

San Francisco Bay Conservation and Development Commission

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January 8, 2021

Khamly Chuop
Port of Oakland
Environmental Programs and Planning Division
530 Water Street
Oakland, CA 94607

SUBJECT: Eagle Rock Aggregates – Oakland Terminal Project proposal at the Port of Oakland, California; SCH #2001082058; BCDC Inquiry File No. MC.MC.7415

Dear Khamly Chuop:

Thank you for your letter dated August 22, 2020, and your recent extension for comments dated December 15, 2020, regarding the Draft Supplemental Environmental Impact Report (Draft SEIR), for the Eagle Rock Aggregates - Oakland Terminal Project (Proposed Project or Project), to be located in the Port of Oakland, in Oakland California.

The San Francisco Bay Conservation and Development Commission (BCDC or the Commission) is a responsible agency for this project and will rely on the SEIR when considering approvals related to the Proposed Project. While the description of the Project as described in the Draft SEIR may not be 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 SEIR and/or through the BCDC permitting process. The Commission itself has not reviewed the Draft SEIR; the following comments are based on BCDC staff review of the project documents available and the McAteer-Petris Act, the *San Francisco Bay Plan* (Bay Plan), and the *San Francisco Bay Area Seaport Plan* (Seaport Plan). The project proponents are expected to obtain a BCDC permit to proceed with the Proposed Project, which includes a ship unloading hopper, overhead conveyer system to three piles of aggregates, barge reclaim system, scale house building, and utility infrastructure across the project site.

This letter iterates and expands upon BCDC staff's comment letter, dated 27 September 2019, on the Notice of Preparation (NOP) for the Proposed Project. It appears that some of our comments were addressed, but not all of our comments. Please see below for areas that should be further expanded upon in the final SEIR.



JURISDICTION

The Project site indicated in the Draft SEIR is within BCDC permitting jurisdiction. Per the McAteer-Petris Act, BCDC is responsible for considering permit applications 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(a)). Based on the Draft SEIR project description, relevant areas of BCDC jurisdiction for the Project may 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) and submerged lands (CGC Section 66610(a)).
- 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 Commission also has land use authority over shoreline locations designated for priority use areas (PUAs) in the Bay Plan. In Oakland, the Commission has designated certain areas of the Bay shoreline for port priority use, as noted in Bay Plan Map No. 5. The final SEIR should discuss the consistency of land uses proposed for these areas within the Project footprint with respect to the Commission's Bay Plan Map No. 5 port priority use designation, and the corresponding applicable Bay Plan policies. The Port Policies in the Bay Plan and the Seaport Plan guide Commission decisions in port PUA.

As the Proposed Project includes a change in use of portions of the Project site both within the Bay and the 100-foot shoreline band, the Project is expected to require a permit from the Commission. Approval of a BCDC permit will require the Commission to find consistency of the Proposed Project with the McAteer-Petris Act, the Bay Plan, and the Seaport Plan.

The final SEIR should map and describe the elements of the Project that would occur within BCDC permitting jurisdiction, distinguishing between the Bay and shoreline band jurisdictions, and note the presence of the port priority use designation. Note that per Title 14 of California Code of Regulations Section 10710, any "areas once subject to Commission jurisdiction remain subject to that same jurisdiction," including areas that may have been "filled or otherwise artificially altered." Thus, the final SEIR should identify whether any portion of the Proposed Project would be located on Bay fill that was placed since 1965.

LAND USE AND PLANNING

The Land Use section is one of two sections in the Draft SEIR that specifically calls out Bay Plan and Seaport Plan policies in detail. The Draft SEIR states that the Project site is consistent with Bay Plan Port Policy 3, as it is currently located within a Bay Plan-designated port PUA and would continue to support marine terminal activity as a construction aggregates import, storage, and distribution marine terminal and would not impair the efficient utilization of the Port area. The Proposed Project also would not involve the use of fill or require dredging activities in the Outer, Middle, or Inner Harbors, consistent with Bay Plan Port Policy 2.

