Project team has previously worked with BCDC staff to map the limits of this jurisdictional area. Areas in the shoreline band jurisdiction include the shoreline, most of the open space and public access amenities, and portions of the surface parking lot located near Belmont Creek.



The Bay shoreline for this Project should be determined as Mean Sea Level (MSL) + 5 feet due to the presence of tidal marsh. In this area, MSL is located at 3.35 NAVD88, so the Bay shoreline would be 8.35 ft NAVD88. It is not clear whether Figure 3-4 (Proposed Site Plan) in the DEIR correctly shows the BCDC jurisdiction since the shoreline topography is not shown and it's marked as "Not to Scale." Please correct the BCDC jurisdiction map to show the Bay shoreline and the 100-foot shoreline band drawn to scale.

Environmental Analyses

Below are BCDC staff's remaining questions and comments on the DEIR, organized by environmental topic.

BIOLOGICAL RESOURCES

In BCDC's comments to the NOP, we requested that "In defining the study area for the biological resources analysis in the DEIR, please include any areas of the Bay that may be affected by site preparation and construction activities and the ongoing operation of the Project, including those that might be affected by light, sound, debris, runoff, etc. Additionally, please provide a detailed analysis of any potential impacts in and along Belmont Creek." Upon our review of the additional analysis provided in the DEIR, we have determined that issues remain with the DEIR's assessment of impacts on biological resources.

Please also note that section 7.4.3 incorrectly incorporates the McAteer-Petris act under Local Applicable Regulations, Plans, and Standards, and it should instead be categorized as at the State level. It may also be useful to cite that the McAteer-Petris Act is Title 7.2 of the California Government Code. Additionally, please make the following corrections to that paragraph:

The McAteer-Petris Act, enacted on September 17, 1965, serves as a legal provision under California State law to preserve San Francisco Bay from indiscriminate filling. The Act initially established the BCDC as a temporary State agency charged with preparing a plan for the long-term use of the San Francisco Bay. In August 1969, the McAteer-Petris Act was amended to make BCDC a permanent regulatory agency **and** to incorporate the policies of the Bay Plan. BCDC jurisdiction includes **the San Francisco Bay and a 100-foot-wide band along the Bay shoreline of the San Francisco Bay, as well as other areas not relevant to this particular project.** The **Bay shoreline** is defined as all areas that are subject to tidal action from the south end of the San Francisco Bay to the Golden Gate (Point Bonita–Point Lobos), and to the Sacramento River line (a line between Stake Point and Simmons Point, extended northeasterly to the mouth of Marshall Cut), **including–** **The BCDC will claim** all sloughs, **and** (specifically **the** marshlands lying between mean high tide and **up to** 5 feet above mean sea level **where marsh vegetation is present**); tidelands (lands **lying** between mean high tide and mean low tide); and submerged lands (land lying below mean low tide) in this region. The McAteer-Petris Act also **provides that within the 100-foot shoreline band, the BCDC may deny an application for a permit on the grounds that the project fails to provide maximum feasible public access, consistent with the proposed project, to the Bay and its shoreline. requires**

~~that “maximum feasible public access, consistent with a project be included as part of each project to be approved by the BCDC.”~~

HAZARDS AND HAZARDOUS MATERIALS

In BCDC’s comments on the NOP, we requested that the DIER “consider the potential for groundwater rise to mobilize below-ground contaminants.... please include a discussion of whether groundwater rise could potentially mobilize below-ground contaminants at the Project site.” Please reference the following comments (Hydrology and Water Quality, 2) on stormwater management as they relate to groundwater rise and the mobilization of toxic contaminants.

HYDROLOGY AND WATER QUALITY

In BCDC’s comments on the NOP, we noted that the DEIR should incorporate Bay Plan policies on Water Quality and Climate Change and include analysis of relevant sea level rise scenarios in accordance with the best available science (currently considered to be the Ocean Protection Council’s 2024 Sea Level Rise Guidance). Upon our review of the additional analysis provided in the DEIR, we have determined that issues remain with the DEIR’s assessment of impacts from Sea Level Rise as the management of stormwater.

