



Final Environmental Impact Report

CANDLESTICK POINT–HUNTERS POINT SHIPYARD PHASE II DEVELOPMENT PLAN PROJECT

Volume IV: Final EIR Comments & Responses (Section A through Letter 49)

SAN FRANCISCO REDEVELOPMENT AGENCY
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San Francisco Redevelopment Agency
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CHAPTER IX **Comments and Responses**

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Comments and Responses

A. INTRODUCTION

A.1 Purpose of the Comments and Responses Document

In accordance with Section 15088 of the *California Environmental Quality Act* (CEQA),¹ the City and County of San Francisco (City) Planning Department and the San Francisco Redevelopment Agency (Agency), serving as co-Lead Agencies, have reviewed and considered both written and oral comments on environmental issues raised from agencies, organizations, and persons who reviewed the Draft Environmental Impact Report (EIR) and have prepared written responses to those comments. The Lead Agencies have responded to comments received during the comment period, as well as comments received after the close of the comment period. The comments and responses to all comments received are provided in the Comments & Responses (C&R) document, which is included as Volume VII, Volume VIII, and Volume IX of this EIR. All appendices to the C&R document are contained in Volume X of this EIR.

The Comments and Responses document will be included in the Final EIR, which, together with the Mitigation Monitoring and Reporting Program (MMRP), Findings of Fact, and Statement of Overriding Considerations, serves as the environmental document used by the Lead Agencies when considering approval of the Project. A Final EIR is defined by Section 15362(b) of the CEQA Guidelines as "... containing the information contained in the Draft EIR; comments, either verbatim or in summary received in the review process; a list of persons commenting; and the responses of the Lead Agency to the comments received."

A.2 Environmental Review Process

Lennar Urban filed an Environmental Evaluation application (EE application) with the Planning Department on August 27, 2007. The filing of the EE application initiated the environmental review process. The EIR process provides an opportunity for the public to review and comment upon the Project's potential environmental effects and to further inform the environmental analysis. As a first step in complying with the procedural requirements of CEQA, the Notice of Preparation (NOP) process was used to determine whether any aspect of the Project, either individually or cumulatively, may cause a significant effect on the environment and, if so, to narrow the focus (or scope) of the environmental analysis.

The Agency and City filed the NOP with the California Office of Planning and Research, State Clearinghouse, as an indication that an EIR would be prepared. In turn, the State Clearinghouse distributed the NOP to public agencies and interested parties for a 30-day public review period that began on August 31, 2007. The NOP was distributed to responsible or trustee agencies in accordance with Section 15082 of the CEQA Guidelines. In addition, the NOP was also sent to organizations, companies, and/or individuals

¹ A complete list of acronyms and abbreviations used in this document is provided in Section F.31 (Changes to Chapter VIII [Acronyms/Abbreviations and Glossary]).

that the Agency and the City believed might have an interest in the Project. In response to the NOP, nine comment letters were submitted to the City by public agencies, organizations, and individuals.

The Agency and the City held two public scoping meetings for the EIR, on September 17, 2007, and September 25, 2007. The scoping meetings provided the public and affected governmental agencies with an opportunity to present environmental concerns regarding the Project. Agencies or interested persons that did not respond during the NOP public review period or the scoping meetings also had an opportunity to comment during the public review period for the Draft EIR, as well as at scheduled hearings on the Project.

The Draft EIR for the Candlestick Point–Hunters Point Shipyard Phase II Development Plan (the Project) was circulated on November 14, 2009, for review and comment to the public, other interested parties, agencies that commented on the Initial Study (IS)/NOP, and surrounding jurisdictions for a 45-day public review period that was to conclude on December 28, 2009. However, at the San Francisco Redevelopment Agency Commission (Agency Commission) public hearing conducted on December 15, 2009, the Agency Commission voted to extend the comment period to January 12, 2010, and scheduled a second Agency Commission public hearing on the Project for January 5, 2010. The San Francisco Planning Commission (SFPC) concurred with the Agency Commission’s decision to extend the comment period. The Draft EIR was circulated to State agencies for review through the State Clearinghouse. In addition, the Draft EIR was also circulated to federal, regional, or local agencies that have discretionary authority over some aspect of the Project, as well as organizations or individuals that requested a copy of the Draft EIR or those who might have an interest in the Project. Copies of the Draft EIR were also available for public review during normal business hours at the following locations:

San Francisco Planning Department
1650 Mission Street, Fourth Floor
San Francisco, CA 94103

San Francisco Redevelopment Agency
One South Van Ness Street, Fifth Floor
San Francisco, CA 94103

The EIR was also posted for public review at <http://www.sfplanning.org> and www.sfgov.org/sfra.

After completing the C&R document, and before approving the Project, the Lead Agencies must make the following three certifications as required by Section 15090 of the CEQA Guidelines:

- That the Final EIR has been completed in compliance with CEQA
- That the Final EIR was presented to the decision-making body of the Lead Agency, and that the decision-making body reviewed and considered the information in the Final EIR prior to approving the project
- That the Final EIR reflects the Lead Agency’s independent judgment and analysis

Pursuant to Section 15091(a) of the CEQA Guidelines, if an EIR that has been certified for a Project identifies one or more significant environmental effects, the Lead Agency must adopt “Findings of Fact.” For each significant impact, the Lead Agency must make one of the following findings:

- (1) Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the EIR.

- (2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.
- (3) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.

Each finding must be accompanied by a brief explanation of the rationale for the finding. The Findings of Fact are presented in a separate stand-alone document that will be presented to the Lead Agencies, if they elect to approve the Project.

Additionally, pursuant to Section 15093(b) of the CEQA Guidelines, when a Lead Agency approves a project that would result in significant unavoidable impacts that are disclosed in the Final EIR, the agency must state in writing its reasons for supporting the approved action. This “Statement of Overriding Considerations” must be supported by substantial information in the record, which includes the Final EIR. Because the Project would result in significant unavoidable impacts, the Lead Agencies would be required to adopt a Statement of Overriding Considerations, if they elect to approve the Project.

Pursuant to Section 15091(d) of the CEQA Guidelines, the Lead Agency must adopt, in conjunction with the findings, a program for reporting or monitoring the changes that it has either required in the Project or made a condition of approval to avoid or substantially lessen environmental effects. These measures must be fully enforceable through permit conditions, agreements, or other measures. This program is referred to as the MMRP, and it is provided as a stand-alone document, separate from this EIR.

A.3 Document Organization

This Comments and Responses document is organized into the following sections:

- **Section A: Introduction**—This section describes the purpose of the C&R document; provides a summary of the environmental review process through certification of the EIR; and describes the organization of the C&R document.
- **Section B: Refinements Since Publication of the Draft EIR**—This section describes refinements to the Project, variants, mitigation measures, and/or alternatives that have occurred since publication of the Draft EIR.
- **Section C: Project Approvals**—This section describes the land uses and components of the Project, variants, and/or alternatives that could be approved. It also describes the various ancillary documents that would require approval along with certification of the EIR, including, but not necessarily limited to, the Design for Development (also sometimes referred to as the D4D), Disposition and Development Agreement (also sometimes referred to as the DDA), and General Plan and Redevelopment Plan amendments.
- **Section D: List of Persons Commenting**—This section contains a list of the agencies, organizations, and individuals who submitted written comments during the public review period or spoke at one or more of the public hearings on the Draft EIR. Letter numbers were assigned to each comment letter as it was received. Two tables are provided, each showing letter number, commenter, date of comment letter, page number where comment letter begins, and page number where response begins. One of the tables organizes the letters numerically (by letter number) and the other table organizes the letters by federal, state, regional, and local agencies, boards, and commissions; organizations; and individuals.

- **Section E: Comments and Responses**—This section contains responses to all significant environmental issues raised with respect to the contents of the Draft EIR. Each comment letter has been assigned a comment code, and comments in each letter are assigned a number. For example, the letter from the California State Lands Commission is Letter 93. The comments in the letter are numbered beginning 93-1 through the end, and the responses are similarly numbered. The comment letter is inserted in its entirety, followed by the responses to the individual comments.

Any text changes that clarify or correct information in the Draft EIR in response to a comment on the Draft EIR are contained in this section. Single-underlined text is used to represent language added or modified in the Draft EIR; ~~strikethrough~~ is used to represent language deleted from the Draft EIR. In addition, figures have also been revised and/or added. A figure that is provided to simply clarify a response will only appear in the C&R document and not in the Draft EIR; these figures are assigned a C&R figure number, and they are located in Section E (Comments and Responses) of this document. Revised Draft EIR figures are indicated with the word “Revised” next to the title, and new Draft EIR figures are indicated with the word “New” next to the title.

- **Section F: Draft EIR Revisions**—This section contains all text changes to the Draft EIR, including those that are made in response to comments received or as staff-initiated text changes. The text changes are presented in the order of the Draft EIR table of contents. New and/or revised Draft EIR figures are also located in this section.
- **Section G: References**—This section contains all references used in this document.

B. REFINEMENTS SINCE PUBLICATION OF THE DRAFT EIR

The Draft EIR analyzes the maximum build-out that could occur on the Project site assuming implementation of the Project’s land use plan and the proposed amendments to the Bayview Hunters Points (BVHP) and Hunters Point Shipyard (HPS) Redevelopment Plans. Consequently, the Draft EIR assumes a total number of dwelling units for residential uses; a maximum square footage for retail, office, research and development (R&D), community services, and art-related uses; a total number of hotel rooms; a total number of seats for the football stadium and performance venue; a total number of slips for the marina; an overall acreage of parks and open space; and a total number of parking spaces.

Subsequent to circulation of the Draft EIR, the Applicant, City, and Agency have made minor refinements to the Project, two of the variants, and one of the alternatives in response to public comments, to reduce impacts, to provide additional flexibility for Project implementation, and/or to respond to changing construction technologies, community priorities, site-specific urban design goals, and real estate market demands while meeting the Project objectives. This section provides a summary of the refinements that are analyzed in Section F (Draft EIR Revisions) of this document. The Project refinements do not affect the overall maximum development envelope, including the total amount of development or building heights or footprints as compared to what was described and analyzed in the Draft EIR. For example, minor revisions have been made that redistribute some housing units from one location on Candlestick Point to another on Candlestick Point, but the total amount of units to be developed does not change. Likewise, the effects of refinements of Project variants (Variant 2A and Variant 3 [new Tower Variant D]) are within the range of effects identified in the Draft EIR for the Project and its variants. As substantiated by the analysis provided in Section F (Draft EIR Revisions), none of the proposed refinements results in a new significant environmental impact or a substantial increase in the severity of impacts. Further, there are no new feasible mitigation measures or feasible alternatives that the Project Applicant declines to adopt.

B.1 Project Refinements

■ Building Preservation

The Project analyzed in the Draft EIR proposed demolishing Buildings 208, 211, 224, 231, and 253 at the HPS Phase II site. These buildings are identified in the Draft EIR as historic resources. Building 208 would now be retained as an element of the cultural landscape, but would not be occupied. The retention of Building 208 would reduce the severity of the historic resources impact and slightly reduce the construction-related impacts of the Project as described in the EIR (i.e., traffic, air quality, and noise), as less building area would be demolished. In all other respects, because the land use plan would not be changed, this refinement would not result in new significant impacts or an increase in the severity of impacts, as described in Section F (Draft EIR Revisions) of this document.

■ Development Schedule

Recent economic forecasts, as well as updated entitlement, Navy transfer, and permitting schedules, have been used to refine the development schedule for CP-HPS Phase II. Site preparation activities, including demolition and infrastructure construction, would begin 1 to 2 years later than originally planned, and the completion of building construction has been extended from 2029 to 2031, with full occupancy by 2032.

The updated development schedule takes advantage of recent market analyses to refine the Project housing program and provide a steady, deliberate buildup of research and development space. As with the original development schedule, the updated development schedule jump-starts the housing program with the construction of over 3,000 homes in the first phase. However, rather than concentrating the construction of more than 6,000 homes in the following two phases as originally planned, the current schedule provides for the construction of 2,000, 2,500, and 2,800 homes over the following three phases, respectively.

Similarly, research and development space is now anticipated to steadily build over each of the first three development phases, whereas the original schedule front-loaded over 2,275,000 sf of research and development construction in the first phase of development.

Total development remains the same as identified in the Draft EIR. Project Documents provide for the horizontal land development of the Project to be built out in four Major Phases, with vertical development occurring during that period and beyond. Specifically, Major Phase 1 (2011–2019) includes demolition and abatement between 2011 and 2015, utilities and infrastructure improvements from 2013 to 2017, and structural shoreline improvements from 2013 to 2017. The rebuilding of Alice Griffith, together with the development of 3,160 residential units, 84,000 sf of neighborhood retail, 583,000 sf of R&D, and 38,000 sf of community facilities would occur in Major Phase 1. Also, if the 49ers satisfy the Stadium Conditions, the Developer must build significant infrastructure for the new 49ers stadium. Major Phase 2 (2016–2021) would include development of 2,005 residential units, 635,000 sf of regional retail, 76,000 sf of neighborhood retail, 150,000 sf of office, 150,000 sf hotel, 842,000 sf R&D, the 10,000-seat performance venue, and 50,000 sf of community facilities in CP North, CP Center, HPS North, HPS Village Center, and the R&D District on HPS Phase II. Major Phase 3 (2020–2027) would include development of 2,505 residential units, 90,000 sf of neighborhood retail, and 1,075,000 sf of R&D in CP North, CP Center, CP South, and completion of the R&D District on HPS Phase II. Major Phase 4 would include development

of 2,830 residential units and 12,000 sf of community facilities in the Jamestown District and CP South. Full build-out of HPS Phase II would occur by 2027 and full build-out of Candlestick Point would occur in 2031, with final occupancy in 2032.

An environmental analysis of this refinement, with associated illustrative graphics, is contained in Section F (Draft EIR Revisions) of this document. This refinement would not result in any new significant environmental impact or an increase in the severity of any impact identified in the Draft EIR (refer to Appendix A1 [PBS&J, Analysis of Project Development Schedule Modifications and Environmental Impact Report, April 10, 2010], Appendix A2 [PBS&J, Analysis of Revised Development Schedule Compared to the Noise Impacts Analyzed in the Draft EIR, March 25, 2010], Appendix A3 [LCW Consulting, CP-HPS Phase II Development Plan Transportation Study—Revised Project Phasing, March 23, 2010], Appendix A4 [Fehr & Peers, Roadway and Transit Phasing Plan, March 17, 2010], and Appendix A5 [ENVIRON, Updated Project Phasing Effect on Air Quality and Climate Change Analyses Candlestick Point—Hunters Point Shipyard Phase II Development Plan, April 26, 2010]).

B.2 Variant Refinements

■ Variant 2A: Housing/R&D Variant

A refinement of Variant 2 (Housing Variant)—Variant 2A (Housing/R&D Variant)—has been identified that would allow for additional R&D uses on the stadium site, along with housing, in the event the 49ers do not choose to develop a stadium in the HPS Phase II area. As compared to the Housing Variant (Variant 2, described on Draft EIR pages IV-72 through IV-81), the Housing/R&D Variant (Variant 2A) would relocate 275 residential units from Candlestick Point to HPS Phase II and redistribute 50 residential units within Candlestick Point. The Housing/R&D Variant (Variant 2A) would not develop the uses in the Jamestown District of Candlestick Point that would occur under the Housing Variant (Variant 2). If the parcels on the privately owned block in the Jamestown District and on the four additional privately owned blocks in Candlestick Point North District (currently developed with an RV park) are not acquired by the Project Applicant, the property owners could develop their property under the BVHP Redevelopment Plan via an Owner Participation Agreement or continue the current non-conforming use. The total amount of residential development in the Project would remain at 10,500 units, the same as for the Housing Variant (Variant 2).

An additional 500,000 square feet (sf) of R&D land use would be constructed on the stadium site as compared to the Housing Variant (Variant 2), for a total of 3,000,000 sf of R&D uses at the HPS Phase II site. The Draft EIR analyzed a total of 5,000,000 sf of R&D uses under the R&D Variant (Variant 1, described on pages IV-4 through IV-12 of the Draft EIR) and 2,500,000 sf under the Housing Variant (Variant 2); therefore, the increased amount of R&D square footage under the Housing/R&D Variant (Variant 2A) (e.g., 3,000,000 sf) would fall within the range of development programs analyzed by the R&D Variant (Variant 1) and the Housing Variant (Variant 2).