The Draft SIER details further Seaport Plan Policies (Marine Terminals Policy 2, Container Terminals Policy 4, and Bulk Terminals Policy 2), and states the Proposed Project would not prevent Bay Area ports from achieving adequate cargo throughput capability (Marine Terminals Policy 2) based on the Project's changing of a portion of a terminal designated for container cargo to bulk construction aggregates. Rather, it would increase resources for construction aggregates needed to meet demand in the state over the next 50 years (Tioga Group, 2019 – 2050 Bay Area Seaport Forecast). Additionally, use of the Project site, which is not currently used for container shipping, for construction aggregates would not impair the future use of the site for container shipping following the completion of the lease term (Container Terminals Policy 4). Further, as described in the Project Objectives, use of the site for construction aggregate materials storage and transport provides a beneficial cargo use of the Proposed Project site until such time the Port requires additional capacity for container cargo.

The Draft SEIR states the Proposed Project would not result in substantial conflicts with an adopted plan or policy under BCDC's authority, and that the Proposed Project would not increase the severity of, or result in a change in, the previously identified less-than-significant impact of the Oakland Army Base Area Redevelopment Plan disclosed in the 2002 EIR as Addended, the primary document upon which the Draft SEIR is based. Therefore, it states that no mitigation measures are required.

The initial term of Eagle Rock Aggregates' (ERA) lease from the Port for the Project site is proposed to be approximately twelve (12) years with three five-year options to extend, for a total maximum of twenty-seven (27) years, resulting in a potential total lease term until 2047. This fits within the timeline of the Tioga cargo forecast report, which the Project proponents used to determine the need for aggregates in the Bay Area. BCDC staff finds that using this site for interim bulk cargo handling appears consistent with BCDC policies for this PUA, as it would be available for container use once the lease has expired.

HYDROLOGY AND WATER QUALITY

BCDC's 2019 comment letter on the NOP requested that the SEIR's hydrology and water quality analysis refer to the Bay Plan's policies when considering the potential significance of any impacts to the Bay. The analysis included in the Draft SEIR does not draw on specific BCDC policies, but there are several aspects of the analysis to note:

The Draft SEIR differs from the NOP in that it states the Project is to be designed with open storage for the stacks, whereas the NOP was unclear on this design element. Open storage stacks could result in dust impacts to Bay surface water quality and within the water column, and conceivably to benthic organisms depending on the volume of material. While enclosed storage for aggregates would be preferable to reduce adverse impacts to water quality, as well as air quality impacts to neighboring communities, according to the Draft SEIR the costs associated with an enclosed design are prohibitive. Bay Plan policies require the Commission consider all project impacts to affected communities. (Also see Environmental Justice discussion beginning page 10.)

The Proposed Project proposes to change the use of a portion of a terminal designated for container cargo to bulk construction aggregates. The installation of new stormwater infrastructure associated with the change would benefit water quality; however, construction activities would have the potential to degrade surface and groundwater quality during construction.

The stormwater infrastructure and Project-associated features that could impact Bay water quality include the stormwater retention pond, bioretention treatment basin, and placement of underground utilities including Hydrodynamic Separator System vault filters. Installation of these ground-disturbing activities could potentially encounter shallow groundwater and provide a pathway for sediment and/or debris-laden and/or hazardous materials to enter groundwater or receiving waters that lead to the Bay which could adversely impact fish and other aquatic species. Improper disposal of dewatering effluent could also adversely affect water quality if polluted dewatered groundwater were to enter surface water or groundwater.

Therefore, the Draft SEIR describes best management practices to be utilized in a Stormwater Pollution Prevention Plan and describes mitigation measures which would be designed to address these issues and result in less than significant impacts.

Still, for greater clarification, BCDC staff requests that the final SEIR address BCDC water quality policies and outline how the Project design elements will address the policies. This type of analysis will be required when the Project comes to BCDC for any permitting needs.

