

San Francisco Bay Conservation and Development Commission

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Governor's Office of Planning & Research

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STATE CLEARINGHOUSE

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SUBJECT: Comments on the Notice of Preparation (NOP) for the Point Molate Mixed-Use Development Project Draft Environmental Impact Report (EIR), State Clearinghouse Number 2019070447; BCDC Inquiry File No. CC.RH.1101.1.

Dear Ms. Velasco:

Thank you for the opportunity to comment on the Notice of Preparation (NOP) for the Point Molate Mixed-Use Development Project (Project) draft Environmental Impact Report (EIR), State Clearinghouse Number 2019070447, distributed on July 12, 2019, and received in our office on July 15, 2019. The proposed project includes a mixed-use development of approximately 80 acres, and includes the following: 1,500 medium- to high-density residential units; rehabilitation of a 374,572 square-foot area of existing historic buildings with approximately 20,000 square feet for retail and restaurants; an additional 20,000 square feet for retail or restaurant use within a 250,000 square-foot area; approximately 180 acres of open space; construction of approximately 1.5 miles of Bay Trail with a vista overlook; a ferry terminal on an existing pier; and the removal of buried storage tanks.

The Commission is a responsible agency for this project and will rely on the DEIR when it considers the project. The project is not specific enough at this time for us to comment on every issue raised with respect to the Commission's laws and policies. However, we have prepared comments outlining specific BCDC issues that should be addressed either in the DEIR or through the BCDC permitting process. Once we receive more details on the project, we will be able to provide more detailed responses, and can work closely with the project sponsors to ensure the project is consistent with the Commission's law and policies. Although the Commission itself has not reviewed the NOP, the staff comments are based on the McAteer-Petris Act and the Commission's San Francisco Bay Plan (Bay Plan).

Commission Jurisdiction. From reviewing the NOP, it appears that a portion of the project would be located within the Commission's jurisdiction. The Commission's jurisdiction includes both the Bay itself and the "shoreline band." The shoreline band extends 100 feet inland from and parallel to the Bay shoreline, that shoreline being defined as the line of mean high tide, or where there is tidal marsh, all areas five feet above mean sea level. Within its jurisdiction, Commission permits are required for activities including the placement of fill, substantial changes in use, and dredging. Permits are issued if the Commission finds the activities to be consistent with the McAteer-Petris Act and the policies of the Bay Plan.



Waterfront Beach, Park Priority Use Area. Section 66602 of the McAteer-Petris Act states, in part, that certain water-oriented land uses along the bay shoreline are essential to the public welfare of the Bay Area, and that these uses include wildlife refuges, water-oriented recreation and public assembly, and, as such, the San Francisco Bay Plan should make provision for adequate and suitable locations for all these uses. In Section 66611, the Legislature declares “that the Commission shall adopt and file with the Governor and the Legislature a resolution fixing and establishing within the shoreline band the boundaries of the water-oriented priority land uses, as referred to in Section 66602,” and that “the Commission may change such boundaries in the manner provided by Section 66652 for San Francisco Bay Plan maps.”

From reviewing the NOP, it appears that most of the project would be located in a Waterfront Beach, Park Priority Use Area. Pursuant to the Commission’s authority under the McAteer-Petris Act and the Bay Plan, development within Waterfront Park Priority Use Areas must be consistent with the Bay Plan Recreation policies that describe appropriate uses and other considerations for development and management of waterfront parks. Therefore, any proposals for placing fill, extracting materials, or changing the use of any land, water, or structure within those areas that are designated for Waterfront Park, Beach Priority Use in the Bay Plan must be developed and managed in a manner consistent with the Recreation policies in the Bay Plan, in addition to the other applicable policies of the McAteer-Petris Act and the Bay Plan.