The total amount of park acreage with the Housing/R&D Variant (Variant 2A) would be 326.6 acres, which represents a decrease of approximately 10 acres as compared to the Project (which would provide 336.4 acres) and about 22.8 acres less than the Housing Variant (Variant 2) (which would provide 349.4 acres) because of increased development on the stadium site. However, the decrease in park acreage

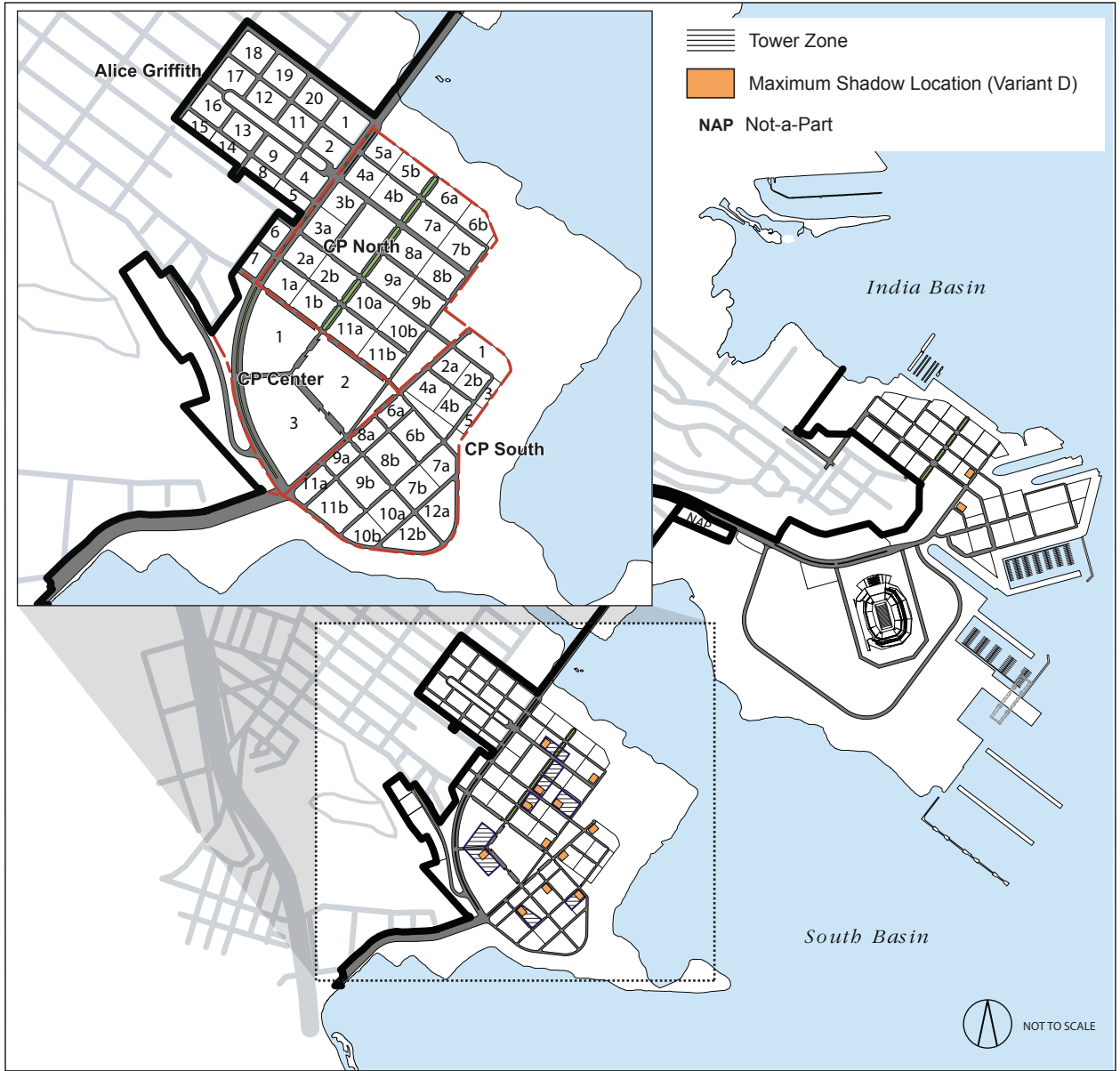
would not reduce park acreage below the identified threshold of 5.5 acres per 1,000 residents, as further described in Section F (Draft EIR Revisions) of this document.

The Housing/R&D Variant (Variant 2A) would not result in any new significant environmental impact or an increase in the severity of any impact identified in the Draft EIR. An environmental analysis of these refinements, with associated illustrative graphics, is contained in Section F (Draft EIR Revisions) of this document. Also refer to Appendix T4 (ENVIRON, Updated Air Quality Analysis Candlestick Point–Hunters Point Shipyard Phase II Development Plan—Updated Variants 2A and 3 [Tower Variant D], Alternative 2, and Subalternative 4A, April 26, 2010), Appendix T5 (ENVIRON, Updated Greenhouse Gas Emissions Calculation for Candlestick Point–Hunters Point Shipyard Phase II Development Plan—Variants 2A and 3 [Tower Variant D], Alternative 2, and Subalternative 4A, March 12, 2010), Appendix T6 (LCW Consulting, CP-HPS Phase II Development Plan Transportation Study—Project Variant 2A, March 15, 2010), and Appendix T7 (LCW Consulting, CP-HPS Phase II Development Plan Transportation Study—Subalternative 4A, April 8, 2010).

■ Variant 3: Tower Variant D

The Draft EIR identified proposed maximum building heights and tower placements for the Project in Figure II-5 (Proposed Maximum Building Heights), Draft EIR page II-12. The Draft EIR also analyzed the effects of different tower placements and heights in the Tower Variant, which considered three alternative tower placements and heights, denoted Tower Variants A, B, and C. (Refer to Draft EIR Section IV.D [Variant 3: Candlestick Point Tower Variants], Draft EIR pages IV-140 through -178.) In implementing the Project, the Design For Development, described in Chapter II (Project Description), would guide building heights, tower placements, and other detailed Project design specifications. Since publication of the Draft EIR, the Design For Development documents have been refined to encourage certain locations for towers based on a variety of tower location principles, including but not limited to clustering towers near the center of the development, formation of skylines, adjacency to transit stops, reducing shadow impacts, maintaining view corridors, and limiting adverse wind effects. Vertical development of the Project would occur over 15 to 20 years, and flexibility in tower locations is needed to ensure that the Project would be able to respond to changing construction technologies, community priorities, site-specific urban design goals, and real estate market demands while meeting the Project objectives. The Design For Development documents would provide this basic flexibility while adhering to the tower location principles described above by creating allowable “tower zones” for high-rise buildings.

Like Variant 3 (Tower Variants A, B, and C), Variant 3 (Tower Variant D) is based on height, bulk, and massing requirements for vertical development within the Project site as described in the Design For Development. The Design For Development identifies specific locations for certain towers and allows towers in certain “tower zones.” Where the Design For Development allows placement of towers within a “tower zone,” the Tower Variant D analysis assumes a specific tower location within proposed tower zones. Tower Variant D also relocates one tower that is proposed for Candlestick Point South Block 2a under the Project and Tower Variants A, B, and C to a tower zone in Candlestick Point North Block 9b pursuant to refinements in the Design For Development. Figure C&R-1 (Tower Variant D Tower Zones Map) indicates where the Design For Development identifies tower zones and the assumed location of towers within those zones for purposes of the Tower Variant D analysis.



SOURCE: Lennar Urban, 2010.

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FIGURE C&R-1  **Candlestick Point — Hunters Point Shipyard Phase II EIR
TOWER VARIANT D TOWER ZONES MAP**

Like Variant 3 (Tower Variants A, B, and C), Variant 3 (Tower Variant D) assumes a 24-story tower at Candlestick Point Center. However, for the purpose of this analysis, Tower Variant D shifts some towers within allowed tower zones to locations that could create more shadow impacts on San Francisco Recreation and Park Department (SFRPD) property. Specifically, towers are shifted within the tower zones at Candlestick Point North Blocks 8a and 9a, and the tower zone at Block 10a. Except for the tower on Block 2a, tower locations at Candlestick Point South remain unchanged relative to the Project (refer to Figure C&R-1). All other tower locations in Candlestick Point and HPS Phase II are unchanged from the Tower Variants analyzed in the Draft EIR. In addition, Tower Variant D would have 12 towers at Candlestick Point, compared to 11 towers with the Project and with Tower Variants A, B, and C.

Tower Variant D also analyzes a 12,500-square-foot maximum floor plate for high-rise towers. The Project described in Draft EIR Chapter II analyzed a 10,500-square-foot maximum floor plate for the towers, built on podiums. The larger floor plate analyzed in Tower Variant D would enable greater efficiency and flexibility in design of floor plans. The proposed size of the podiums analyzed in the Draft EIR would be sufficient to accommodate the larger floor plates and would not change. Therefore, the overall “footprint” of the towers would remain the same, and the amount of impermeable surface would not be increased. The total number of dwelling units proposed with the Project would not change. All other features of Tower Variant D would be the same as the Project, with the same land uses and the same total amount of development, e.g., the total number of residential units.

Any changes in the environmental analysis as a result of these refinements, including graphic illustrations, are reflected in Section F (Draft EIR Revisions) of this document. The impacts of refinements to the Tower Variant would be limited to aesthetics and shadows. No other resource areas would be affected. Overall, these refinements would not result in any new significant environmental impacts or increase the severity of previously identified environmental impacts. Also refer to Appendix T4 (ENVIRON, Updated Air Quality Analysis Candlestick Point–Hunters Point Shipyard Phase II Development Plan—Updated Variants 2A and 3 [Tower Variant D], Alternative 2, and Subalternative 4A, April 26, 2010) and Appendix T5 (ENVIRON, Updated Greenhouse Gas Emissions Calculation for Candlestick Point–Hunters Point Shipyard Phase II Development Plan—Variants 2A and 3 [Tower Variant D], Alternative 2, and Subalternative 4A, March 12, 2010).

B.3 Modifications to Mitigation Measures

Since the publication of the Draft EIR, some mitigation measures have been edited to correct typographical errors, add minor information or provisions, or clarify how, by whom, and/or when the measure would be implemented, but do not represent substantive changes in the mitigation measure.

A few mitigation measures were modified as a result of further study and analysis or in response to comments received on the Draft EIR. Those mitigation measures that include more substantive changes, but do not alter any of the significance conclusions in the EIR are identified as revised in Section F (Draft EIR Revisions) of this document and include:

- **MM TR-51**—The revision adds language that clarifies that implementation of the Transportation Management Plan applies to Variants 1, 2, and 2A and conforms the EIR text to the text in Appendix D of the EIR (Transportation Study)

- **MM HY-12a.2**—The Draft EIR describes an Adaptive Management Plan (Section III.M, pages III.M-101 and -102) for ensuring the continuing protection of shoreline, public facilities, and public access improvements should sea level rise occur. Additions to MM HY-12a.2 further amplify specific actions, the timing for these actions, and the parties responsible for establishing the mechanism to fund and implement the Adaptive Management Plan.
- **MM BI-4a.1**—This mitigation measure has been modified to provide greater assurance of wetland restoration success by requiring a greater percentage of native vascular species in the restored wetlands.
- **MM BI-a.2**—This mitigation measure has been modified to clarify how temporarily impacted wetlands would be restored.
- **MM BI-5b.1 and MM BI-5b.2**—The revision removes the qualifier for implementation of mitigation measure MM BI-5b.2 and acknowledges that future locations of eelgrass beds may be different from baseline conditions, thereby necessitating eelgrass surveys prior to all in-water activities at HPS and the Yosemite Slough. This revision ensures that both MM BI-5b.1 and MM BI-5b.2 would be implemented in all identified circumstances.
- **MM BI-9b**—The modification specifies that no unsheathed creosote-soaked wood piling shall be used to ensure additional protections to aquatic organisms and restricts all pile-driving activities during the Pacific herring spawning season to provide additional protection of the Pacific herring.
- **MM HY-13b**—As originally drafted, mitigation measure MM HY-13b required that the Project Applicant obtain a Floodplain Development Permit from the City. However, the City has not established a process for the issuance of such permits. The purpose of mitigation measure MM HY-13b was to reduce the potential of placing structures in a 100-year flood hazard area. This goal is adequately accomplished through mitigation measure MM HY-12a.1 (Finished Grade Elevations above Base Flood Elevations). Hence, mitigation measure MM HY-13b has been deleted, and the analysis instead relies on MM HY-12a.1.

B.4 Subalternative 4A: CP-HPS Phase II Development Plan with Historic Preservation

Some commenters have asked that the Draft EIR include a historic preservation alternative keeping all other Project components the same. Alternative 4 (Reduced CP-HPS Phase II Development, Historic Preservation) was included in the Draft EIR to analyze an alternative with preservation of all five historically eligible structures (Buildings 208, 211, 224, 231, and 253).² Although the text of Alternative 4 in the Draft EIR inadvertently omitted reference to Buildings 208 and 231, this was a typographical error and the text has been revised in the Draft EIR (Section F [Draft EIR Revisions]) to clarify that four buildings would be retained and/or rehabilitated according to the Secretary of the Interior's Standards. (Building 208 is included in the Project, so Alternative 4 has been clarified to indicate that it includes Buildings 211, 224, 231, and 253.) That Alternative 4 includes a reduced development plan compared to the Project does not affect the analysis of the historic preservation component in Alternative 4.

When considering Project approval, the Lead Agencies have the flexibility to approve all or any portion of the Project. This flexibility extends to approving all or any portion of an alternative as well. Therefore, the

² It should be noted that, since publication of the Draft EIR, the decision has been made to retain Building 208 under all development scenarios

Lead Agencies could adopt the Project *and* the historic preservation component of Alternative 4 without the EIR providing a separate analysis of such an option. Both the Project's land use plan and the historic preservation option were thoroughly analyzed in the Draft EIR. The Project ultimately approved by the Lead Agencies could include a combination of components of the Project, any of the variants, and/or any of the alternatives.

The analysis of the historic preservation component of Alternative 4 would not change regardless of whether that element is combined with a variant, another alternative, or the Project. While not required, a subalternative to Alternative 4—Subalternative 4A (CP-HPS Phase II Development Plan with Historic Preservation)—has been included in the Final EIR to fully respond to comments. This is not a substantially different alternative, but one that combines the Project's development plan with preservation of the historically eligible buildings, both of which were analyzed in the Draft EIR. Similar to Alternative 4, (Draft EIR Chapter VI, pages VI-93 through -126), Subalternative 4A would retain the four historic buildings (Buildings 211, 224, 231, and 253) that would otherwise be demolished under the Project. In order to accommodate the historic preservation component in the Project's development plan, some adjustments in the location and intensity of some of the Project's land uses and a more cost-effective approach for providing sea level rise protection for the historic resources area have been included in this subalternative. In all other respects, Subalternative 4A assumes a development plan that is identical to the Project.

This alternative would preserve the structures and contributing features of the California Register of Historical Resources (CRHR)-eligible Hunters Point Commercial Drydock and Naval Shipyard Historic District. This alternative, like the Project, would retain Drydocks 2 and 3 and four buildings (Buildings 140, 204, 205, and 207) previously identified as historic resources in National Register of Historic Places (NRHP)-eligible Hunters Point Commercial Drydock Historic District. This alternative and the Project would also retain Drydock 4, considered individually eligible for the NRHP, and Building 208, part of the CRHR-eligible historic district. Unlike the Project, Subalternative 4A would retain Buildings 211, 224, 231, and 253. Buildings 211, 231, and 253 would be rehabilitated under the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (Secretary's Standards) to accommodate approximately 338,000 gsf of R&D and 1,000 parking spaces. Total floor area for R&D would remain the same as the Project, i.e., 2,500,000 gsf. Building 231 would be reused for parking. Buildings 211 and 253 would accommodate R&D uses. Building 208 would be retained as an element of the cultural landscape, the same as with the Project, and Building 224, the air raid shelter, would be retained as museum space.

As discussed on Draft EIR page III.J-33, the Project proposes to retain the buildings and structures in the potential Hunters Point Commercial Drydock District, identified in 1998 as eligible for listing in the NRHP, including Drydocks 2 and 3 and Buildings 140, 204, 205, and 207 that would be rehabilitated using the Secretary's Standards. As shown in Figure III.J-2, Draft EIR page III.J-23, the Hunters Point Commercial Drydock and Naval Shipyard Historic District encompasses the smaller Hunters Point Commercial Drydock District. Thus, Subalternative 4A would retain all significant historic resources identified in the Draft EIR.

The other uses at HPS Phase II (artists' studios, community services, marina, and football stadium) would be the same as with the Project. Subalternative 4A would include the Yosemite Slough bridge, shoreline improvements, and the State Park land agreement, as with the Project and Alternative 4.

The Project's land use plan would be implemented with Subalternative 4A in terms of total square footage of land uses and district locations. The displaced R&D uses that, as described in the Draft EIR, would have been built at the location of Buildings 211, 224, 231, and 253 would be distributed throughout the remainder of the HPS Phase II. However, the building heights in the R&D District on HPS Phase II immediately west of the site of Buildings 211, 224, 231, and 253 would increase from 85 to 120 feet to accommodate the displaced square footage.

Subalternative 4A would also retain existing grades, allowing railroad spurs and other historic elements to remain. A wave-protection berm is proposed seaward of the eligible historic district to accommodate a 36-inch sea level rise. The San Francisco Bay Trail (Bay Trail) would run on top of the levee. All other components of Subalternative 4A would remain the same as under the Project. An environmental analysis of this subalternative, including appropriate illustrative graphics, is included in Section F (Draft EIR Revisions) of this document. Also refer to Appendix T4 (ENVIRON, Updated Air Quality Analysis Candlestick Point–Hunters Point Shipyard Phase II Development Plan—Updated Variants 2A and 3 [Tower Variant D], Alternative 2, and Subalternative 4A, April 26, 2010), Appendix T5 (ENVIRON, Updated Greenhouse Gas Emissions Calculation for Candlestick Point–Hunters Point Shipyard Phase II Development Plan—Variants 2A and 3 [Tower Variant D], Alternative 2, and Subalternative 4A, March 12, 2010), and Appendix T7 (LCW Consulting, CP-HPS Phase II Development Plan Transportation Study—Subalternative 4A, April 8, 2010).