CLIMATE CHANGE, FLOOD HAZARDS, AND SEA LEVEL RISE

In 2019, the Port of Oakland approved its Sea Level Rise Assessment to comply with AB 691, which requires that a sea level rise assessment be completed for areas under the jurisdiction of the State Lands Commission. The Port's study includes an impact assessment; maps showing affected areas for years 2030, 2050, and 2100; financial costs of the impacts; and a description of protection measures. BCDC staff notes that this assessment is for the Port as a whole and is not specific to this Project.

The report also begins with a disclaimer which states in part: "This AB 691 Sea-level rise analysis, and the associated maps, are intended to prepare for impacts from sea level rise. This analysis, and the associated maps, are not detailed to the parcel-scale and do not account for flooding from other sources, erosion, subsidence, future construction or shoreline protection upgrades, or other changes to the region that may occur in response to sea level rise. The maps also may not fully take into account the Port of Oakland's existing pumps and drainage system that may reduce impacts from sea level rise. Flooding due to sea level rise and storm surges is possible in areas outside of those predicted in these maps, and the maps do not guarantee the safety of an individual or structure."

With this consideration, the Draft SEIR does not include an analysis of sea level rise specific for this Project. Therefore, as previously stated in BCDC's 2019 comment letter on the NOP, BCDC staff requests that the final SEIR include a discussion of flood hazards and the potential for flooding to result in the release of pollutants with a description of the Project site's existing and future vulnerability to inundation and storm surge. To this end, the SEIR should identify the Mean Higher

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High Water line, the 100-year flood elevation, mid-and end-of-century sea level projections using the 2018 State of California Sea Level Rise Guidance, anticipated site-specific storm surge effects, and a preliminary assessment of the Proposed Project's vulnerability to future flooding and sea level rise. In determining the significance of potential hydrological and water quality impacts to the Bay, the final SEIR should describe how the Project has been designed to tolerate, adapt to, and/or manage shoreline flooding at the site to ensure the Proposed Project is resilient to mid-century sea level rise projections, and, if it is likely to remain in place longer than mid-century, how it can adapt to conditions at the end of the century. If shoreline protection is a part of this Project or proposed mitigation for hydrological impacts, the final SEIR should explain how the proposed protection is consistent with the Bay Plan's Shoreline Protection policies.

The 2002 EIR as Addended concluded that impacts could occur related to localized flooding (Impact 4.15-6). The Proposed Project site is located in a Federal Emergency Management Agency (FEMA)-designated 100-year flood zone (City of Oakland 2016). While there is a low annual probability of significant flooding, the risk of Project inundation is still possible during extremely wet winters. The Proposed Project would include new storm drainage pipes and catch basins, which would facilitate site drainage and reduce the likelihood of flooding on site. Additionally, an 8-inch asphalt curb would also be installed around the site's periphery in addition to asphalt speed bump ramps at site access points in order to prevent stormwater from draining off the site. With these and other water retention and filtration features described in the Draft SEIR, the project proponents have determined that the Proposed Project would not increase the severity of, or result in a change in, the previously identified less-than-significant impact of the Oakland Army Base Area Redevelopment Plan disclosed in the 2002 EIR as Addended.

The Draft SEIR describes how the Project will identify and implement a number of structural and non-structural BMPs (e.g., Good Housekeeping, Spill and Leak Prevention and Response, Employee Training Program) to reduce and prevent pollutants as part of stormwater discharge. Monitoring data would be used to determine the effectiveness of stormwater treatment practices and whether additional treatment measures would be necessary to comply with the California Industrial General Permit for water quality. With these post-construction measures, the Draft SEIR states that impervious surfaces would not contribute additional sources of polluted runoff.