The DEIR should discuss those areas of the project sites that are designated for Waterfront Park, Beach Priority Use, the consistency of any proposed uses with this designation and, where there are inconsistencies, how the project sponsors plan to resolve them. The DEIR should also provide information on how the project’s proposed plan for the preservation of the variety of historic and cultural resources found on the project site, as well as preservation of the site’s park character.

Commission Law and Bay Plan Policies Relevant to the Project

1. **Bay Plan Map Policy.** The DEIR should reflect that Bay Plan Map No. 4 includes the following enforceable policy for the Former Naval Fuel Depot at Point Molate: “Develop for park use. Landward of Western Drive should be developed consistent with recreation policy 4-b. Provide trail system linking shoreline park areas and vista points in hillside open space areas. Provide public access to historical district with interpretation of this resource. The Point Molate Pier should be re-used for water oriented recreation and incidental commercial recreation. Encourage water-oriented recreation, including mooring facilities for transient recreational boats, excursion craft and small water craft. Protect existing eelgrass beds.”

Bay Plan Map No. 4 also identifies Western/Winehaven Drive as a Scenic Drive. The Bay Plan Appearance Design, and Scenic Views Policy No. 14 states: “Views of the Bay from vista points and from roads should be maintained by appropriate arrangements and heights of all developments and landscaping between the view areas and the water. In this regard,

particular attention should be given to all waterfront locations, areas below vista points, and areas along roads that provide good views of the Bay for travelers, particularly areas below roads coming over ridges and providing a 'first view' of the Bay."

2. **Bay Fill** . Section 66605 of the McAteer-Petris Act sets forth the criteria necessary to authorize placing fill in the Bay and certain waterways. It states, among other things, that further filling of the Bay should only be authorized if it is the minimum necessary to achieve the purpose of the fill and if harmful effects associated with its placement are minimized. According to the Act, fill is limited to water-oriented or minor fill for improving shoreline appearance or public access and should be authorized only when no alternative upland location is available for such purpose.

The DEIR should indicate the amount of fill that would be removed, if any, and the amount of new fill for the project as a whole and for each specific area, as well as the uses associated with the proposed new fill for each specific area. Depending on the amount of net total fill proposed and the uses proposed on fill, the Commission may require that fill be removed elsewhere on the waterfront to mitigate the amount of new fill proposed.

3. **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 construction of a residential- or commercial-focused mixed-use development including as many as 1,500 dwelling units and more than 600,000 square feet of commercial uses will by definition bring more people to the site, and it will impact the existing nearby public access spaces. In addition to mitigating adverse impacts to existing public access areas and uses at the site, maximum feasible public access consistent with the project is to be provided.

In order to fully evaluate the public access proposed with the project, the DEIR should include more detailed information regarding existing and proposed public access. The design of the new and improved park and open space areas should be fully described in the DEIR to allow the Commission to fully evaluate the public access proposed with the project.

The DEIR should analyze the number of new residents, workers, customers and other users expected at the site, their impact to existing public access areas, and evaluate whether the proposed new public access areas will accommodate these users or mitigate for these impacts. Providing this information will aid the Commission in determining whether the public access proposed with the project is the maximum feasible, consistent with the project.

The Bay Plan Public Access policies also provide that "[p]ublic access to some natural areas should be provided to permit study and enjoyment of these areas," recognizing that "some wildlife are sensitive to human intrusion... [and, f]or this reason, projects in such areas should be carefully evaluated in consultation with appropriate agencies to determine the appropriate location and type of access to be provided." The DEIR references existing sensitive habitats, including tidal marsh salt marsh, sand dunes, native vegetation and offshore eelgrass beds, as well as proposed creation of new habitat such as sand dunes, bird islands, recreational beach area, a bioengineered breakwater, brackish lagoons, and