C. PROJECT APPROVALS

The Project that is being proposed for approval by the San Francisco Planning Commission and the San Francisco Redevelopment Agency is the Project identified in Chapter II of the Final EIR, as modified by the Candlestick Point Tower Variants (Variant 3, Tower Variant D, concerning tower locations) and the 49ers/Raiders Shared Stadium Variant (Variant 5, concerning use of the stadium by both the Raiders and the 49ers).

In addition, the Project proposed for approval would allow an alternative land use development at the stadium site in the event the 49ers do not avail themselves of the stadium site at HPS Phase II. In this event, in lieu of the stadium and related uses proposed for the Project at the stadium site (including Variant 5), two alternative uses would be allowed at the stadium site: either Variant 1, which provides for an R&D use at the stadium site, or Variant 2A, which provides for a mix of housing and R&D at the stadium site. If a stadium scenario is implemented, it would be modified by implementation of Variant 3 (Tower Variant D).

In sum, the Project as described in Chapter II of the Final EIR, together with Project Variants 1, 2A, 3 (Tower Variant D), and 5 as described in Chapter IV of the Final EIR, constitute the Project that is being proposed for approval.

D. LIST OF PERSONS COMMENTING

Two tables have been provided to identify the government agencies, boards or commissions, organizations, or persons commenting on the Draft EIR, either orally or in writing. Table C&R-1 (Commenters on the Draft EIR [Numerical by Letter Number]) presents them in the order they were received by the City or the Agency, and they are presented with consecutive numbering (e.g., Letter 1, Letter 2, Letter 3, etc.). Table C&R-2 (Commenters on the Draft EIR [Alphabetical by Commenter Type]) presents them first by federal, state, regional, or local agencies, and then by boards and commissions, organizations, and individuals. Within those categories, they are organized alphabetically first, then by date, and lastly by letter number. In this case, they are not presented with consecutive numbering.

Table C&R-1 Commenters on the Draft EIR (Numerical by Letter Number)				
<i>Letter No.</i>	<i>Commenter</i>	<i>Date of Comment</i>	<i>Page Number Where Comment Letter Begins</i>	<i>Page Number Where Responses Begin</i>
1	Sierra Club	11/25/09	C&R-167	C&R-169
2	People Organized to Win Employment Rights	12/14/09	C&R-171	C&R-173
3	Hunters Point Shipyard Citizen's Advisory Committee	12/16/09	C&R-175	C&R-177
4	Neighborhood Parks Council	12/17/09	C&R-179	C&R-181
5	Loa, Sam	12/17/09	C&R-183	C&R-185
6	Jackson, Espanola	12/17/09	C&R-187	C&R-189
7	City of Brisbane	12/18/09	C&R-191	C&R-195
8	Indian Canyon Nation/Costanoan Indian Research Inc.	01/12/10	C&R-203	C&R-215
9	People Organized to Win Employment Rights	12/21/09	C&R-217	C&R-219
10	San Francisco Bay Trail	12/18/09	C&R-221	C&R-223
11	Alice Griffith Public Housing Tenant Association	11/03/09	C&R-225	C&R-227
12	Asian Pacific Democratic Club	12/17/09	C&R-229	C&R-231
13	Toxic Chem Handout - PC Hearing	12/17/09	C&R-233	C&R-243
14	Positive Directions Equals Change	12/17/09	C&R-245	C&R-247
15	Cavella, Barbara	12/12/09	C&R-249	C&R-251
16	Birkelund, James	12/19/09	C&R-253	C&R-255
17	Dale-LeWinter, Marcia	01/04/10	C&R-257	C&R-265
18	Bay Access	12/28/09	C&R-267	C&R-269
19	Whittle, Lola	12/14/09	C&R-271	C&R-273
20	Multiple Commenters	12/14/09	C&R-275	C&R-277
21	Enea, Kristine	12/11/09	C&R-279	C&R-281
22	Parkmerced Residents' Organization	12/09/09	C&R-283	C&R-285
23	Winter, Rhonda	12/08/09	C&R-289	C&R-291
24	City of Brisbane	11/18/09	C&R-293	C&R-295
25	Golden Gate Audubon Society	11/16/09	C&R-297	C&R-299

Table C&R-1 Commenters on the Draft EIR (Numerical by Letter Number)

<i>Letter No.</i>	<i>Commenter</i>	<i>Date of Comment</i>	<i>Page Number Where Comment Letter Begins</i>	<i>Page Number Where Responses Begin</i>
26	Dodt, Dan	11/13/09	C&R-301	C&R-303
27	Da Costa, Francisco	01/12/10	C&R-305	C&R-321
28	Hamman, Michael	01/04/10	C&R-323	C&R-325
29	Bay Area Council	01/04/10	C&R-327	C&R-329
30	San Francisco Planning + Urban Research Association	01/04/10	C&R-331	C&R-333
31	San Francisco Bay Trail	01/12/10	C&R-335	C&R-341
32	Docomomo/US, Northern California Chapter	01/11/10	C&R-349	C&R-351
33	Antonini, Michael	01/11/10	C&R-353	C&R-355
34	San Francisco Architectural Heritage	01/11/10	C&R-361	C&R-365
35	Hamman, Michael	01/12/10	C&R-369	C&R-375
36	San Francisco Green Party	01/12/10	C&R-381	C&R-389
37	San Francisco Bay Herring Fisherman's Association	01/12/10	C&R-393	C&R-395
38	Da Costa, Francisco	01/11/10	C&R-396	C&R-411
39	City and County of San Francisco, Historic Preservation Commission	01/12/10	C&R-413	C&R-415
40	Gould, Corrina	01/12/10	C&R-427	C&R-429
41	Hamman, Michael	01/12/10	C&R-431	C&R-433
42	Californians for Renewable Energy, Inc.	01/12/10	C&R-435	C&R-577
43	People Organized to Win Employment Rights	01/12/10	C&R-579	C&R-583
44	Neighborhood Parks Council	01/12/10	C&R-597	C&R-599
45	National Trust for Historic Preservation, Western Office, and California Preservation Foundation	01/12/10	C&R-603	C&R-611
46	Visitacion Valley Planning Alliance	01/11/10	C&R-615	C&R-621
47	California State Parks Foundation	01/12/10	C&R-625	C&R-723
48	McRee, Richard	01/12/10	C&R-795	C&R-799
49	Neighborhood Parks Council	01/12/10	C&R-803	C&R-805
50	People Organized to Win Employment Rights	01/12/10	C&R-807	C&R-813
51	Simms, Robert	01/12/10	C&R-833	C&R-835
52	People Organized to Win Employment Rights	01/12/10	C&R-837	C&R-845
53	Stokes, Ernest	01/12/10	C&R-851	C&R-853
54	Stancil, Esselene	01/12/10	C&R-855	C&R-857
55	Breast Cancer Action	01/12/10	C&R-859	C&R-861
56	Indian Canyon Nation	01/12/10	C&R-863	C&R-865
57	Franklin, Alice	01/12/10	C&R-867	C&R-869
58	Green Action Health and Environmental Justice	01/12/10	C&R-873	C&R-875
59	Jefferson, Simon	01/12/10	C&R-879	C&R-881

Table C&R-1 Commenters on the Draft EIR (Numerical by Letter Number)				
Letter No.	Commenter	Date of Comment	Page Number Where Comment Letter Begins	Page Number Where Responses Begin
60	Donahue, Vivien	01/12/10	C&R-885	C&R-887
61	Lee, Mishwa	01/12/10	C&R-889	C&R-893
62	Confederation of the Ohlone People	01/11/10	C&R-897	C&R-899
63	Herrera, Catherine	01/11/10	C&R-901	C&R-903
64	San Francisco Tomorrow	01/12/10	C&R-905	C&R-919
65	Joshua, Nyese	01/12/10	C&R-925	C&R-931
66	Tello, Juana	01/12/10	C&R-943	C&R-951
67	Harvey, Carol	01/12/10	C&R-959	C&R-973
68	Technical Assistance Services for Communities	01/12/10	C&R-975	C&R-975
69	People Organized to Win Employment Rights	01/12/10	C&R-985	C&R-989
70	Tello, Jesse	01/12/10	C&R-991	C&R-993
71	California Department of Transportation—Transportation Planning	01/12/10	C&R-995	C&R-999
72	Muhammad, Colleen	01/12/10	C&R-1005	C&R-1007
73	Lee, Mishwa	01/12/10	C&R-1009	C&R-1013
74	Matlock, Perry	01/11/10	C&R-1019	C&R-1037
75	Sierra Club	01/12/10	C&R-1039	C&R-1057
76	Whittle, Lola	01/12/10	C&R-1061	C&R-1063
77	City and County of San Francisco, Historic Preservation Commission	01/12/10	C&R-1065	C&R-1067
78	City and County of San Francisco, Human Rights Commission	01/12/10	C&R-1069	C&R-1175
79	San Francisco Bicycle Coalition	01/12/10	C&R-1177	C&R-1179
80	People Organized to Win Employment Rights	12/11/09	C&R-1181	C&R-1183
81	Golden Gate Audubon Society	01/12/10	C&R-1185	C&R-1199
82	Arc Ecology	01/12/10	C&R-1211	C&R-1373
83	Arc Ecology	01/12/10	C&R-1393	C&R-1413
84	Arc Ecology	01/12/10	C&R-1421	C&R-1445
85	Arc Ecology	01/12/10	C&R-1461	C&R-1597
86	California State Parks	01/12/10	C&R-1605	C&R-1623
87	San Francisco Bay Trail	01/12/10	C&R-1645	C&R-1651
88	Porter Sumchai, Ahimsa	12/11/09	C&R-1653	C&R-1669
89	Da Costa, Francisco	01/12/10	C&R-1671	C&R-1675
90	Hunters Point Shipyard Citizen's Advisory Committee	01/12/10	C&R-1677	C&R-1683
91	California State Parks	12/23/09	N/A	C&R-1691
92	National Football League	01/12/10	C&R-1693	C&R-1695
93	California State Lands Commission	01/12/10	C&R-1697	C&R-1701
94	Harvey, Carol	01/12/10	C&R-1703	C&R-1705

Table C&R-1 Commenters on the Draft EIR (Numerical by Letter Number)

<i>Letter No.</i>	<i>Commenter</i>	<i>Date of Comment</i>	<i>Page Number Where Comment Letter Begins</i>	<i>Page Number Where Responses Begin</i>
95	Koepf, Ernie	01/12/10	C&R-1707	C&R-1709
96	Fox, Jill	01/12/10	C&R-1711	C&R-1715
97	Brightline Defense Project	01/12/10	C&R-1721	C&R-1723
98	US Department of the Navy	01/12/10	N/A	C&R-1725
99	City/County Association of Governments of San Mateo	01/12/10	C&R-1727	C&R-1729
100	Shaffer, Linda	01/12/10	C&R-1731	C&R-1735
101	US Department of the Navy	01/14/10	C&R-1737	C&R-1745
102	Literacy for Environmental Justice	01/12/10	C&R-1755	C&R-1761
103	San Francisco Bay Conservation and Development Commission	01/12/10	C&R-1763	C&R-1773
104	Da Costa, Francisco	01/13/10	C&R-1785	C&R-1787
105	Da Costa, Francisco	01/18/10	C&R-1789	C&R-1791
106	Da Costa, Francisco	01/18/10	C&R-1793	C&R-1795
107	Muwekma Ohlone Indian Tribe	01/12/10	C&R-1793	C&R-1795
108	Hunters Point Shipyard Citizen's Advisory Committee	12/18/09	C&R-1811	C&R-1819
109	San Francisco Building and Construction Trades Council	01/04/10	C&R-1821	C&R-1823
110	Singer, Sam	01/05/10	C&R-1825	C&R-1827
111	San Francisco Organizing Project	01/05/10	C&R-1829	C&R-1831
112	San Francisco Chamber of Commerce	01/05/10	C&R-1833	C&R-1835
113	San Francisco Housing Action Coalition	01/05/10	C&R-1837	C&R-1839
114	Hamman, Michael	01/05/10	C&R-1841	C&R-1843
115	Da Costa, Francisco	01/10/10	C&R-1845	C&R-1851
116	Bay Access	01/11/10	C&R-1853	C&R-1857
117	India Basin Neighborhood Association	01/12/10	C&R-1859	C&R-1865
SFRA1	Various commenters spoke at the San Francisco Redevelopment Agency Commission Hearing	12/15/09	C&R-1811	C&R-1989
SFPC	Various commenters spoke at the San Francisco Planning Commission Hearing	12/17/09	C&R-2005	C&R-2113
SFRA2	Various commenters spoke at the San Francisco Redevelopment Agency Commission Hearing	01/05/10	C&R-2139	C&R-2165

Table C&R-2 Commenters on the Draft EIR (Alphabetical by Commenter Type)				
<i>Letter No.</i>	<i>Commenter</i>	<i>Date of Comment</i>	<i>Page Number Where Comment Letter Begins</i>	<i>Page Number Where Responses Begin</i>
WRITTEN COMMENTS				
Federal Agencies				
98	US Department of the Navy	01/12/10	N/A	C&R-1725
101	US Department of the Navy	01/14/10	C&R-1737	C&R-1745
State Agencies				
71	California Department of Transportation—Transportation Planning	01/12/10	C&R-995	C&R-999
93	California State Lands Commission	01/12/10	C&R-1697	C&R-1701
86	California State Parks	01/12/10	C&R-1605	C&R-1623
91	California State Parks	12/23/09	N/A	C&R-1691
103	San Francisco Bay Conservation and Development Commission	01/12/10	C&R-1763	C&R-1773
Local Agencies, Boards, and Commissions				
39	City and County of San Francisco, Historic Preservation Commission	01/12/10	C&R-413	C&R-415
77	City and County of San Francisco, Historic Preservation Commission	01/12/10	C&R-1065	C&R-1067
78	City and County of San Francisco, Human Rights Commission	01/12/10	C&R-1069	C&R-1175
24	City of Brisbane	11/18/09	C&R-293	C&R-295
7	City of Brisbane	12/18/09	C&R-191	C&R-195
99	City/County Association of Governments of San Mateo	01/12/10	C&R-1727	C&R-1729
10	San Francisco Bay Trail	12/18/09	C&R-221	C&R-223
31	San Francisco Bay Trail	01/12/10	C&R-335	C&R-341
87	San Francisco Bay Trail	01/12/10	C&R-1645	C&R-1651
Organizations				
11	Alice Griffith Public Housing Tenant Association	11/03/09	C&R-225	C&R-227
82	Arc Ecology	01/12/10	C&R-1211	C&R-1373
83	Arc Ecology	01/12/10	C&R-1393	C&R-1413
84	Arc Ecology	01/12/10	C&R-1421	C&R-1445
85	Arc Ecology	01/12/10	C&R-1461	C&R-1597
12	Asian Pacific Democratic Club	12/17/09	C&R-229	C&R-231
18	Bay Access	12/28/09	C&R-267	C&R-269
116	Bay Access	01/11/10	C&R-1853	C&R-1857
29	Bay Area Council	01/04/10	C&R-327	C&R-329
55	Breast Cancer Action	01/12/10	C&R-859	C&R-861
97	Brightline Defense Project	01/12/10	C&R-1721	C&R-1723
47	California State Parks Foundation	01/12/10	C&R-625	C&R-723
42	Californians for Renewable Energy, Inc.	01/12/10	C&R-435	C&R-577
62	Confederation of the Ohlone People	01/11/10	C&R-897	C&R-899

Table C&R-2 Commenters on the Draft EIR (Alphabetical by Commenter Type)