1. **Sea-level rise and flood resilience.** Section 13.3.2 considers the SLR resilience of the site by looking at MHHW plus 2 feet of sea level rise, since the City requires development to be at least 2 feet above the FEMA base flood elevation, which here is 10 feet NAVD88. However, The Ocean Protection Council’s 2024 State of California Sea Level Rise Guidance ¹ predicts 2 feet of sea level rise for about the year 2070. Per San Francisco Bay Plan Climate Change policies, the DEIR should include analysis of sea level rise impacts to the end of the Project’s life (or otherwise end-of-century), which is assumed to be 2100, when sea level rise is predicted to be about 5 feet.

Please note that the Project is not consistent with OneShoreline’s Planning Policy Guidance,² which should be incorporated into the local regulatory setting (13.4.3). Additionally, please also note that BCDC policies require that future work maintain sea level rise resilience to the end of the Project life, including public access within BCDC jurisdiction. The DEIR analysis of flood projections for this site should consider both sea level rise and creek outflows, using future projections for rainfall in the Belmont Creek watershed.

¹ opc.ca.gov/wp-content/uploads/2024/05/California-Sea-Level-Rise-Guidance-2024-508.pdf

² <https://onshoreline.org/wp-content/uploads/2023/09/OneShoreline-Planning-Policy-Guidance-Final-June-21-2023-For-Print.pdf>

2. **Storm-water.** BCDC previously requested that the DEIR conduct an analysis of the impacts of groundwater rise. Based on the analysis provided, BCDC is concerned that the proposed stormwater management system could result in Project impacts that are not currently accounted for in the DEIR. Groundwater is shallow onsite (about 3 feet below the current grade, or 10 feet NAVD88), and appears the grades are being raised by about 2 feet. This will locate groundwater about 5 feet below grade. Per section 13.5.4, the Project drainage will rely on stormwater infiltration of permeable areas and detention basins to meet requirements. However, since storm drain piping is likely to be installed to depths of about 5 feet below ground, it will quickly fill with groundwater due to leaks in the system and lose capacity. Since groundwater levels will rise with sea level rise, groundwater will be within 3 feet of the ground surface (2 foot rise) by 2070 after which time stormwater infiltration will cease to be effective³.

The EIR Project Description should include a description of work needed to maintain the function of the storm drain system over the life of the Project, and the analysis should take into account the effects of future groundwater rise.

3. **Drainage patterns.** For Impact Analysis HYD-3, please include a discussion that explains how raising the elevation of the site would not increase the rate and volumes of flow off of the site into adjacent areas.
4. **Flood hazards.** For Impact Analysis HYD-4, please incorporate potential flooding from groundwater rise over the life of the Project into the analysis of whether a flooding event could risk the release of pollutants. Additionally, please include a brief characterization of what the analysis considers to be a pollutant (and note that the contents of sewer lines, etc. should also be considered pollutants in this context).

LAND USE AND PLANNING

As BCDC previously noted in our comments on the NOP, “The McAteer-Petris Act and the Bay Plan are a State law and a land use plan, respectively, adopted for the purpose of avoiding or mitigating an environmental effect and should be included in the regulatory settings for this section as well as considered in the impact analysis.” However, the DEIR does not reference the Bay plan or McAteer-Petris Act in Section 14.4 (Applicable Regulations, Plans, and Standards) or the accompanying analysis.

³https://www.sfei.org/sites/default/files/biblio_files/Shallow%20Groundwater_Sea%20Level%20Rise_Pathways_SFEI_2022_v2_2.pdf

PUBLIC SERVICES AND RECREATION

Thank you for including the adjacent Belmont Creek Trail segments and connected planned and existing recreation areas in the study area. However, in BCDC's comments on the NOP, we requested that, for the recreation analysis, the DEIR also "identify the service area and service population for these facilities, assess whether the recreational facilities provided are commensurate with the need generated by the Project, and consider whether the Project has the potential to result in the physical deterioration of these facilities."

BCDC also previously requested that the DEIR analysis "should demonstrate that public access and recreational facilities are resilient to projected sea level rise at mid-century, with a comprehensive plan for adaptation through the end of the century. This plan should include strategies for maintaining accessibility, functionality, and safety of recreational and visitor-serving amenities under various sea level rise scenarios. The DEIR should state whether the adaptation or replacement of the proposed public access would require further construction or expansion of recreational facilities and assess whether that may have an adverse effect on the environment."

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)-352-3626 or by email at alyssa.plese@bcdc.ca.gov.

Sincerely,

DocuSigned by:
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