wetlands and ponds. The DEIR should discuss how the project will consult with appropriate agencies, including but not limited to California Department of Fish and Wildlife, U.S. Department of Fish and Wildlife, National Marine Fisheries Service, on the question of the compatibility of the proposed public access with aquatic life, wildlife and plant communities presently at the site, as well as with the habitat creation and enhancement components of the proposed project. To allow the Commission to understand the potential effects of public access on wildlife, the DEIR should also provide information on the species and habitats at the project site, the likely human use of the access, and the potential for significant adverse effects (such as impacts on endangered species, impacts on breeding and foraging areas, or fragmentation of wildlife corridors). Please provide this information both in the site-specific context and within a regional context, identifying any siting, design, or management strategies that could be employed to avoid or minimize adverse effects on wildlife, and how the effects of public access on wildlife will be monitored over time to determine whether revisions of management strategies are needed.

For a Waterfront Park Priority Use Area, the Bay Plan Recreation Policy No.4.a. states in part that “[t]o assure optimum use of the Bay for recreation, [certain] facilities should be encouraged in waterfront parks...” including camping areas accessible by boat, boat docking and launching facilities, fishing facilities, trails [including the San Francisco Bay Trail and Bay Area Ridge Trail] for hiking and biking, picnic and swimming areas, small restaurants, interpretive and educational sites, vista points, beaches, services to accommodate public transit including for buses, and parking that does not diminish the character of the park. Additionally, this Bay Plan policy states, in part, “limited commercial recreation facilities, such as small restaurants, should be permitted within waterfront parks provided they are clearly incidental to the park use, are in keeping with the basic character of the park, and do not obstruct public access to and enjoyment of the Bay. Limited commercial development may be appropriate (at the option of the park agency responsible) in all parks shown on the [Bay] Plan maps except where there is a specific note to the contrary.” The DEIR should outline the recreational facilities that will be included in the proposed project, and how they support the character of the area, as well as a detailed explanation of the proposed commercial facilities and why they are incidental to park use. It should identify locations for public access improvements, including furnishings, signage, lighting, possible site programming, and other amenities. Lastly, the DEIR should indicate whether the public access areas permit barrier-free access for persons with disabilities to the maximum extent feasible and should outline the proposed maintenance program for public areas.

Furthermore, the DEIR should discuss in detail the proposed shoreline trail network, its connections to the neighboring areas, its proposed incorporation into the Bay Trail, and its links to other shoreline parks and nearby public access areas. Please also provide detail on anticipated public transit use and connections to the project site and the shoreline, as well as the siting and availability of parking for those arriving by car to visit the shoreline.

The NOP states that a new ferry terminal will be constructed as part of the proposed project. Bay Plan Recreation Policy No. 9 provides that “[f]erry terminals may be allowed in waterfront park priority use areas...provided the develop and operations of the ferry facilities do not interfere with current or future park and recreational uses, and navigational safety can be assured.” The DEIR should include information on how the ferry terminal will be operate alongside the other existing and proposed uses of the area, with details on the proposed configuration of the terminal and the design of supporting facilities such as parking.

The project will require review by BCDC’s Design Review Board.

4. **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 subtidal habitats, native, threated 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.” The DEIR should address how the construction and use of the proposed project would meet these policies and avoid or minimize impacts to special-status species and habitat in the Bay.
5. **Tidal Marshes and Tidal Flats.** Bay Plan policies for this section limit filling, diking and dredging projects that would substantially harm tidal marshes or tidal flats. Policy No. 1 in this section requires that such project “be allowed only for purposes that provide substantial public benefits and only if there is no feasible alternative.” Policy No. 2 requires that “[a]ny proposed filling, diking, or dredging project should be thoroughly evaluated to determine the effect of the project on tidal marshes and tidal flats, and designed to minimize, and if feasible, avoid any harmful effects.” Policy No. 3 establishes the same test for the transition zone present between tidal and upland habitats, and that “[w]here a transition zone does not exist and it is feasible and ecologically appropriate, shoreline projects should be designed to provide a transition zone between tidal and upland habitats.” Policy No. 8 allows “a minor amount of fill...to enhance or restore, fish, other aquatic organisms or wildlife habitat if the Commission finds that no other method of enhancement or restoration except filling is feasible.”