<i>Letter No.</i>	<i>Commenter</i>	<i>Date of Comment</i>	<i>Page Number Where Comment Letter Begins</i>	<i>Page Number Where Responses Begin</i>
32	Docomomo/US, Northern California Chapter	01/11/10	C&R-349	C&R-351
25	Golden Gate Audubon Society	11/16/09	C&R-297	C&R-299
81	Golden Gate Audubon Society	01/12/10	C&R-1185	C&R-1199
58	Green Action Health and Environmental Justice	01/12/10	C&R-873	C&R-875
3	Hunters Point Shipyard Citizen's Advisory Committee	12/16/09	C&R-175	C&R-177
90	Hunters Point Shipyard Citizen's Advisory Committee	01/12/10	C&R-1677	C&R-1683
108	Hunters Point Shipyard Citizen's Advisory Committee	12/18/09	C&R-1811	C&R-1819
117	India Basin Neighborhood Association	01/12/10	C&R-1859	C&R-1865
56	Indian Canyon Nation	01/12/10	C&R-863	C&R-865
8	Indian Canyon Nation/Costanoan Indian Research Inc.	01/12/10	C&R-203	C&R-215
102	Literacy for Environmental Justice	01/12/10	C&R-1755	C&R-1761
20	Multiple Commenters	12/14/09	C&R-275	C&R-277
107	Muwekma Ohlone Indian Tribe	01/12/10	C&R-1793	C&R-1795
92	National Football League	01/12/10	C&R-1693	C&R-1695
45	National Trust for Historic Preservation, Western Office, and California Preservation Foundation	01/12/10	C&R-603	C&R-611
4	Neighborhood Parks Council	12/17/09	C&R-179	C&R-181
44	Neighborhood Parks Council	01/12/10	C&R-597	C&R-599
49	Neighborhood Parks Council	01/12/10	C&R-803	C&R-805
22	Parkmerced Residents' Organization	12/09/09	C&R-283	C&R-285
14	Positive Directions Equals Change	12/17/09	C&R-245	C&R-247
2	People Organized to Win Employment Rights	12/14/09	C&R-171	C&R-173
9	People Organized to Win Employment Rights	12/21/09	C&R-217	C&R-219
43	People Organized to Win Employment Rights	01/12/10	C&R-579	C&R-583
50	People Organized to Win Employment Rights	01/12/10	C&R-807	C&R-813
52	People Organized to Win Employment Rights	01/12/10	C&R-837	C&R-845
69	People Organized to Win Employment Rights	01/12/10	C&R-985	C&R-989
80	People Organized to Win Employment Rights	12/11/09	C&R-1181	C&R-1183
34	San Francisco Architectural Heritage	01/11/10	C&R-361	C&R-365
37	San Francisco Bay Herring Fisherman's Association	01/12/10	C&R-393	C&R-395
79	San Francisco Bicycle Coalition	01/12/10	C&R-1177	C&R-1179
109	San Francisco Building and Construction Trades Council	01/04/10	C&R-1821	C&R-1823
112	San Francisco Chamber of Commerce	01/05/10	C&R-1833	C&R-1835
36	San Francisco Green Party	01/12/10	C&R-381	C&R-389
113	San Francisco Housing Action Coalition	01/05/10	C&R-1837	C&R-1839

Table C&R-2 Commenters on the Draft EIR (Alphabetical by Commenter Type)				
<i>Letter No.</i>	<i>Commenter</i>	<i>Date of Comment</i>	<i>Page Number Where Comment Letter Begins</i>	<i>Page Number Where Responses Begin</i>
111	San Francisco Organizing Project	01/05/10	C&R-1829	C&R-1831
30	San Francisco Planning + Urban Research Association	01/04/10	C&R-331	C&R-333
64	San Francisco Tomorrow	01/12/10	C&R-905	C&R-919
1	Sierra Club	11/25/09	C&R-167	C&R-169
75	Sierra Club	01/12/10	C&R-1039	C&R-1057
68	Technical Assistance Services for Communities	01/12/10	C&R-975	C&R-975
13	Toxic Chem Handout - PC Hearing	12/17/09	C&R-233	C&R-243
46	Visitacion Valley Planning Alliance	01/11/10	C&R-615	C&R-621

Individuals

33	Antonini, Michael J.	01/11/10	C&R-353	C&R-355
16	Birkelund, James	12/19/09	C&R-253	C&R-255
15	Cavella, Barbara	12/12/09	C&R-249	C&R-251
27	Da Costa, Francisco	01/12/10	C&R-305	C&R-321
38	Da Costa, Francisco	01/11/10	C&R-396	C&R-411
89	Da Costa, Francisco	01/12/10	C&R-1671	C&R-1675
104	Da Costa, Francisco	01/13/10	C&R-1785	C&R-1787
105	Da Costa, Francisco	01/18/10	C&R-1789	C&R-1791
106	Da Costa, Francisco	01/18/10	C&R-1793	C&R-1795
115	Da Costa, Francisco	01/10/10	C&R-1845	C&R-1851
17	Dale-LeWinter, Marcia	01/04/10	C&R-257	C&R-265
26	Dodt, Dan	11/13/09	C&R-301	C&R-303
60	Donahue, Vivien	01/12/10	C&R-885	C&R-887
21	Enea, Kristine	12/11/09	C&R-279	C&R-281
96	Fox, Jill	01/12/10	C&R-1711	C&R-1715
57	Franklin, Alice	01/12/10	C&R-867	C&R-869
40	Gould, Corrina	01/12/10	C&R-427	C&R-429
28	Hamman, Michael	01/04/10	C&R-323	C&R-325
35	Hamman, Michael	01/12/10	C&R-369	C&R-375
41	Hamman, Michael	01/12/10	C&R-431	C&R-433
114	Hamman, Michael	01/05/10	C&R-1841	C&R-1843
67	Harvey, Carol	01/12/10	C&R-959	C&R-973
94	Harvey, Carol	01/12/10	C&R-1703	C&R-1705
63	Herrera, Catherine	01/11/10	C&R-901	C&R-903
6	Jackson, Espanola	12/17/09	C&R-187	C&R-189
59	Jefferson, Simon	01/12/10	C&R-879	C&R-881

Table C&R-2 Commenters on the Draft EIR (Alphabetical by Commenter Type)

<i>Letter No.</i>	<i>Commenter</i>	<i>Date of Comment</i>	<i>Page Number Where Comment Letter Begins</i>	<i>Page Number Where Responses Begin</i>
65	Joshua, Nyese	01/12/10	C&R-925	C&R-931
95	Koepf, Ernie	01/12/10	C&R-1707	C&R-1709
61	Lee, Mishwa	01/12/10	C&R-889	C&R-893
73	Lee, Mishwa	01/12/10	C&R-1009	C&R-1013
5	Loa, Sam	12/17/09	C&R-183	C&R-185
74	Matlock, Perry	01/11/10	C&R-1019	C&R-1037
48	McRee, Richard	01/12/10	C&R-795	C&R-799
72	Muhammad, Colleen	01/12/10	C&R-1005	C&R-1007
88	Porter Sumchai, Ahimsa	12/11/09	C&R-1653	C&R-1669
100	Shaffer, Linda	01/12/10	C&R-1731	C&R-1735
51	Simms, Robert	01/12/10	C&R-833	C&R-835
110	Singer, Sam	01/05/10	C&R-1825	C&R-1827
54	Stancil, Esselene	01/12/10	C&R-855	C&R-857
53	Stokes, Ernest	01/12/10	C&R-851	C&R-853
66	Tello, Juana	01/12/10	C&R-943	C&R-951
70	Tello, Jesse	01/12/10	C&R-991	C&R-993
19	Whittle, Lola	12/14/09	C&R-271	C&R-273
76	Whittle, Lola	01/12/10	C&R-1061	C&R-1063
23	Winter, Rhonda	12/08/09	C&R-289	C&R-291
ORAL COMMENTS				
SFRA1	Various commenters spoke at the San Francisco Redevelopment Agency Commission Hearing	12/15/09	C&R-1811	C&R-1989
SFPC	Various commenters spoke at the San Francisco Planning Commission Hearing	12/17/09	C&R-2005	C&R-2113
SFRA2	Various commenters spoke at the San Francisco Redevelopment Agency Commission Hearing	01/05/10	C&R-2139	C&R-2165

E. COMMENTS AND RESPONSES

This section contains responses to comments on the Draft EIR that were received from government agencies, boards or commissions, organizations, and individuals, either orally or in writing. Consistent with Sections 15088(a) and 15088(b) of the CEQA Guidelines, comments that raise significant environmental issues are provided with responses. Comments that are outside of the scope of CEQA review (i.e., where a comment does not raise an environmental issue, or where it expresses the subjective opinion of the commenter) will be forwarded for consideration to the decision-makers as part of the project approval process; these comments are answered with a general phrase, but no more detailed response is provided. All comments will be considered by the Lead Agencies when making a decision on the Project.

Responses are provided as individual responses that respond to specific comments raised and as master responses that respond to broad issues where there were several public comments on the same issue. Master responses are presented first, followed by individual responses. Each comment letter, in numerical order, is included in its entirety, followed by the responses to the individually numbered comments.

E.1 Master Responses

Master responses are used to address similar comments that were raised in more than one letter and to provide information in a comprehensive, easily located discussion that clarifies and elaborates upon the analyses in the Draft EIR. The master responses address the following topics:

- Master Response 1—SB 18
- Master Response 2—Potential Native American Burial Sites
- Master Response 3—Impacts of the Project on Yosemite Slough (Biological Resources)
- Master Response 4—Purpose and Benefits of the Yosemite Slough Bridge
- Master Response 5—Health of the Bayview Hunters Point Community
- Master Response 6—Seismic Hazards
- Master Response 7—Liquefaction
- Master Response 8—Sea Level Rise
- Master Response 9—Status of the CERCLA Process
- Master Response 10—Pile Driving through Contaminated Soils
- Master Response 11—Parcel E-2 Landfill
- Master Response 12—Naturally Occurring Asbestos
- Master Response 13—Post-Transfer Shipyard Cleanup
- Master Response 14—Unrestricted Use Alternative
- Master Response 15—Proposition P and the Precautionary Principle
- Master Response 16—Notification Regarding Environmental Restrictions and Other Cleanup Issues
- Master Response 17—Enforcement of Environmental Restrictions and Mitigation Measures
- Master Response 18—Traffic Mitigation Measures
- Master Response 19—Proposed BAAQMD Guidelines

■ Master Response 1: SB 18

Introduction

Overview

This master response addresses concerns raised by commenters about the Senate Bill 18 (SB 18) consultation process; in particular, the concern that the Native American tribes and representatives were not formally consulted on the Project prior to publication of the Draft EIR. This response provides a summary of the requirements of SB 18 and information on the consultation process that will be undertaken to ensure that the concerns of the Native American tribes in the region are addressed with respect to the Project.

Commenters

Commenters who addressed this issue include:

- Federal, State, Regional, Local Agencies, Boards, and Commissions
 - > Planning Commissioner Borden (SFPC-117)
 - > Redevelopment Agency Commissioner Bustos (SFRA2-39)
- Organizations
 - > Arc Ecology (84-12)
 - > Confederation of the Ohlone People (62-1, 62-2, 62-3)
 - > Human Rights Commission (78-1)
 - > Indian Canyon Nation/Costanoan Indian Research Inc. (8-1, 56-1, 56-2, 56-3, 56-4, 56-5, 56-6, 56-7, 56-8)
 - > POWER (People Organized to Win Employment Rights) (52-8)
- Individuals
 - > Bernadette Sambrano (SFPC-77)
 - > Catherine Herrera (63-1)
 - > Corrina Gould (40-1)
 - > Espanola Jackson (SFRA2-2)
 - > Francisco Da Costa (27-1, 27-2, 38-1, 38-2, 89-1, 89-3, 104-1, SFPC-48, SFPC-50)
 - > Mishwa Lee (73-10, 73-11, 73-15, SFPC-29)
 - > Neil McLean (SFPC-104)
 - > Perry Matlock (74-1, 74-4)

Comment Summary

This master response responds to all or part of the following comments: 8-1, 27-1, 27-2, 38-1, 38-2, 40-1, 52-8, 56-1, 56-2, 56-3, 56-4, 56-5, 56-6, 56-7, 56-8, 62-1, 62-2, 62-3, 63-1, 73-10, 73-11, 73-15, 74-1, 74-4, 78-1, 84-12, 89-1, 89-3, 104-1, SFPC-29, SFPC-48, SFPC-50, SFPC-77, SFPC-104, SFPC-117, SFRA2-2, SFRA2-39.

Comments received on the Draft EIR related to SB 18 consultation were focused almost exclusively on issues addressed in Section III.J (Cultural Resources) of the Draft EIR; therefore, this master response provides further discussion to update and augment the analysis of the issues presented in Section III.J.

Summary of Issues Raised by Commenters

- The Native American community, including the Indian Canyon Nation, the Mutsun Band of Ohlone/Costanoan people, Confederation of Ohlone People, and the Muwekma Ohlone, desire to be included in the consultation process with regard to the Project

Response

Commenters, including representatives of Native American tribes, asserted that, under SB 18, the City was required to consult with Native American groups during preparation of the Draft EIR regarding potential Project effects on Native American cultural places, and that such consultation did not occur. SB 18, Local and Tribal Intergovernmental Consultation, adopted in 2004, requires California cities or counties to contact and consult with California Native American Tribes before adopting or amending a General Plan or when designating land as open space, for the purposes of protecting Native American Cultural Places. Under *Public Resources Code* (PRC) 5097.9 and 5097.993, Cultural Places are defined as a Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine on private lands; or a Native American historic, cultural, or sacred site that is listed or may be eligible for listing in the California Register of Historical Resources (CRHR) pursuant to PRC Section 5024.1, including any historic or prehistoric ruins, any burial ground, or any archaeological or historic site on public lands. The California Native American Tribes are defined as those on the contact list maintained by the California Native American Heritage Commission (NAHC). SB 18 sets out a consultation process but does not mandate any specific steps with regard to protection of Native American Cultural Places. Those steps would be developed between the relevant cities or counties and the appropriate California Native American Tribes.

SB 18 is not part of CEQA, and consultation under SB 18 is not a requirement of the EIR process. Therefore, formal consultation with Native American tribes or organizations during preparation of the Draft EIR was not required as part of the CEQA process. In addition, as a charter city, San Francisco is not subject to many of the SB 18 requirements, because it is codified in a portion of the Government Code that concerns General Plan procedural requirements that do not apply to charter cities or counties.

Nonetheless, the City of San Francisco is currently undertaking outreach with Native American groups on the NAHC list related to the General Plan changes proposed as part of the Project.^{3,4,5,6} The Project, as noted in Draft EIR Chapter II (Project Description), Section II.G (Approval Requirements), pages II-80 through II-84, would include amendments to the Bayview Hunters Point Area Plan of the General Plan. The Project would also include the introduction of Subarea Plans for the Candlestick Point and Hunters Point areas. The outreach that the City is undertaking is intended to elicit a full understanding of concerns that Native American tribes and organizations have about the Project, how the concerns may be addressed, and any other suggestions or recommendations the Native American tribes or organizations may have. As

³ John Rahaim, Planning Director, San Francisco Planning Department, letter to Andrew Galvan, The Ohlone Indian Tribe, January 26, 2010.

⁴ John Rahaim, Planning Director, San Francisco Planning Department, letter to Ann Marie Sayers, Chairperson, Indian Canyon Band Mutsun Band of Costanoan, January 26, 2010.

⁵ John Rahaim, Planning Director, San Francisco Planning Department, letter to Rosemary Cambra, Chairperson, Muwekma Ohlone Indian Tribe of the San Francisco Bay Area, January 26, 2010.

⁶ John Rahaim, Planning Director, San Francisco Planning Department, letter to Irene Zwierlein, Chairperson, Amah/Mutsun Tribal Band, January 26, 2010.

part of that outreach, the Planning Department made available to the Native American groups the background documents prepared as part of Draft EIR Section III.J (Cultural Resources and Paleontological Resources), including *Historical Context for the Archaeology of the Bayview Waterfront Project, San Francisco, California* and *Archaeological Research Design and Treatment Plan for the Bayview Waterfront Project, San Francisco, California*, cited on Draft EIR p. III.J-1.⁷

Further, Planning Department staff and Mayor's Office staff met on February 19, 2010, with Native American/Ohlone representatives who had responded to the Planning Department's January 26, 2010, letters and offer of consultation. At the meeting, a variety of concerns were expressed and various future actions were agreed to, including (1) allowing time for representatives from additional Native American groups to respond to the request for consultation; (2) providing more information regarding prehistoric archaeological sites to interested Ohlone representatives, to the extent permitted by law; and (3) agreeing that the parties would meet again to consult.

Draft EIR Section III.J (Cultural Resources and Paleontological Resources) describes the potential occurrence of Native American sites, including burial sites, sites eligible for listing on the CRHR, or sites on public land, within the Project boundaries. The Draft EIR identifies the Project effects, and mitigation measures that would avoid significant adverse effects on such sites. Refer to Master Response 2 (Potential Native American Burial Sites) for further discussion of consultation with Native American representatives regarding burial sites that would be part of the mitigation measures.

The comments on the Draft EIR on SB 18 consultation do not address the adequacy or completeness of the Draft EIR regarding Project effects on cultural resources, including Native American sites.

■ Master Response 2: Potential Native American Burial Sites

Introduction

Overview

This master response addresses concerns raised by commenters that the Project site contains Native American burial sites of symbolic and cultural importance that would be disturbed by Project development. This response explains that the Draft EIR acknowledges that the Project site includes prehistoric burial sites of patrimonial importance to the Native American community. The response also explains that Native American burial remains and funerary objects discovered at the Project site would be treated as required by applicable laws, and with efforts to reach an agreement to treat with appropriate dignity such human remains and funerary objects.

Commenters

Commenters who addressed this issue include:

- Federal, State, Regional, Local Agencies, Boards, and Commissions
 - > Planning Commissioner Borden (SFPC-117)

⁷ The prior name of the Project was the Bayview Waterfront Project. Some of the technical studies completed for the Project use the former name if they were prepared prior to August 2009; however, regardless of name, the reports address conditions at the Project site.