The Draft SEIR states that the Project ensures all measures related to flood protection are in compliance with applicable policies of the Safety Element of the City's General Plan, therefore, there would not be a significant flooding impact. However, the document the City is relying on, the Safety Element of the City's General Plan, references BCDC's "Sea Level Rise: Predictions and Implications for San Francisco Bay," which dates from 1988, and other similarly dated documents. Older documents such as these may not adequately inform the impacts or issues for the Project, nor do they speak to potential Project consistency with current Bay Plan Policies relating to sea level rise applicable as part of the BCDC permitting process. Since 1988 the California Sea Level Rise Guidance has been developed and updated many times, and additional new tools have been developed that may result in a more rigorous analysis, such as the Bay Area Shoreline Flood Explorer. BCDC staff requests that the project proponent employ the best available, and up-to-date, science and technology in the final SEIR when evaluating sea level rise impacts as required by and

consistent with Bay Plan Policies, and that the final SEIR graphically illustrate the expected sea level rise projections at the Project site. The final SEIR should show how the design of the Project and the proposed mitigation measures reduce the potential Projects impacts as a result of flooding risk from sea level rise to a less-than-significant level.

HAZARDS AND HAZARDOUS MATERIALS

The Draft SEIR describes hazards best management practices, and a Hazardous Materials Business Plan to address possible impacts from hazardous materials and impacts. The 2002 EIR as Addended concluded that the site preparation, remediation, and redevelopment could expose workers or others to contaminated soil and groundwater and hazardous materials in and around possible Aboveground Storage Tanks and Underground Storage Tanks (USTs).

Currently, the Project site is not located on a hazardous materials site compiled pursuant to Government Code Section 65962.5. However, due to past industrial uses and the potential presence of municipal garbage in fill underlying the Project site, there is a potential for contaminated soil and groundwater to be present, as there is a history of USTs in the surrounding area, some of which have released fuels and other chemical contaminants in soils and groundwater. Thus, ground disturbing activities associated with construction could potentially encounter contaminated soil, groundwater, or disturb or damage an unknown UST and release these hazardous materials and waste into the environment, which would cause a significant impact. Proper planning and mitigation measures, as described in the Draft SEIR, would reduce these potential impacts to less than significant levels.

While specific BCDC policies are not discussed in the Draft SEIR, the Bay Plan’s Water Quality policies have relevance to the SEIR’s hazards and hazardous materials discussion. Given potential changes to truck and vessel transportation patterns in response to the Project, the final SEIR should address the potential for hazardous substances such as fuels to be released into the Bay due to routine use or transportation, or potential upset or accident conditions.

In addition, as stated in the BCDC 2019 comment letter on the NOP, the Bay Plan provides Navigational Safety and Oil Spill Prevention policies that state, in part, that “physical obstructions to safe navigation... should be removed to the maximum extent feasible” (Policy 1), and that marine facility projects should be “in compliance with oil spill contingency plan requirements” (Policy 2). The final SEIR should include a discussion of whether the Project would have any impacts on navigational safety, and would meet oil spill contingency requirements of the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act. The Draft SEIR does not discuss the possibility of oil spills, or address Port oil spill contingency planning, a possible oversight.

GEOLOGY AND SOILS

The Draft SEIR states the Proposed Project does not anticipate any additional filling of the Bay. It also states that portions of the Project may be on areas of previous fill, but does not date the fill, or when the berths or terminals were constructed. The final SEIR should map and describe any areas of the Project site that were subject to tidal action at any point since September 17, 1965 that have been subsequently filled, and describe in detail the proposed development, activity, and uses on these filled areas and consistency with the Commission’s laws and policies.

While the BCDC Safety of Fills policies are mentioned briefly in the Draft SEIR it is unclear how they are applied to this Project. There are details of the Erosion and Sedimentation Control Plan, the Soils Report, the Geotechnical Report, and the Stormwater Pollution Prevention Plan. Still, greater specificity would be desirable to see how these policies and plans are applied to this Project, and how they relate to BCDC policies.

TRANSPORTATION

Other than the Land Use section discussed above, this is the only other section in the Draft SEIR that details Seaport Plan policies. The Project site has been used on an interim basis for ancillary maritime services (AMS) such as overnight truck parking, shipping container/chassis storage, and staging to support Port maritime activities.