DEIR should include a thorough discussion of proposed filling of existing tidal marshes and tidal flats (as well as diking or dredging if any is proposed), the anticipated effects on this habitat, and an analysis of alternatives that may avoid or minimize harmful effects. The alternatives analysis should consider the feasibility of identified alternatives.

6. **Subtidal Areas.** Policy No. 1 in this Bay Plan section establishes the method of evaluating proposed filling or dredging of subtidal areas, and establishes that “[p]rojects in subtidal areas should be designed to minimize and, if feasible, avoid any harmful effects.” However, there are stricter standards for projects in scarce subtidal areas, and subtidal areas with an abundance and diversity of fish, other aquatic organisms and wildlife, including eelgrass beds. Policy No. 2 states in part that “[f]illing, change in use and dredging in these areas should therefore be allowed only if: (a) there is no feasible alternative; and (b) the project provides substantial public benefits.” The DEIR should discuss the project’s potential impacts to subtidal habitats. Please identify the present extent of the

offshore eelgrass beds at the project site, and discuss if the project would involve fill (e.g., construction of piers or docks) within these areas. According to the previously completed DEIS/R, the project site contained approximately 62 acres of eelgrass beds and 0.108 acres of tidal marsh. The DEIR should discuss the public benefits that would accrue from the proposed Bay fill or dredging, how any impacts to eelgrass beds would be avoided, and evaluate these benefits against the public detriment from the loss of important habitat values.

7. **Water Surface Area and Volume.** This Bay Plan section provides, in part, that the surface area of the Bay and the total volume of water should be kept as large as possible, and that filling that reduces area and water volume should be allowed only for purposes providing substantial public benefits and only if there is no reasonable alternative. The DEIR should discuss how the proposed project would maintain or improve open water areas in the Bay, with particular attention to the proposed increase in Bay fill from new piers and floating docks.
8. **Water Quality.** The policies in this Bay Plan section address water quality and require Bay water pollution to be prevented to the greatest extent feasible. New projects are required to be sited, designed, constructed and maintained to prevent or minimize the discharge of pollutants in the Bay by controlling pollutant sources at the project site, using appropriate construction materials, and applying best management practices. The DEIR should address how the construction and use of the proposed project would be designed to control stormwater runoff and pollution to the Bay, including litter management. The DEIR should also identify the role of the State and Regional Water Boards in reviewing and approving the project.

Policy No. 4 requires that, “[w]hen approving a project in an area polluted with toxic or hazardous substances, the Commission should coordinate with appropriate local, state and federal agencies to ensure that the project will not cause harm to the public, to Bay resources, or to the beneficial uses of the Bay.” The DEIR should identify whether any portions of the project site are polluted with toxic or hazardous substances, any anticipated effects associated with such pollution, and the role other agencies will take in the review.

Finally, Policy No. 7 requires that, whenever practicable, native vegetation buffer areas should be used in place of hard shoreline and bank erosion control methods (e.g., rock riprap) where appropriate and practicable. The DEIR should identify the approach the project will take in terms of shoreline armoring at the site, and discuss where the use of vegetation in favor of hard shoreline protection would be appropriate and feasible. Please also discuss the anticipated performance of the softer shoreline protection measures that are proposed for the project site.

9. **Safety of Fills and Climate Change.** Climate Change Policy No. 1 states that, “risk assessment[s] should be prepared...based on the estimated 100-year flood elevation that takes into account the best estimates of future sea level rise and current flood protection and planned flood protection...for the proposed project or shoreline area. A range of sea level rise projections for mid-

century and end of century based on the best scientific data available should be used in the risk assessment." Policy No. 3 states that where such assessments show vulnerability to public safety, projects "should be designed to be resilient to a mid-century sea level rise projection" and an "adaptive management plan" be prepared.