- > Redevelopment Agency Commissioner Bustos (SFRA2-39)
- Organizations
 - > Human Rights Commission (78-1)
 - > Indian Canyon Nation/Costanoan Indian Research Inc. (8-1, 56-1, 56-2, 56-3, 56-4, 56-5, 56-6, 56-7, 56-8)
- Individuals
 - > Francisco Da Costa (89-3)
 - > Juana Tello (SFPC-94)

Comments received on the Draft EIR related to Native American burial sites were focused almost exclusively on issues addressed in Section III.J (Cultural Resources) of the Draft EIR; therefore, this master response provides further discussion to update and augment the analysis of the issues presented in Section III.J.

Comment Summary

This master response responds to all or part of the following comments: 8-1, 56-1, 56-2, 56-3, 56-4, 56-5, 56-6, 56-7, 56-8, 78-1, 89-3, SFPC-94, SFPC-117, SFRA2-39.

Summary of Issues Raised by Commenters

- The Project site contains Native American burial sites of patrimonial, symbolic, and cultural importance that would be disturbed by Project development.
- The Native American community must be involved in the review of effects on such sites or how burial remains are treated after discovery.

Response

Draft EIR Section III.J (Cultural Resources and Paleontological Resources), pages III.J-2 through III.J-5, provides context on the prehistoric record and historic record of indigenous peoples and describes the settlement pattern of Ohlone/Costanoan tribes in San Francisco. The Draft EIR acknowledges that prehistoric sites in San Francisco may include burial sites of patrimonial importance to Native American groups. Draft EIR page III.J-2 notes that the current understanding of San Francisco prehistory recognizes this importance to Native American culture:

- Prehistoric sites sometimes occur in clusters with a primarily symbolic association with a focal shellmound of greater size and age
- The importance of the primary shellmound may have been in the form of religious/funerary observances and burials even after its abandonment
- Bay Area prehistoric shellmounds may have been planned, intentionally re-created structures (not merely inadvertent dietary refuse accumulations)
- Prehistoric shellmounds were sometimes constructed over pre-existing cemeteries
- Many Bay Area shellmounds were abandoned over the course of a relatively brief period

The Draft EIR page III.J-17 further notes, in relation to past excavations of several shellmounds in the Project vicinity, that there is potential for Native American burials to occur at archaeological sites that

could be affected by the Project. Draft EIR pages III.J-18 to -19 describe five indigenous sites that, based on archival research, are known or believed to be located within the boundaries of the Project site (CA-SFR 9, 11, 12, 13, and 14); the sites may currently be under fill or have been destroyed. Undocumented prehistoric sites may also exist within the Project site. Therefore, development of the Project could result in disturbance of previously unrecorded Native American burials and funerary materials.

Impact CP-2a (Change in Significance of Archaeological Resources), Impact of Candlestick Point, Draft EIR page III.J-36, concludes that construction at Candlestick Point would not result in a substantial adverse change in the significance of archaeological resources, including prehistoric Native American, Chinese fishing camp, and maritime-related archaeological remains, because mitigation measure MM CP-2a would reduce potential adverse effects of construction-related activities to archaeological resources at Candlestick Point to less-than-significant levels through implementation of the Project Archaeological Research Design and Treatment Plan (ARDTP).⁸ Impact CP-2b (Impact of Hunters Point Shipyard Phase II), Draft EIR III.J-40, and Impact CP-2 (Combined Impact of Candlestick Point and Hunters Point Shipyard Phase II), Draft EIR pages III.J-40 to -41, similarly conclude that impacts on prehistoric Native American resources would be less than significant through implementation of the ARDTP.

To clarify that the Project could affect Native American burial sites of symbolic or cultural importance to present-day Native American tribes and representatives, the following underlined text is added on Section III.J, Draft EIR page III.J-36, Impact CP-2a discussion, as a new sentence three:

The Project archaeological research has found that archaeological resources expected to be found on the Project site could have important research value and would, therefore, be legally significant under CEQA. Examples of research themes that have been proposed to which expected archaeological resources could contribute significant data include (i) the spatial organization and historical development of Chinese fishing camps; (ii) effects, adaptations, and resistance of the fishing camps to anti-Chinese fishing legislation (1885-1930s); (iii) spatial organization of shipyards and development of local traditions of boat building technology, including that of the scow schooner and Chinese junks; (iv) the development, changing function, and inter-settlement relationships of prehistoric shell mounds; (v) comparative spatial organization of shell mound sites; (vi) changes in prehistoric faunal and biotic exploitation practices; (vii) prehistoric changes in social stratification; and (viii) the relationship between Hunters Point-Bayview and South of Market area prehistoric settlements. The Project could also disturb potential Native American burial sites of symbolic and cultural importance to present-day Native American tribes and representatives. Any potential archaeological resources, e.g., CA-SFR-9, fishing camps, that are covered by existing development will remain covered and unavailable unless the site is redeveloped.

The following underlined text is added on Section III.J, Draft EIR page III.J-40, Impact CP-2b discussion, paragraph three, as a new sentence three:

Moreover, previous archaeological investigations have shown that prehistoric archaeological sites in the HPS Phase II site tend to be located along the original shoreline. Therefore, it is possible that Project-related construction activities may encounter previously unknown archaeological resources. The Project could also disturb potential Native American burial sites of symbolic and cultural importance to present-day Native American tribes and representatives.

⁸ Archeo-Tec, Archaeological Research Design and Treatment Plan for the Bayview Waterfront Project, San Francisco, California, November 2009, as cited on Draft EIR page III.J-1. The prior name of the Project was the Bayview Waterfront Project. Some of the technical studies completed for the Project use the former name if they were prepared prior to August 2009; however, regardless of name, the reports address conditions at the Project site.

The following underlined text is added on Section III.J, Draft EIR page III.J-40, Impact CP-2 discussion, last paragraph, as a new sentence four:

As discussed above, the Project site is expected to contain subsurface archaeological resources from the Native American, Chinese fishing village, prehistoric, and maritime development periods, including, but not limited to, CA-SFR-9, CA-SFR-11, CA-SFR-12, CA-SFR-13, and CA-SFR-14. Any potential archeological resources, e.g., fishing camps, that are covered by existing development will remain covered and unavailable unless the site is redeveloped. Construction activities associated with the Project could disturb those archaeological resources, and result in potentially significant impacts. The Project could also disturb potential Native American burial sites of symbolic and cultural importance to present-day Native American tribes and representatives. Refer to Impact CP-2a and Impact CP-2b and associated discussions, above. Mitigation measure MM CP-2a would reduce the Project potentially significant effects on archaeological resources to a less-than-significant level through implementation of the *Archaeological Research Design and Treatment Plan for the Bayview Waterfront Project, San Francisco, California*.

Mitigation measure MM CP-2a would apply to Impacts CP-2a, CP-2b, and CP-2. The measure includes a range of steps, as called for in the ARDTP, for archeological testing, monitoring, and data recovery. Those steps would ensure that archaeological resources, including potential Native American burials, would be identified and significant adverse effects avoided. Mitigation measure MM CP-2a also includes specific steps should human remains or associated or unassociated funerary objects be encountered during Project development, as set forth on page III.J-39 of the Draft EIR:

Human Remains and Associated or Unassociated Funerary Objects: The treatment of human remains and associated or unassociated funerary objects discovered during any soil-disturbing activity shall comply with applicable state and federal laws. This shall include immediate notification of the Coroner of the City and County of San Francisco and in the event of the Coroner's determination that the human remains are Native American remains, notification of the California State Native American Heritage Commission (NAHC), which shall appoint a Most Likely Descendant (MLD) (PRC Sec. 5097.98). The archaeological consultant, Project Applicant, and MLD shall make all reasonable efforts to develop an agreement for the treatment of human remains and associated or unassociated funerary objects with appropriate dignity (CEQA Guidelines Sec. 15064.5(d)). The agreement shall take into consideration the appropriate excavation, removal, recordation, analysis, custodianship, curation, and final disposition of the human remains and associated or unassociated funerary objects.

As stated above, Native American burial remains and funerary objects discovered at the Project site would be treated as required by applicable laws, with notification of the NAHC and the Most Likely Descendant, and with reasonable efforts to reach an agreement to treat with appropriate dignity such human remains and associated or unassociated funerary objects. Master Response 1 (SB 18) discusses the consultation process required with Native American groups, separate from the CEQA process. That consultation process could result in agreements for participation by Native American representatives in monitoring of sites during investigation for potential prehistoric materials or remains. Such monitoring activities would be in addition to requirements for NAHC and Most Likely Descendant notification steps addressed in mitigation measure MM CP-2a.

The ARDTP addresses appropriate consultation with Native American community regarding burials (ARDTP, page 411):

Native American Consultation

The MEA [San Francisco Planning Department Major Environmental Analysis section] may consult with appropriate member(s) members of the Native American community regarding this project prior to the discovery of burials. This consultation would not designate a Most Likely Descendant (MLD), nor replace the legal process whereby the Native American Heritage would appoint the MLD in the event human remains are found.

Stewart [“An Overview of Research Issues for Indigenous Archaeology”, as cited in the ARDTP] notes that “archaeology, contrary to how it was practiced in the past, is currently practiced with a sensibility that insists that indigenous peoples have a stake in the management of their ancestral remains, and that the values bound up in those remains, sites, landscapes, etc., are not exclusively scientific.” Although this document’s [ARDTP] scope is limited to the data potential of prehistoric sites, this does not preclude the value that the site has beyond its informational value.

Topics of consultation might include, but not be restricted to, the opinions and wishes concerning the Bayview Waterfront Project as an Ohlone ancestral site, the cultural value or concerns regarding the site, opinions on publicity, etc. Of particular concern to archaeological consultants are issues regarding the handling, study, and special studies of burials and human remains—issues usually discussed with or otherwise addressed by an MLD.

Especially sensitive issues are whether the MLD and/or the community would permit analysis of human remains of any sort, or even the archaeological excavation of any burials found. There are MLDs in California who categorically refuse permission to conduct osteological description and non-destructive analysis of human burials. Another is the question of the desirability of obtaining radiocarbon dates from shell beads associated with a burial, or the wish to use a small bone fragment from a Native American burial for radiocarbon dating purposes. Another potentially useful analysis which involves destruction of human remains is removal of a tooth from a mandible or maxilla for purposes of mtDNA extraction and characterization.

Refer also to Master Response 1 (SB 18) explaining that the Planning Department has begun a consultation process with Native American tribal representatives. That consultation process will be an avenue for addressing the types of concerns identified in the ARDTP.

■ Master Response 3: Impacts of the Project on Yosemite Slough (Biological Resources)

Introduction

Overview

In 2006, the California Department of Parks and Recreation (CDPR) approved the Yosemite Slough Restoration Project (Restoration Project). The Restoration Project, sponsored by the California State Parks Foundation would restore tidal wetlands in a 34-acre parcel of Candlestick Point SRA in Yosemite Slough immediately adjacent to the Project site. The Plan would increase the existing tidally influenced area from 9 acres to over 20 acres, create two islands intended for use by nesting birds, and provide nursery areas for fish and benthic organisms, transitional and upland areas to buffer sensitive habitats, more than 5,000 feet of new interpretive trails with five vista points, approximately 2.5 acres of passive use public areas, an approximately 1,200-square-foot multi-use interpretative center with restroom facilities, new access to the restored area, and additional amenities including parking, fencing, lighting, benches, and drinking water fountains. The restoration design of the slough would also address soil contaminant issues arising from previous fill activities that could affect human and wildlife health. The Restoration Project has not been

implemented. It is proposed for construction in an area adjacent to but outside of the Project area, with the exception of a small area that overlaps the proposed location of the Yosemite Slough bridge.

The biological impacts associated with the construction and operation of the Yosemite Slough bridge have been analyzed in Section III-N of the Draft EIR. However, specific concerns have been raised that the development of the Project would negatively impact the proposed/ongoing Restoration Project if it proceeds. Specifically, commenters have stated that development of the Yosemite Slough bridge would release contaminated sediment into the environment, provide an additional source of contaminated runoff into the slough, divide an existing state park, and disrupt existing or future wildlife migration. Some commenters suggested that the effects of the bridge, particularly on the Restoration Project, were not analyzed in the Draft EIR and indicated that maps in the Draft EIR did not clearly indicate whether the Restoration Project was part of the Project area. Specific concerns also included the potential effects of construction-related disturbance while the bridge is being constructed, operational effects of noise, vibration, and exhaust from vehicles using the bridge on wildlife using the area around the bridge, including the restoration site, and effects of shading from the bridge on habitats below. Comments suggested that the Draft EIR did not address these potential impacts in sufficient detail.

This response provides detail regarding how the Draft EIR took the Restoration Project into account in its analysis and why the Project would not significantly impact the Restoration Project or impair or interfere with the goals and objectives of the Restoration Project. This master response addresses these comments with respect to the Restoration Project and biological resources. Traffic issues associated with the proposed bridge are addressed in Master Response 4 (Purpose and Benefits of the Yosemite Slough bridge), and hazardous materials and contamination issues are addressed in Master Response 9 (Status of the CERCLA Process).

This master response has been prepared using the analysis of Project impacts to biological resources in the Draft EIR; references to technical literature; plans for the Restoration Project provided by WRA, Inc., the firm that designed the wetland restoration plan; reference to other relevant sites in the San Francisco Bay area (Bay area); and analysis and inferences drawn from these sources by Stephen C. Rottenborn, Ph.D. Dr. Rottenborn, a principal and senior wildlife ecologist with the ecological consulting firm H. T. Harvey & Associates, is an expert on the wildlife, particularly birds, of the Bay area. Dr. Rottenborn's expert analysis addresses issues raised in the various comments on biological impacts and in particular the Restoration Project. His curriculum vitae is provided in Appendix C&R-1 (Biological Consultant Curriculum Vitae).

This response is organized by the following topics:

- Consideration of Yosemite Slough and the Yosemite Slough Restoration Project in the Draft EIR
- Summary of the Restoration Project
- Discussion of Biological Resource Impacts on Yosemite Slough in the Draft EIR
- Potential Effects of Noise on Wildlife Use of the Yosemite Slough
- Potential Effects of Vehicle Exhaust on Plants and Animals of Yosemite Slough
- Potential Effects of Lighting on Animals of Yosemite Slough
- Wildlife Use and Habitat Conditions at Reference Sites
- Expected Effects of the Bridge on Wildlife Use of Yosemite Slough
- Conclusion

Commenters

Commenters who addressed this issue include:

- Federal, State, Regional, Local Agencies, Boards, and Commissions
 - > California State Parks (86-1, 86-6, 86-12)
 - > Planning Commissioner Lee (SFPC-125)
- Organizations
 - > Arc Ecology (85-25, 85-29)
 - > California State Parks Foundation (47-3, 47-4, 47-5, 47-7, 47-17, 47-18, 47-19, 47-21, 47-22, 47-23, 47-24, 47-35, 47-37, 47-38, 47-40, 47-47, 47-49, 47-50, 47-51, 47-54, 47-56, 47-59, 47-68, 47-70, 47-71, 47-72, 47-73, 47-74, 47-75, 47-77, 47-81, 47-82, 47-86, 47-87, 47-89, 47-93, 47-97)
 - > Golden Gate Audubon Society (81-1, 81-2, 81-4, 81-7, 81-9, 81-10, 81-11, 81-13, 81-14)
 - > Green Action Health and Environmental Justice (SFPC-81, SFPC-826)
 - > San Francisco Bay Conservation and Development Commission (103-9, 103-19)
 - > San Francisco Bay Trail (31-6)
 - > San Francisco Tomorrow (64-2, 64-4)
 - > Sierra Club (75-5, 75-7)
 - > Yosemite Slough Project at Candlestick Recreation Area (SFRA1-78, SFRA1-79)
- Individuals
 - > Linda Richardson (SFPC-4)
 - > Mishwa Lee (61-3, 61-7, 73-6)
 - > Saul Bloom (SFPC-136)

Comments received on the Draft EIR related to the Restoration Project and biological resource impacts were focused almost exclusively on issues addressed in Section III.N (Biological Resources) of the Draft EIR; therefore, this master response provides further discussion to update and augment the analysis of the issues presented in Section III.N.

Comment Summary

This master response responds to all or part of the following comments: 31-6, 47-3, 47-4, 47-5, 47-7, 47-17, 47-18, 47-19, 47-21, 47-22, 47-23, 47-24, 47-35, 47-37, 47-38, 47-40, 47-47, 47-49, 47-50, 47-51, 47-54, 47-56, 47-59, 47-68, 47-70, 47-71, 47-72, 47-73, 47-74, 47-75, 47-77, 47-81, 47-82, 47-86, 47-87, 47-89, 47-93, 47-97, 61-3, 61-7, 64-2, 64-4, 73-6, 75-5, 75-7, 81-1, 81-2, 81-4, 81-7, 81-9, 81-10, 81-11, 81-13, 81-14, 85-25, 85-29, 86-1, 86-6, 86-12, 103-9, 103-19, SFRA1-78, SFRA1-79, SFPC-4, SFPC-81, SFPC-82, SFPC-125, SFPC-136.