With the Proposed Project, the site would no longer be available or used for AMS services; however, the Draft SEIR states that the Proposed Project would not result in inadequate parking capacity at the Port or increase the number and incidence of large vehicles parking within surrounding communities or on streets not designated for such uses. Therefore, the Draft SEIR states the Proposed Project would not substantially increase the severity of, or result in a change in, the previously identified less-than-significant impact of the Oakland Army Base Area Redevelopment Plan described in the 2002 EIR as Addended, and subsequently, no mitigation measures are necessary.

The 2002 EIR as Addended also concluded that redevelopment construction activities would use a significant number of trucks and could cause significant circulation impacts on the street system (Impact 4.3-11). BCDC staff asks for clarification if these impacts are temporary during construction, as opposed to the impacts of longer-term operation listed above.

The Proposed Project would eliminate approximately 18 acres of existing AMS that currently occupy the site. The Draft SEIR states that the Port currently has 40 acres for public truck parking including 15 acres at the Roundhouse (an area formerly occupied by Union Pacific located south of Adeline Street, east of the Matson Terminal, and west of Schnitzer Steel) and 25 acres at Howard Terminal.

The Draft SEIR does not take into consideration the potential loss of Howard Terminal to support parking needs. As Howard Terminal is subject to its own development proposals, which includes an application to amend the Bay and Seaport Plans (BCDC Bay Plan amendment No. 2-19) to remove the Port PUA and terminal designations from the site, BCDC staff believes the final SEIR should not rely on Howard Terminal as an alternative parking site. Current parking at Howard Terminal is an interim use and even if the terminal is developed into something other than the proposed ballpark project, such as an active marine terminal, another site will need to be found and utilized for truck parking. Even though the proposed ballpark project has not been approved and is under environmental review, it is important to consider that the location and features of Howard Terminal would not make it desirable for long term parking needs. The final SEIR should identify alternative possible AMS locations, including alternative truck parking locations, so to adequately support Port terminal operations as a whole.

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Despite the assurances of the Draft SEIR, concerns remain that there be room for adequate truck parking and AMS at the Port. Public comments from interested parties and trucking partners continue to express greater needs than are currently met. If the Port loses 18 acres from the Proposed Project site and 25 acres from the Howard Terminal site, will the 15 acres at the Roundhouse site be sufficient to accommodate future growth and needs at the Port? And, more generally, are the 15 acres of truck parking required of the Port by the 2001 Bay Plan amendment, as described in the Draft SEIR, adequate for current and future needs? Are there any recent congestion or truck parking studies available to inform a more current and comprehensive analysis? Also important, please show how community concerns related to trucking and truck parking have been addressed in this analysis (see Environmental Justice discussion beginning page 10).

AESTHETICS

There are currently views of the site for pedestrians and cyclists along Burma Road looking south across the Oakland Outer Harbor, and possibly from along Maritime Street looking west, on the east of the Project site. Please describe how these views and others around the area may be impacted by the Proposed Project. As noted in the BCDC 2019 comment letter on the NOP, the SEIR should discuss whether the proposed development would have an adverse effect on a scenic vista, and whether it would conflict with Bay Plan policies governing scenic quality. The final SEIR should discuss the Project's consistency with Bay Plan Appearance, Design, and Scenic Views policies, including how the Proposed Project's design could affect views of and to the shoreline.

With this in mind, BCDC staff notes the Draft SEIR briefly describes a visual barrier around or along the Project. Greater specificity is requested to determine what that will look like and what materials it will be made of. Where will this barrier be located? Will it be visible from across the Harbor at Burma Road? Will it be visible from Maritime Street to the east of the Project? Are there any other public access opportunities or barriers that may be considered in designing or implementing the Proposed Project? The Bay Plan has policies regarding Public Access requirements that also will need to be addressed in obtaining a BCDC permit.