In addition, Policy No. 4 in the Bay Plan Safety of Fills section states that structures on fill or near the shoreline should have adequate flood protection including consideration of future relative sea level rise as determined by competent engineers. The policy states that, "[a]dequate measure should be provided to prevent damage from sea level rise and storm activity that may occur on fill or near the shoreline over the expected life of a project.... New projects on fill or near the shoreline should either be set back from the edge of the shore so that the project will not be subject to dynamic wave energy, be built so the bottom floor level of structures will be above a 100-year flood elevation that takes future sea level rise into account for the expected life of the project, be specifically designed to tolerate periodic flooding, or employ other effective means of addressing the impacts of future sea level rise and storm activity." These policies should be read in combination with Public Access Policy No. 5, which states in part, that public access areas "should be sited, designed, managed and maintained to avoid significant adverse impacts from sea level rise and shoreline flooding."

For the project site, the DEIR should identify the Mean Higher High Water, the 100-year-flood elevation, mid- and end-of-century rise in sea level projections, anticipated site-specific storm surge effects, and a preliminary assessment of the project's vulnerability to future flooding and sea level rise. The DEIR should also describe how the project has been designed for adapting to, tolerating, and managing sea level rise and shoreline flooding at the site to ensure the project is resilient to mid-century sea level rise projections, and how it can adapt to end of the century projections. The DEIR should indicate whether any proposed long-term adaptation strategies would adversely effect or reduce in size public access areas, and possible ways to minimize these effects.

The project may need to go before the Commission's Engineering Criteria Review Board (ECRB), which reviews projects "for the adequacy of their specific safety provisions, and make[s] recommendations concerning these provisions [and] prescribe[s] an inspection system to assure placement and maintenance of fill according to approved designs." The staff recommends that the project sponsor consult with the Commission's staff engineer, and if necessary, seek early guidance from the ECRB.

10. **Shoreline Protection.** The Bay Plan establishes criteria by which new shoreline protection projects may be authorized and by which existing shoreline protection may be maintained or reconstructed. Policy No. 4 requires that "shoreline protection projects should include provisions for nonstructural methods such as marsh vegetation and integrate shoreline protection and Bay ecosystem enhancement, using adaptive management," whenever feasible and appropriate. New shoreline protection projects are also to avoid adverse impacts to natural resources and public access, and mitigation or alternative public access must be provided when avoidance is not possible. The DEIR should catalog the existing shoreline protection structures at the project site and identify where

maintenance or reconstruction is required. The DEIR should also discuss in detail the proposed methods for new shoreline protection, including an analysis of their potential to adversely impact natural resources or public access.

11. **Public Trust.** The public trust doctrine holds that navigable waters and tidal lands are the property of the state and must be protected for public use and enjoyment. The Bay Plan policies on public trust lands states, in part, that when taking actions on such land, the Commission “should assure that the action is consistent with the public trust needs for the area and, in the case of lands subject to legislative grants, would also assure that the terms of the grant are satisfied and the project is in furtherance of statewide purposes.” Public trust uses cited in the Bay Plan include commerce, navigation, fisheries, wildlife habitat, recreation and open space.

The DEIR should indicate where the State’s public trust requirements apply to the proposed project, discuss how the project affects the public trust, and indicate that the Commission’s determination regarding a project’s consistency with the public trust doctrine is done independently and in consultation with the State Lands Commission.

Thank you for providing the staff with an opportunity to review the NOP of a DEIR for the Point Molate Mixed-Use Development Project. We recognize the importance and scope of this project and hope these comments aid you in preparation of the DEIR. We look forward to working with you and the project sponsors as the project is developed and through the permitting stage. If you have any questions regarding this letter or the Commission’s policies and permitting process, please do not hesitate to contact me at 415/352-3654 or morgan.chow@bcdca.gov.

Sincerely,



MORGAN CHOW
Shoreline Development Analyst

MC/gg

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