Summary of Issues Raised by Commenters

- No mention of the Restoration Project in Draft EIR
- The potential effects of construction-related disturbance to the slough
- Operational effects of noise, vibration, and exhaust from vehicles using the bridge on wildlife using the area around the bridge, including the Restoration Project site
- Effects of shading from the bridge on habitats below
- Project would interfere with goals of the Restoration Project

Response

It is important to recognize that CEQA requires that except for special-status species, determinations of significant adverse impacts depend on the regional habitat value of resources and species viability rather than the amount of impact in a specifically defined but very limited habitat.

Impacts to special-status species would be significant (in the absence of mitigation) if the Project would adversely affect any of the following: (1) a species listed as threatened or endangered by the state or federal government at the time the Draft EIR is published; (2) a major population or subpopulation of a species that would result in the regional declines of this species; (3) a relatively large number of individuals within a population that is considered rare or declining; (4) a species' metapopulation (i.e., if one of only a few known populations occurs in the impact zone, or if the species has extremely narrow habitat requirements); or (5) a habitat type or vegetation community in regional decline or that is regionally endemic and recognized as such by the local, state, or federal agencies identified in the Setting section.

Impacts to sensitive or rare species would be less than significant, even without mitigation, if they are not expected to substantially affect species or populations because (1) a relatively small number of non-listed individuals would be impacted; (2) the number of individuals of a non-listed species to be impacted represent a very small fraction of regional populations due to the species' regional abundance; (3) recovery and conservation effects are documented to adequately conserve the species or habitat, and impacts would not affect the recovery or conservation of this species or habitat; or (4) the species or habitat is locally common and fairly abundant in the region. Because such species exist in a broad area, in regionally abundant habitat, such species would not be expected to experience substantial impacts from a project.

Consideration of Yosemite Slough and the Yosemite Slough Restoration Project in the Draft EIR

Confusion regarding whether or not Yosemite Slough was considered part of the Project and whether impacts to portions of Yosemite Slough outside the Project site were analyzed in the Draft EIR stemmed in part from reviewers' interpretations of various figures in the Draft EIR, particularly Figure III.N-1 (Biological Resources Study Area). This figure correctly depicted only the mouth of Yosemite Slough as being within the "Project Boundary," while showing that a slightly greater portion of the slough was within the "Study Area" and the entire slough was within the "Yosemite Slough Watershed Wildlife Study Area." Commenters questioned why these study areas differed.

The purpose of Figure III.N-1 was to indicate the relationships of three different geographic areas: the boundary of the Project site (Project Boundary); the boundary of the area that was covered by the wetland delineation performed for the Project (Study Area); and the boundary of the area in which data on wildlife use had been collected during a study performed by LSA Associates, Inc. and volunteers in 2004 (Yosemite Slough Watershed Wildlife Study Area). The Study Area boundary extended beyond the Project boundary because impacts to wetlands and aquatic habitats, both existing and those that would be present after implementation of the Restoration Project, were anticipated to occur slightly upstream from the Project boundary during construction of the Yosemite Slough bridge. That the Study Area boundary did not include the entire slough does not indicate that the remainder of the slough was not considered in the impact analysis. Rather, as discussed in the following section, the impact analysis considered direct and

indirect effects on all biological resources both within and adjacent to the Project boundary, including all of Yosemite Slough and relevant adjacent areas.

Commenters suggested that the Draft EIR did not adequately recognize the Restoration Project as an integral component of the Candlestick Point State Recreation Area (CPSRA) or adequately analyze effects of the bridge on the Restoration Project, and suggested that the bridge would conflict with the goals of the restoration. CEQA initially requires an analysis of the Project's effects against existing baseline conditions. The Restoration Project, although planned and approved, has not been implemented. After analyzing the impacts of a Project against existing conditions, CEQA requires consideration of Project effects in combination with other past, present, and future projects, i.e., a cumulative impact analysis. The Restoration Project was discussed in the cumulative context and was considered one of the "planned and in-process wetland restoration projects within the Bay area" in the cumulative impact analysis on page III.N-118 of the Draft EIR.

In addition, the Draft EIR considered the effects of the Project on the habitats and species that would be expected to use the restoration site in the context of the Draft EIR's assessment of direct and indirect impacts to sensitive habitats and special-status/sensitive species both on- and off-site (Impact BI-3a through Impact BI-12c). Direct, explicit reference to the effects of the CP-HPS Project, including the Yosemite Slough bridge, on the Restoration Project itself was limited in the Draft EIR because the Draft EIR followed the CEQA requirement to assess impacts with respect to the change that the Project would cause to existing, baseline conditions (under which the Restoration Project has not been implemented). The descriptions of Project impacts focused on existing conditions rather than explicitly discussing the future Restoration Project. However, the Draft EIR fully assessed the impacts on the resources that are the focus of the Restoration Project. As explained in more detail below, habitats in the existing slough and along the Candlestick Point and HPS Phase II shorelines contain the same or similar characteristics as the restored slough in terms of the types of habitats and species that could be impacted by the Project. To enable the public to see how the analysis covered the impact areas, this master response more directly correlates the biological analysis with the details of the Restoration Project.

Summary of the Restoration Project

As stated in the Initial Study/Mitigated Negative Declaration (IS/MND) issued by the California State Parks Foundation⁹ for the Restoration Project, the goals and objectives of the restoration plan include the following:

- Increase the area subject to tidal influence.
- Restore habitat diversity by re-establishing tidal flats and marsh in areas of present upland fill.
- Improve local foraging and roosting habitat for migratory and resident birds.
- Improve quality of life for the surrounding community.
- Remediate, sequester, or remove contaminated soils to reduce potential for human and wildlife contact.
- Create a clean, beautiful, and local park that the public can visit and view wildlife habitat.

⁹ California State Parks Foundation. 2006. Initial Study/Mitigated Negative Declaration. Candlestick Point State Recreation Area Yosemite Slough Restoration Project.

- Create an environmental area that local schools can use for educational field trips.
- Benefit local businesses by increasing the number of visitors coming to the area.
- Connect the Bay Trail through CPSRA with the Bay Trail that is proposed for Hunters Point.

The 12 acres of wetlands would occur through the excavation of three embayments. This would occur with inland excavation only, without dredging and minimal grading. The new wetlands would be vegetated with cordgrasses along the slough, pickleweed within most of the wetland, and gumplant, salt gratt, fat hen, and alkali heath within the traditional areas separating the grasslands from the wetlands.

Excavation on the north and south sides of the slough would create embayments and two isolated nesting islands. A sandy nesting island would be created on the northern side of the slough to provide habitat for birds, which according to the IS/MND for the Restoration Project would include species such as plovers, curlews, and sandpipers. This island would be approximately 0.71 acres in size and would be located in stable areas that would be minimally subject to erosion from tidal action. A second island, approximately 1.34 acres in size, would be created on the southern side of the slough. This island would primarily be constructed to shells with vegetation composed of coyote brush to provide loafing and foraging habitat for birds, which according to the IS/MND would include species such as ducks, western grebes, and greater and lesser scaup. Principal features of the proposed plan are the isolated bird nesting islands. The IS/MND states that the sand, shell, and rocky beaches would provide nesting habitat for a variety of summer nesting shorebirds such as the American avocet, black-necked stilt, and several species of terns. Isolation of the islands from the mainland by tidal channels is intended to protect nesters from feral animal and human disturbance.

The increased areas of cordgrass created in the restored wetland areas would provide refuge and a high quality of foraging area for juvenile fish thus creating a nursery habitat for local and migratory fish. The restored areas of cordgrass and pickleweed with the appropriate imported and amended soils would provide habitat for benthic invertebrates, including various worm and bivalve species. Benthic invertebrates are known to be important sources of food for shorebirds and bottom feeding fish.

Salt marsh vegetation occurs along the shoreline which is alternately exposed by low tides and inundated by high tides on a daily basis, between Mean Low Water and Mean Higher High Water. Low salt marsh typically occurs above Mean Low Water. This zone would be planted with Pacific cordgrass, a native species typically found in this zone. Middle salt marsh occurs around Mean Tide Level and planting in this zone would be primarily pickleweed. Within the zone of irregular flooding by the higher high tides, Mean High Water to Mean Higher High Water, planting would include alkali heath, fleshy jaumea, and salt grass. In areas where the California clapper rail and salt marsh harvest mouse occur, areas of cordgrass and low inter-tidal to mid-tidal ranges are the preferred habitat of California clapper rail, and pickleweed and high marsh areas are the preferred habitat of the salt marsh harvest mouse, both listed species.

The studies and surveys done to prepare the Restoration Plan determined that the potential for presence of any special-status wildlife species within the Yosemite Slough project area is presently low. Occupation by these species is greatly limited by existing site conditions, which either are not suitable or are not of sufficient stature to support most species. The IS/MND states that it is likely that restoration of the site could create native transitional and wetland habitats, which could substantially increase nesting and

foraging habitats for wildlife species, particularly for sensitive species such as the western snowy plover, San Francisco common yellowthroat, double-crested cormorant, and the California clapper rail.

The Restoration includes preparation of the Monitoring and Adaptive Management Plan that would set the framework for long-term (5 year) biological monitoring of the project's restored habitats. There is a contingency measure provision that states that if annual or final success criteria are not met, the applicant would prepare an analysis of the cause(s) of failure and, if determined necessary by the Corps, propose remedial action for approval.

As discussed in the following sections, the Draft EIR analyzed impacts of the Project, including the proposed bridge, upon areas subject to tidal influence such as tidal flats and marsh (i.e., impacts to tidal wetlands, mud flats, and aquatic habitats were assessed). The Restoration Project would increase the extent of these habitats, in particular increasing the extent of tidal marsh habitat in Yosemite Slough and restoring more extensive contiguous marshes. The new, restored tidal marsh would increase the extent of vegetated wetlands by approximately 12 acres, which comprises approximately 0.003% of similar baylands and shallow aquatic habitats available within the Bay.¹⁰ The pockets of marsh such as those that could be present on the restoration site after wetland construction are not expected to attract species other than those which currently use the CP-HPS Project site, in Dr. Rottenborn's opinion. Therefore, although the impact assessment in the Draft EIR did not expressly differentiate between impacts to existing wetland, mud flat, and aquatic habitats and those that could be present after implementation of the Restoration Project, the Draft EIR described the types of impacts to those habitats (and associated species) that could occur, considered the significance of those impacts, and prescribed mitigation measures. The intent was to identify impacts and the associated mitigation measures to address impacts to any sensitive habitats or species within the Project's impact areas, whether those habitats and species were on site or off site, and whether the habitats and species currently exist or could exist after implementation of the Restoration Project.

The potential impacts of the bridge on migratory and resident birds, and other taxa, that could use the restoration site were analyzed in the context of existing conditions, as the species expected to use the restoration site after restoration implementation are species that are currently present at least occasionally on the site. The Restoration Project would expand marsh and mud flat habitat, potentially providing more extensive habitat for species associated with vegetated tidal marsh such as marsh wrens, Alameda song sparrows, and possibly Bryant's savannah sparrows. Although implementation of the Restoration Project would increase the potential for these species to breed in Yosemite Slough in small numbers, relative to existing conditions, these species already could potentially occur in low numbers in the marsh remnants on the Project site. Other marsh-associated species, such as the California clapper rail, salt marsh harvest mouse, and salt marsh wandering shrew, are not expected to occur in the restored tidal marsh. The harvest mouse and wandering shrew are not known to occur as far north on the San Francisco Peninsula as the

¹⁰ Goals Report. 1999. Baylands Ecosystem Habitat Goals. A report of habitat recommendations prepared by the San Francisco Bay Area Wetlands Ecosystem Goals Project. First Reprint. U.S. Environmental Protection Agency, San Francisco, CA/San Francisco Bay Regional Water Quality Control Board, Oakland, CA.

Project site,^{11,12,13} and the site is isolated from potential source populations of these low-mobility species by miles of unsuitable habitat. As a result, there is no significant potential for natural colonization of restored tidal marsh in Yosemite Slough by these small mammals. Although the California clapper rail is mobile enough to be able to disperse to the site vicinity from source populations elsewhere, marsh size and proximity to other marshes are important determinants of habitat quality for this species, which typically nests in larger marshes, with more well-developed networks of small tidal channels, than would be restored by the Restoration Project.¹⁴ Based on the small size of the marsh to be restored, Dr. Rottenborn concludes that California clapper rails would not be expected to use the restored marsh to any significant degree. Therefore, these “new” habitat areas are not expected to attract species other than those which currently use Yosemite Slough and South Basin at least occasionally.

The effects of the bridge on the species that might use the “nesting islands,” if and when they are proposed as part of the Restoration Project, are not expected to be substantial. In Dr. Rottenborn’s assessment of literature and characteristics of these species, suggests it is unlikely that additional species (i.e., those that are not currently present on the site) would actually use those islands for nesting to any significant degree. As noted, the Restoration Project description describes these islands as being created for special-status species such as the double-crested cormorant and snowy plover. In fact, neither species is likely to nest on these islands as described. Neither the cormorant nor the plover nests on such small, low, shell/sandy islands surrounded by tidal water anywhere in the Bay area. Rather, double-crested cormorants breeding in the Bay area nest primarily on electrical transmission towers or larger rocky islands (Ainley 2000).¹⁵ A ground-nesting colony in the San Jose area is located on extensive berms separating (and surrounded by) vast, non-tidal ponds, where the birds are much farther from mainland areas supporting potential mammalian nest predators such as raccoons than would be the case at Yosemite Slough.¹⁶ Consequently, Dr. Rottenborn does not expect that cormorants would nest on small, low islands surrounded by tidal water in Yosemite Slough. Likewise, snowy plovers breeding in the Bay area nest on extensive sandy beaches along the coast or, inside the Bay, in areas providing extensive salt pannes (depressions embedded within salt and brackish marshes), in salt pond bottoms, or on islands of bay sediment within large, non-tidal salt ponds.¹⁷ Based on the known habitat use of this species in the Bay area, Dr. Rottenborn does not expect this species to nest on the shell

¹¹ Shellhammer, H. S. 2000. Salt marsh harvest mouse. Pages 219-228 in Olofson, P.R. (ed.), Goals Project. Baylands ecosystem species and community profiles: life histories and environmental requirements of key plants, fish and wildlife.

¹² Shellhammer, H. S. 2000. Salt marsh wandering shrew. Pages 231-233 in Olofson, P.R. (ed.), Goals Project. Baylands ecosystem species and community profiles: life histories and environmental requirements of key plants, fish and wildlife.

¹³ U.S. Fish and Wildlife Service. 2010. Draft recovery plan for the tidal marsh ecosystems of northern and central California. February 10, 2010 draft. California/Nevada Operations Office, Sacramento, CA.

¹⁴ U.S. Fish and Wildlife Service. 2010. Draft recovery plan for the tidal marsh ecosystems of northern and central California. February 10, 2010.

¹⁵ Ainley, D. G. 2000. Double-crested cormorant. Pages 323-325 in Olofson, P.R. (ed.), Goals Project. Baylands ecosystem species and community profiles: life histories and environmental requirements of key plants, fish and wildlife. Prepared by the San Francisco Bay Area Wetlands Ecosystem Goals Project. San Francisco Bay Regional Water Quality Control Board, Oakland, California.

¹⁶ Bousman, W. G. 2007. Double-crested cormorant. Pages 148-149 in Bousman, W. G. (ed.), Breeding Bird Atlas of Santa Clara County. Santa Clara Valley Audubon Society.

¹⁷ Page, G. W., C. M. Hickey, and L. E. Stenzel. 2000. Western snowy plover. Pages 281-284 in Olofson, P.R. (ed.), Goals Project. Baylands ecosystem species and community profiles: life histories and environmental requirements of key San Francisco Bay Regional Water Quality Control Board. Plants, Fish and Wildlife. Prepared by the San Francisco Bay Area Wetlands Ecosystem Goals Project. Oakland, California.

island that the Restoration Project expected would be vegetated with shrubs such as coyote brush; snowy plovers breed in open/barren to only sparsely vegetated areas.^{18,19} Snowy plovers are also not expected to nest on the island that is proposed to be “sandy” due to its small size, exposure to tidal action, and proximity to the proposed marsh and to the human-use areas of the Restoration Project itself. In Dr. Rottenborn’s experience with this species and review of the literature on Bay area-breeding snowy plovers, this species is not known to nest in such circumstances anywhere in the Bay area.

There is a low probability that most other island-nesting bird species in the Bay area, such as American avocets, black-necked stilts, Forster’s terns, and Caspian terns, would nest on these islands. Unless (or more likely, until) these islands become dominated by vegetation, their substrate might be suitable for nesting by such species. However, small islands subjected to fully tidal conditions are not, in Dr. Rottenborn’s experience, used for nesting by these species in south San Francisco Bay. Maintaining these islands free from vegetation is not proposed by the Restoration Project. As a result, these islands may become too densely vegetated to provide suitable breeding habitat for these species. Alternatively, they may be subject to so much tidal wash that colonization by vegetation or nesting by birds is precluded. Regionally abundant ducks (such as mallards), and perhaps western gulls (which nest on Double Rock), may nest on these islands, though again, western gulls are unlikely to nest on islands that are either densely vegetated or are unvegetated due to tidal action. However, Dr. Rottenborn expects the sandy island to be used primarily by foraging and roosting waterbirds. The shell/vegetated island would likely be used primarily by species that currently use the coyote brush-dominated portions of the non-native annual grassland currently present in some areas along the edges of Yosemite Slough and South Basin, and by roosting and foraging waterbirds along the perimeter of the island if open, unvegetated foraging and loafing areas persist.