ENVIRONMENTAL JUSTICE

Our Commission recently approved several new Bay Plan policies on Environmental Justice and Social Equity. Policy No. 2 of the new Bay Plan Environmental Justice and Social Equity chapter states "...the Commission should support, encourage, and request local governments to include environmental justice and social equity in their...discretionary approval processes...[t]he Commission should provide leadership in collaborating transparently with other agencies on issues related to environmental justice and social equity that may affect the Commission's authority or jurisdiction." Policy No. 3 says "[e]quitable, culturally-relevant community outreach and engagement should be conducted by local governments and project applicants to meaningfully involve potentially impacted communities for major projects and appropriate minor projects in underrepresented and/or identified vulnerable and/or disadvantaged communities... Evidence of how community concerns were addressed should be provided." Policy No. 4 states "[i]f a project is proposed within an underrepresented and/or identified vulnerable and/or disadvantaged community, potential disproportionate impacts should be identified in collaboration with the potentially impacted communities."

According to the CalEnviroScreen screening tool, across a wide array of environmental and health indicators that include air, water, and soil pollution, West Oakland is one of the most impacted areas in the state. All of West Oakland census tracts are in the top 50% of pollution-burdened census tracts, with the highest census tract scored at 89%. Likewise, BCDC's Community Vulnerability Mapping tool¹ shows West Oakland containing concentrations of highest and high social vulnerability.

The Final SEIR should specify the culturally-relevant community outreach and engagement efforts that has or will be conducted for the Project, identify whether the Project is in a vulnerable community, and if so, should identify potential disproportionate impacts, consistent with the above-identified Bay Plan Policies.

Additionally, BCDC collaborates with partner agencies to improve social equity and environmental justice outcomes in affected communities. BCDC staff has reached out to the Bay Area Air Quality Management District (Air District) and jointly identified several overlapping areas that could advance community-based concerns raised in the recently adopted *Owning Our Air: The West Oakland Community Action Plan*:

- Operational or physical measures that control stockpile aggregates impacts on air and water resources, and community health;
- Reduced emissions through use of zero or low-emission vehicles, equipment ocean-going vessels; shore power; and no-idling requirements;
- Meaningful community consultation in the development of all operational plans and amendments to such plans

The Final SEIR should address these and other concerns identified through the meaningful community outreach and engagement process consistent with BCDC's Bay Plan Environmental Justice Policies.

CLOSING THOUGHTS

Overall BCDC is concerned that some of the plans and documents that the project proponent has used for this analysis, while designed for the 2002 Oakland Army Base Redevelopment, are not specific to this Proposed Project, and may be outdated. BCDC encourages, and the Bay Plan requires as applicable, analysis based on the best available current science and technology. BCDC has a number of more recent studies and tools which may help further relevant environmental

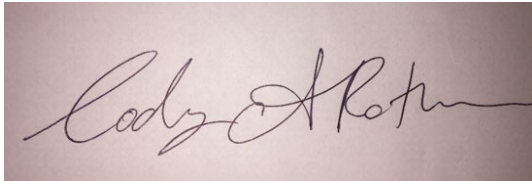
¹ <https://bcdc.maps.arcgis.com/apps/webappviewer/index.html?id=526ca82e85eb403489de768498f605f3>



resource impact analyses, such as the Adapting to Rising Tides Bay Area Sea Level Rise and Shoreline Analysis Maps (<http://www.adaptingtorisingtides.org/project/regional-sea-level-rise-mapping-and-shoreline-analysis/>), which include community vulnerability data, and other information relevant to Bay Plan and Seaport Plan policies not addressed in the Draft SEIR. As noted above, other considerations listed in this letter may be considered when applying for a BCDC permit, such as Public Access. The Project Proponents can find information about applying for BCDC permits on our website at <https://www.bcdc.ca.gov/permits/>. Once matched with a BCDC permit analyst, that staff person will be equipped to assist with the permitting process.

Thank you for the opportunity to comment on the Draft SEIR for the Eagle Rock Aggregates – Oakland Terminal Project. We appreciate your attention to the topics discussed above. If you have any questions or concerns regarding this matter, please do not hesitate to contact me at (415)-352-3641 or by email at cody.achele@bcdc.ca.gov.

Sincerely,

A photograph of a handwritten signature in black ink on a light-colored background. The signature is cursive and reads "Cody Aichele-Rothman".

CODY AICHELE-ROTHMAN
Coastal Planner

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