More importantly, limited nesting by special-status species new to the restoration area is not likely to be significantly impacted by the bridge. As noted, most of these species would not be breeding during the winter season. Temporary impacts from light, vibration, and exhaust may be attenuated by the physical separation of the islands from the bridge, since many of the birds using those islands are expected to learn that game-day impacts are not only confined to a few hours but that the people and vehicles using the bridge also cannot physically intrude on the island habitat.

Since the Restoration Project has not been implemented, there is some uncertainty as to how the bridge might affect this future project. It is not known, for example, whether all or just part of the Restoration Project would be constructed prior to construction of the Yosemite Slough bridge, and thus the extent of restored habitats that would be subject to impact by the bridge is unknown. Also, there is an Environmental Protection Agency (USEPA) inquiry into contamination of materials within Yosemite Slough, and it is possible that some remediation of these materials would be required prior to, or simultaneously with, the restoration. Because the USEPA has not yet reached a decision as to whether it would require any such remediation,²⁰ the timing of such remediation and hence a delay in restoration, if required, is unknown.

¹⁸ Page, G. W., J. S. and J. C. Warriner, and P. W. C. Paton. 1995. Snowy plover (*Charadrius alexandrinus*). In A. Poole and F. Gill (eds.), *The Birds of North America*, No. 154. The Academy of Natural Sciences, Philadelphia, PA, and The American Ornithologists’ Union, Washington, D.C.

¹⁹ U.S. Fish and Wildlife Service. 2007. Recovery plan for the Pacific Coast population of the western snowy plover (*Charadrius alexandrinus nivosus*). California/Nevada Operations Office, Sacramento, CA.

²⁰ Brett Moxley (U.S. EPA), pers. comm. to Stephen C. Rottenborn (H. T. Harvey & Associates), phone conversation on January 28, 2010.

Even so, as described in the following sections, Dr. Rottenborn expects the impacts of the proposed CP-HPS Project, including the Yosemite Slough bridge, on the habitats and species either existing in the Project area or expected to occur in the Project area upon completion of the Restoration Project to be comparable to those described in the Draft EIR for existing habitats and species using the slough and the CP-HPS shoreline. Although the Restoration Project would increase the extent of tidal aquatic, mudflat, and (especially) tidal marsh habitat in Yosemite Slough, the type of the potentially affected habitats and species present after implementation of the Restoration Project would be largely similar to the existing conditions. Restoration of marsh habitat in Yosemite Slough would increase the potential for species associated with vegetated tidal marsh such as marsh wrens, Alameda song sparrows, and Bryant's savannah sparrows to nest in the slough (and/or increase the number of pairs that might breed in the slough to some extent), but these species could already be present in the Project area (albeit in low numbers). As described in detail in the following sections, the quantity of impacts to the new/restored habitats, including habitats that might be used by nesting birds associated with tidal marsh habitats, would not be substantially greater than the Project's effects on existing Yosemite Slough conditions. The following sections expand on some of the concerns raised in comments regarding effects on biological resources in the slough. These sections discuss that, while the bridge would have a limited adverse effect on habitat conditions in and wildlife use of the Restoration Project, impacts are either less than significant, or mitigable to less-than-significant levels, and the bridge would not preclude the achievement of the biological goals of the Restoration Project.

Discussion of Biological Resource Impacts on Yosemite Slough in the Draft EIR

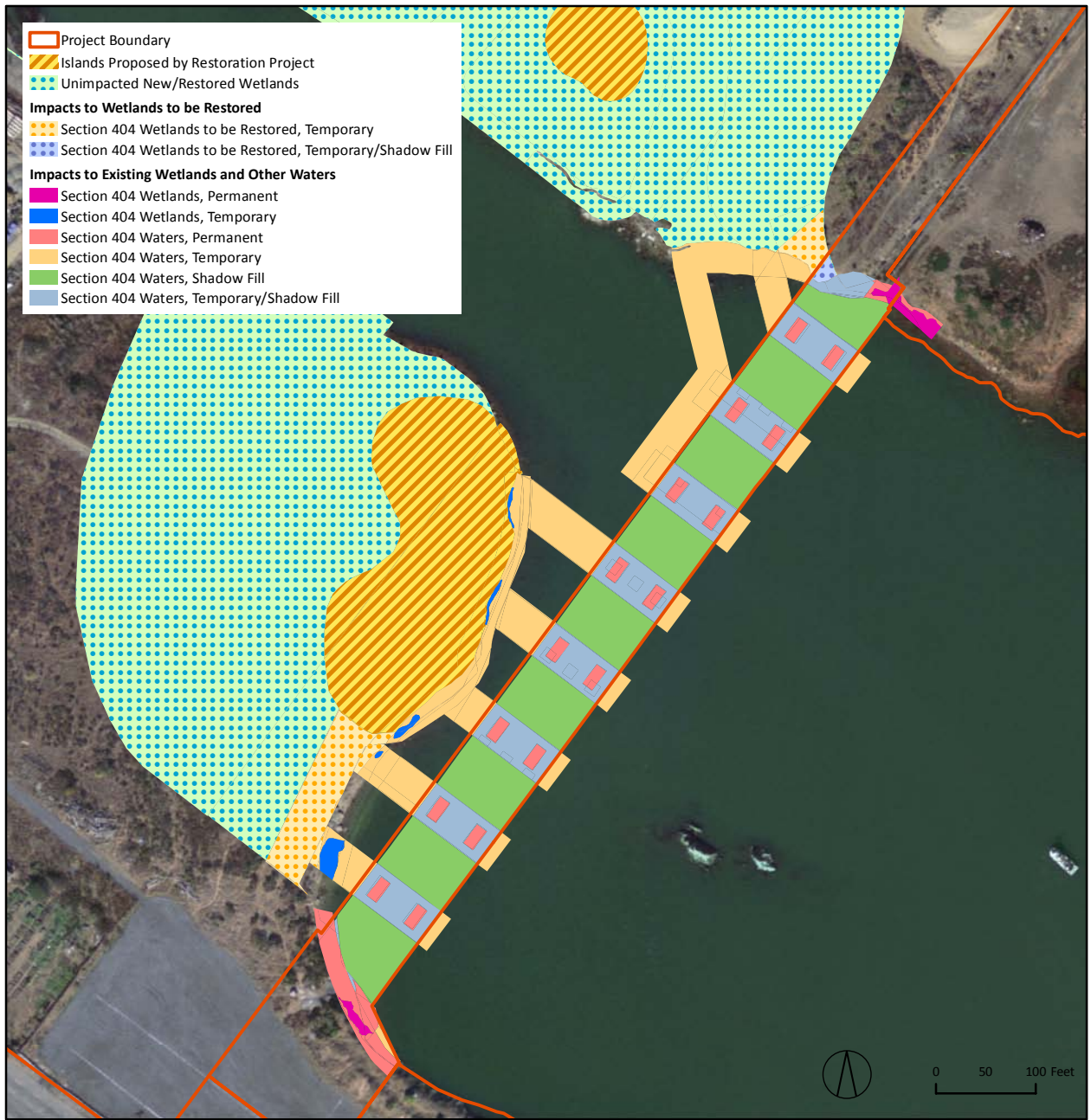
The Draft EIR discussed potential impacts of the Yosemite Slough bridge on common species and habitats (Impact BI-2), special-status plants (Impact BI-3b), wetlands and aquatic habitats (Impact BI-4c), fish and marine mammals (Impact BI-9b), native oysters (BI-10c), designated critical habitat for green sturgeon and Central California Coast steelhead (Impact BI-11c), essential fish habitat (Impact BI-12c), wildlife movement and wildlife nursery sites (Impact BI-13b), and local policies or ordinances protecting biological resources (Impact BI-14b). These discussions did not separately distinguish impacts to existing biological resources from impacts to biological resources that may be expected to occur in the future following implementation of the Restoration Project by State Parks, because although some habitats, such as intertidal mud flat and tidal salt marsh, would be more extensive once restoration occurs, the species and habitat types that would be present following restoration are comparable to the types of species and habitats currently present at Yosemite Slough. Therefore, the Project-specific and cumulative impact analysis performed in the Draft EIR considered direct and indirect effects of the bridge, including its construction and use, on biological resources that are currently present, and that would be present after restoration has been completed, both on- and off-site. To better understand these issues, the full effect on the Restoration Project will be outlined.

As discussed in the Draft EIR, construction of the Yosemite Slough bridge is expected to affect common species and habitats, sensitive habitats such as wetlands, mud flats, and aquatic habitats, and potentially some special-status wildlife species. The Draft EIR prescribed measures (MM BI-4a.1, MM BI-4a.2, MM BI-4c, MM BI-5b.1 through MM BI-5b.4, MM BI-9b, MM BI-12a.1, MM BI-12a.2, MM BI-12b.1, MM BI-12b.2, and MM BI-14a) to mitigate potentially significant impacts to less than significant levels. As identified in mitigation measure MM BI-4a.1 on pages III.N-59-62 of the Draft EIR, the permanent loss of aquatic, mud flat, and essential fish habitats as a result of the placement of bridge piers within the slough

would be mitigated by replacement of such habitat through creation or restoration at a minimum 1:1 ratio. In addition, the following text has been added to mitigation measure MM BI-4a.2 (on page III.N-63 of the Draft EIR, before the last square bullet beginning with “For impacts to tidal habitats”) to ensure temporarily impacted sensitive habitats would be restored to their pre-construction condition following the completion of construction activities:

- ...
- *Testing and disposal of any dredged sediment shall be conducted as required by the USACE and the Long-Term Management Strategy (LTMS)⁷⁹⁰*
 - *All temporarily impacted wetlands and other jurisdictional waters, whether in tidal or non-tidal areas, shall be restored to pre-construction contours following construction. Such impact areas include areas that are dewatered (e.g., using coffer dams) and/or used for construction access. Temporarily impacted wetlands that were vegetated prior to construction shall be revegetated in accordance with a Wetlands and Jurisdictional Water Mitigation and Monitoring Plan as described above.*
 - *For impacts to tidal habitats: ...*

Several commenters questioned why the Draft EIR explicitly analyzed impacts to future wetlands that may be constructed as part of the US Department of the Navy (Navy) wetland mitigation on HPS but did not explicitly analyze the potential impacts to wetlands that would be created by the Restoration Project. Neither the Navy’s wetland mitigation nor the Restoration Project is currently in place, and thus neither project comprises part of the existing CEQA baseline. They are future potential impacts which are likely or foreseeable impacts, and are assessed based on the likelihood and timing of occurrence. To more explicitly explain the extent of possible impacts to wetland and aquatic/mud flat habitats that would be present after the Restoration Project is implemented, the proposed bridge footprint and temporary construction/access areas were overlaid electronically on final plans for Phase I of the restoration plan (on the north side of Yosemite Slough) provided by WRA, Inc., the firm that designed the wetland restoration plan, on 19 January 2010 and 50 percent plans for Phase II (on the south side) provided by WRA on 4 February 2010. The text of the cumulative impact analysis has been revised in the Final EIR to include an assessment of the resulting changes in acreages of impacts to jurisdictional habitats that would be affected, as described in further detail below and depicted in Figure III.N-7 (Impacts to Wetlands and Other Waters after Yosemite Slough Wetland Restoration). This more detailed explanation and calculation of acreages clarifies the extent of the potential impact if the Restoration Project is constructed in accordance with the designs provided by WRA prior to construction of the bridge. The assessment does not result in a new significant impact or a substantial increase in the magnitude of an impact because the Draft EIR had already identified impacts to wetlands and other waters resulting from construction of the Yosemite Slough bridge as a significant impact, and the impacts to “new” wetlands that would be restored by the Restoration Project do not substantially increase the magnitude of these impacts over those assessed in the Draft EIR. Although approximately 12 acres of new tidally influenced habitats, predominantly tidal marsh, are proposed to be constructed by the Restoration Project, bridge construction access would result in temporary impacts to only 0.21 acre of new vegetated tidal marsh that is proposed as part of the Restoration Project, and less than 0.01 acre of wetlands that would be restored by the Restoration Project would be permanently impacted by shading as a result of being located directly under the bridge. The bridge would result in no permanent fill of new/restored wetland, aquatic, or mud flat habitat other than



SOURCE: HT Harvey, 2010; Moffat & Nichol, 2009; Mactec, 2010; PBS&J, 2010.

PBS&J 05.07.10

● **FIGURE III.N-7**

▶ **Candlestick Point - Hunters Point Shipyard Phase II EIR**
IMPACTS TO WETLANDS AND OTHER WATERS
AFTER YOSEMITE SLOUGH WETLAND RESTORATION

in existing conditions as created by the Restoration Project. Rather, while temporary impacts to wetlands and other waters would increase slightly, permanent impacts to these sensitive habitats would be reduced if the Restoration Project is implemented prior to bridge construction because shoreline improvements that would otherwise be constructed as part of the Project would then not be necessary on the south side of Yosemite Slough west of the bridge. A total of 0.03 acre of permanent impacts to existing wetlands and 0.19 acre of permanent impacts to existing Section 404 waters along the Yosemite Slough shoreline (off site) that were originally identified for the Project would not occur if Phase II of the restoration plan is implemented prior to bridge construction (though these existing jurisdictional areas would be temporarily impacted during bridge construction).

The mitigation measures that were previously described in the Draft EIR would, as originally intended, apply to any impacts to wetland and aquatic habitats, whether such habitats currently exist or are restored by the Restoration Project prior to bridge construction. Therefore, the mitigation measures for impacts to new wetland, aquatic, and mud flat habitats on the Restoration Project site were identified in the Draft EIR.

To more directly respond to public concerns, the following text has been added to the cumulative impacts discussion (before the first partial paragraph on page III.N-122 of the Draft EIR) to provide a more detailed discussion of impacts to future wetland and aquatic habitat in consideration of the Restoration Project:

In response to public concerns, impacts to future wetland and aquatic habitat in consideration of the Yosemite Slough Restoration Project have been quantified. If the Restoration Project is implemented before the Yosemite Slough bridge is constructed, then the bridge would impact not only existing wetlands, aquatic habitats, and mud flats, but also sensitive habitats that have been restored by the Yosemite Slough Restoration Project. Based on the final Phase I Restoration Plan (on the north side of Yosemite Slough) provided by WRA, Inc. (the firm that designed the restoration plans) on 19 January 2010 and 50 percent plans for Phase II of the Restoration Plan (on the south side of Yosemite Slough) provided by WRA on 4 February 2010, additional impacts to sensitive habitats were calculated and are illustrated by Figure III.N-7 (Impacts to Wetlands and Other Waters after Yosemite Slough Wetland Restoration). Bridge construction access would result in temporary impacts to 0.21 acre of new vegetated tidal marsh that is proposed as part of the Yosemite Slough Restoration Project, but the CP-HPS Project would result in no permanent fill of new/restored wetland, aquatic, or mud flat habitat. Further, if the Restoration Project is implemented prior to bridge construction, shoreline improvements that would otherwise have been constructed to extend along the southern Yosemite Slough shoreline will not be necessary. Therefore, 0.03 acre of permanent impacts to wetlands and 0.19 acre of permanent impacts to Section 404 waters along the southern Yosemite Slough shoreline (off site) that were originally identified for the Project would not occur if Phase II of the Restoration Plan is implemented prior to bridge construction (though these existing jurisdictional areas would be temporarily impacted during bridge construction). Temporary impacts would be mitigated through implementation of mitigation measures MM BI-4a.1 and MM BI-4a.2, as required by the Project. Based on the plans for the restoration site provided by WRA as described above, less than 0.01 acre of wetlands that would be restored by the Restoration Project would be impacted by shading as a result of being located directly under the shadow of the bridge. If additional vegetated wetlands are proposed within the bridge footprint as design for Phase II of the Restoration Plan proceeds, such that additional shading impacts to vegetated wetlands would occur, and if such wetlands are constructed prior to construction of the bridge, mitigation for such impacts will be provided by the CP-HPS Project at a 1:1 ratio as described above.

In addition to new wetlands and other waters that are restored (i.e., from existing nonjurisdictional areas) by the Restoration Project, it is also possible that wetland vegetation would colonize some areas near the proposed bridge site that are currently unvegetated “other waters” as a result of planting or changes in hydrology or sediment accretion that occur as a result of the Restoration Project. As a result, some bridge

impact areas that are currently aquatic or mud flat habitat could be vegetated at the time of bridge construction, resulting in a slight increase in impacts to vegetated wetlands due to construction access or, possibly, shading and a concomitant decrease in impacts to other waters. However, such areas were already considered impacted “other waters” in the Draft EIR, and they would be very limited in extent. Impacts to vegetated wetlands, whether currently existing or existing at the time of construction, would be mitigated via implementation of mitigation measures MM BI-4a.1 and MM BI-4a.2, as described in the Draft EIR.

The construction of the Yosemite Slough bridge and approach roads would also impact limited areas of upland habitat, including upland transitional habitat located immediately upslope from restored wetlands and a proposed buffer zone located immediately upslope from the transitional habitat within the proposed restoration site. Impacts to upland transitional and buffer habitat would be predominantly temporary, occurring during bridge construction, with approximately 600 square feet of potential, temporary impacts to upland transitional and buffer habitats on the Restoration Project site (based on an overlay of the bridge plans over the Restoration Project plans provided by WRA). Such temporarily impacted areas would be restored to their pre-construction conditions following bridge construction. Approximately 170 square feet of upland transitional and buffer habitat would be permanently impacted by the bridge abutment on the northern side of the slough. Approximately 1.5 acres of additional upland areas within the Restoration Project site would be permanently impacted by the bridge approach roads, including areas on both the north and south sides of the slough. These upland areas would be planted with native shrubs, grasses, and forbs.²¹ The upland transitional, buffer zone, and upland habitats on the Restoration Project site that would be impacted by the CP-HPS Project are similar to non-native annual grassland and landscaped areas at Candlestick Point and on portions of HPS Phase II, as described in Section III.N of the Draft EIR. Impacts to such upland habitat types and the plant and animal species associated with them were evaluated in Impact BI-2 (Common Species and Habitats) on pages III.N-50 to -55 of the Draft EIR. The additional impact to 1.5 acres within the Restoration Project site would not substantially increase Project effects on upland grassland or landscaped habitat or the species using these habitats due to the limited extent of such additional impacts. Furthermore, as discussed in Impact BI-2 (Common Species and Habitats) in the Draft EIR, any plant or wildlife species occurring in regionally abundant upland habitats on the Restoration Project site is itself regionally abundant, and any adverse effects of the CP-HPS Project on the abundance of such species on the restoration site would not substantially affect regional populations of these species. Upland transitional habitat occurring on the upland side of tidal marsh is a less abundant habitat regionally; however, its importance is tied closely to the value of the adjacent wetlands to species that may require upland transitional areas during high tides. Because the Yosemite Slough is not expected to support rare species such as the California clapper rail or salt marsh harvest mouse, for which upland transitional zones might be particularly valuable, the loss of 170 square feet of upland transitional and buffer habitat due to construction of the bridge would not result in a substantial impact to either the quality of the Restoration Project or the species that use it. Given the very limited nature of the upland and upland transitional habitats on the restoration site that would be impacted, such impacts are not expected to result in substantial reductions in the populations of any particular species, either on the site itself or regionally. Therefore, impacts to upland and upland transitional habitats in the Restoration Project area would not introduce a new significant impact.

²¹ California State Parks Foundation. 2006. Initial Study/Mitigated Negative Declaration. Candlestick Point State Recreation Area Yosemite Slough Restoration Project.

Commenters also noted that a portion of the funding for the Restoration Project consisted of in-lieu fees paid as mitigation for wetland impacts by other projects and questioned whether the regulatory permits for those other projects would require revision if wetlands on the restoration site were impacted by the Project. It is not expected that the regulatory agencies would re-open the permitting for those other projects or require any additional mitigation or coordination on the part of the applicants for those projects. Rather, the regulatory agencies are expected to require the CP-HPS Project Applicant to obtain permits prior to engaging in any activity that could impact any such mitigation wetlands and to compensate for any such impacts through the implementation of the mitigation measures identified in the Draft EIR and/or other permit conditions.

Commenters suggested that potential effects of shading from the bridge on wetlands and other habitats below the bridge were not adequately discussed in the Draft EIR. This impact was discussed in Impact BI-4c. Although the bridge would be high enough to continue to let some light under the bridge, the potential for permanent loss of vegetated wetlands as a result of shading from the bridge was considered a potentially significant impact in the Draft EIR. The Draft EIR discussed the possibility that shading from the bridge would be great enough to result in the loss of vegetated wetlands (which would include both existing wetlands and any wetlands that have been restored as part of the Restoration Project) and prescribed mitigation via restoration at a 1:1 ratio (the same as for wetlands that are lost due to outright filling). To determine the extent of potentially vegetated wetlands that would be restored by the Restoration Project and yet be located under the shadow of the bridge, the proposed bridge footprint has been overlaid electronically on final plans for Phase I of the Restoration Project (on the north side of Yosemite Slough) and 50 percent plans for Phase II (on the south side) provided by WRA, Inc. This overlay indicates that less than 0.01 acre (313 square feet) of new/restored vegetated tidal wetlands would be located under the shadow of the bridge. Further, although shading during early morning hours (when the sun is east of the bridge) would extend outside the bridge footprint into the restored tidal marsh to some extent, indirect sunlight during these morning hours and direct insolation during the afternoon would allow substantial sunlight to reach vegetated habitats, allowing for the development and maintenance of marsh vegetation in the restoration site in areas that are outside the immediate bridge footprint. If additional vegetated wetlands are proposed within the bridge footprint as design for Phase II of the restoration plan proceeds, such that additional shading impacts to vegetated wetlands would occur, and if such wetlands are constructed prior to construction of the bridge, mitigation for such impacts would be provided by the CP-HPS Project at a 1:1 ratio as described in the cumulative impact analysis.

The effects of shading on mud flat and aquatic habitat would be less substantial than on vegetated wetlands. Tidal marshes around the bay export nutrients and organic material to other estuarine habitats, including mud flats and aquatic habitats.^{22,23} As a result, mud flats and aquatic habitats gain some of their productivity from organic matter exported from marshes in addition to photosynthesis within the mud flats and water column, and thus shading would not eliminate the base for mud flat and aquatic food webs within the shaded area. Also, shading would not affect habitat structure (e.g., height and density of vegetation) in

²² Kneib, R. T., C. A. Simenstad, M. L. Nobriga, and D. M. Talley. 2008. Tidal marsh conceptual model. Sacramento (CA): Delta Regional Ecosystem Restoration Implementation Plan.

²³ Atwater, B. F., S. G. Conard, J. N. Dowden, C. W. Hedel, R. L. MacDonald, W. Savage. 1979. History, landforms, and vegetation of the estuary's tidal marshes. Pages 347-385 in San Francisco Bay: the urbanized estuary. Pacific Division of the American Association for the Advancement of Science.

these unvegetated habitats as it would in vegetated wetlands. As a result, shading is not expected to have substantial impacts to the aquatic and intertidal organisms using these habitats under the bridge, and these habitats would retain much of their existing ecological functions and values after the bridge has been constructed. Nevertheless, the Draft EIR (MM BI-4c on page III.N-68) specified that shading impacts to mud flat and aquatic habitats that are not permanently impacted by bridge piers but that are within the bridge footprint must be compensated via creation or restoration at a 0.5:1 ratio to acknowledge that some reduction in functions and values of these habitats would occur as a result of shading.

Some commenters suggested that shading from new high-rise buildings on Candlestick Point or Hunters Point Shipyard would also shade wetlands to the point that adverse effects would occur. The potential locations of shadows cast by all buildings proposed by the Project were predicted and were mapped in the Draft EIR on Figure III.F-2 for Candlestick Point and on Figure III.F-15 for HPS Phase II. As indicated by those figures, shadows cast by new buildings constructed by the Project on HPS Phase II would not reach any portion of the Restoration Project site, and only a very limited area on the southernmost portion of the Restoration Project site would be subject to any shading from buildings to be constructed on Candlestick Point. Comparing Figure III.F-2 and the 50 percent wetland restoration plans for Phase II of the Restoration Project provided by WRA, less than ½-acre of new, restored wetlands on the Restoration Project site would be subject to any shading from new buildings. The analysis of shade distribution during different times of year and times of day presented in Section III.F of the Draft EIR indicates that shading of any portion of the Restoration Project's new wetlands would be very infrequent, and most of the time there would be no shading of these areas. Therefore, it is expected that ample sunlight would reach these wetlands to allow for the development and maintenance of vegetated tidal marsh.

Potential Effects of Noise on Wildlife Use of Yosemite Slough

The effects of noise on wildlife have received quite a bit of research attention,²⁴ but the results of most studies cannot be directly applied to the Yosemite Slough site. Many such studies focused on the effects of very loud noise, such as that produced by low overflights of military aircraft,²⁵ rather than on the much less acute noise that would be associated with the proposed bus rapid transit (BRT) buses, vehicles, and human use of the Yosemite Slough bridge. The effects of noise and vibrations on invertebrates, reptiles, and amphibians have not been well studied, and studies of noise effects on fish suggest that “normal traffic noise would not be sufficiently great to disturb those species that have been looked at so far”²⁶ and in the case of the Project, the principal traffic noises would only occur for a few hours 10 to 12 days a year.

²⁴ Kaseloo, P.A. and K.O. Tyson. 2004. Synthesis of noise effects on wildlife populations. Report No. FHWA-HEP-06016.

²⁵ Baker, M. and G. Belliveau (eds.) Effects of noise on wildlife conference, Proceedings. Happy Valley - Goose Bay, Labrador. Aug. 22-23, 2000. Institute for Environmental Monitoring and Research.

²⁶ Kaseloo, P.A. and K.O. Tyson. 2004. Synthesis of noise effects on wildlife populations. Report No. FHWA-HEP-06016.

Most studies of noise effects have focused on birds. Some studies of grassland and woodland birds have found reduced abundance of birds in closer proximity to roadways.^{27,28,29} However, the results of many studies documenting similar results do not conclusively identify noise or vehicular movements as the mechanism for the observed results; for example habitat changes were not controlled well enough to identify noise as the reason for reduced abundance near roads. Furthermore, several studies cited by Kaseloo and Tyson (2004) have demonstrated that habitat quality may be of much greater importance than proximity to roads in determining wildlife distribution, with birds occurring more abundantly in roadside areas providing higher-quality habitat than in lower-quality habitat farther from roads. Therefore, while a number of studies have documented adverse effects of roads on abundance and behavior of birds, other studies indicate a tolerance of proximity to roads in roadside areas providing high-quality habitat.

Most studies have investigated the effects of occasional, very loud noises such as low aircraft overflights or the distribution of wildlife in relation to proximity to very busy roads with thousands of vehicle trips/day. In contrast, the Yosemite Slough bridge would be used only by BRT buses except during the 10 to 12 days/year, and half dozen or so hours on those days, in which vehicles entering or exiting the new stadium would be using the bridge. During those few game days, both traffic noise and the number of vehicles are expected to result in greater disturbance than on days when only buses would use the bridge. While the amount of such game-day noise, vibration, and human activity on the bridge, and the degree to which such factors would disturb wildlife using Yosemite Slough, are unknown, it is reasonable to expect that these factors would disturb wildlife to a greater extent than everyday BRT use on non-game days. Due to the timing of the NFL football season, these effects would primarily occur during the avian nonbreeding season (i.e., in fall and early winter). During that season, the slough is currently used primarily by foraging and loafing waterfowl, shorebirds, gulls, and large waders. After implementation of the Restoration Project, those species may be complemented by somewhat larger numbers of marsh-associated birds, such as marsh wrens and sparrows, than currently use the slough. Disturbance by game-day traffic is expected to cause waterbirds foraging and loafing in open areas to either move farther from the bridge than would be the case on non-game days, or to leave the slough entirely. Small passerines (i.e., perching birds) using tidal salt marsh and upland habitats may also move farther from the bridge or may spend more time in vegetated cover than usual on game days, if they are not tolerant of (or if they do not habituate to) such disturbance. As discussed in “Expected Effects of the bridge on Wildlife Use of Yosemite Slough” below, birds that are permanent residents are expected to return to their normal activities and territories after game-day disturbance subsides, and nonbreeding birds may either return to their use of areas closer to the bridge or would find foraging and loafing habitat elsewhere around the Bay. Other wildlife taxa, such as mammals and reptiles, may show greater avoidance of areas close to the bridge on game days than during non-game days. On game days, they may thus move to areas either within the Restoration Project site or on the east side of the bridge that are farther from the bridge, or they may spend more time in the cover of vegetation

²⁷ Foppen, R. and R. Reijnen. 1994. The effects of car traffic on breeding bird populations in woodland. II. Breeding dispersal of male willow warblers (*Phylloscopus trochilus*) in relation to the proximity of a highway. *Journal of Applied Ecology* 31(1):95-101.

²⁸ Reijnen, R. and R. Foppen. 1994. The effects of car traffic on breeding bird populations in woodland. I. Evidence of reduced habitat quality for willow warblers (*Phylloscopus trochilus*) breeding close to a highway. *Journal of Applied Ecology* 31(1):85-94.

²⁹ Reijnen, R., R. Foppen, C. ter Braak, and J. Thissen. 1995. The effects of car traffic on breeding bird populations in woodland: III. Reduction of density in relation to the proximity of main roads. *Journal of Applied Ecology* 32(1):187-202.

during game days. However, due to the limited mobility of these species, they are not expected to move long distances, and it is likely that they also would return to areas closer to the bridge (or increase their activity in areas closer to the bridge) after game-day activity subsides.

On all other days, one bus would cross the bridge every 2.5 minutes, on average, during peak commute periods and every 5 minutes the remainder of the day. The hybrid buses that would be used on this BRT route would have a maximum noise level (from pull-away after a stop to 35 miles per hour [mph]) of 70 to 75 A-weighted decibel scale (dBA) at the source, roughly equivalent to the sound of freeway traffic at a distance of 50 feet. Some studies have documented that such noise levels have effects on some birds, while others have found no long-term effects on birds of much higher noise levels (as reviewed by Kaseloo and Tyson 2004). For example, a US Department of the Interior report on the Environmental Impact of the Big Cypress Swamp Jetport, addressing B-720 jet flyovers at altitudes of 500 to 5,000 ft, indicated that birds were not observed to be flushed or disturbed at noise levels ranging from 75 to 96.5 dBA.³⁰ Another study reviewed by Kaseloo and Tyson reported no significant effect of jet overflights on wading birds at levels of 55 to 100 dBA. Further, while there are no established criteria relating traffic noise and animal behavior, the analyses of noise effects on wildlife often employ higher impact thresholds than the 70 to 75 dBA noise levels that would result from BRT bus use, or even game-day traffic use, of the Yosemite Slough bridge. For example, the Bay area to Central Valley High-Speed Train Program Environmental Impact Report/Environmental Impact Statement used a sound exposure level of 100 dBA as its impact threshold.³¹

The ambient noise to which animals are currently exposed at Yosemite Slough, and to which animals would be exposed after implementation of the Restoration Project, is already relatively high, at least intermittently. The closest noise measurement to Yosemite Slough (recorded during the preparation of the Draft EIR) was taken in a vacant lot within the Project site along Carroll Avenue, across from Alice Griffith Neighborhood Park residences. The ambient noise level at this location was measured at 64.8 decibels, and the primary source of noise at this location was generated from traffic (Table III.I-6 [Existing Peak-Hour Traffic Noise Measurements (L_{eq})] of Section III.I [Noise and Vibration]). In addition, the industrial and storage uses of the properties on the south side of Yosemite Slough that are outside both the Yosemite Slough restoration area and the CP-HPS Project site, and that would thus not be subject to change as a result of either project, are the source of considerable ambient noise. Back-up signals on equipment, truck noise from the adjacent truck storage yard, and machinery from adjacent industrial areas contribute to noise levels in the area,³² and any wildlife using Yosemite Slough, both currently and following restoration, would have to be habituated to such noise levels. Thus, the noise levels at Yosemite Slough on non-game-days following bridge construction can be characterized as having moderately high ambient noise levels, as expected of this urban location, punctuated every 2.5 minutes (during commute periods) to 5 minutes (during non-commute periods) by somewhat increased noise levels as a BRT bus passes over the bridge. Based on the available information on noise effects on wildlife and observations of wildlife use of other urban wetland areas in the Bay area, Dr. Rottenborn has inferred that such BRT traffic may result in a small reduction in use of areas near the bridge by wildlife, or temporary effects on wildlife behavior when

³⁰ US Environmental Protection Agency (USEPA). 1971. Effects of noise on wildlife and other animals. NTID300.5.

³¹ California High-Speed Rail Authority and Federal Railroad Administration. 2008. *Bay Area to Central Valley High-Speed Train (HST) Program Environmental Impact Report/Environmental Impact Statement (EIR/EIS)*. Final. Volume 1: Chapters. May. Sacramento, CA and Washington, D.C.

³² S. Rottenborn, H. T. Harvey & Associates, pers. obs. during January 6, 2010 site visit.

a bus passes by, but such noise is expected to affect a relatively small proportion of the Yosemite Slough area and is not expected to substantially reduce wildlife use of the restoration site (as discussed in greater detail in “Expected Effects of the bridge on Wildlife Use of Yosemite Slough” below).

Potential Effects of Vehicle Exhaust on Plants and Animals of Yosemite Slough

There is some evidence that urban air pollution, including exhaust from vehicles, may adversely affect vegetation.³³ However, the effects of vehicle exhaust on plants and animals have not been well-studied, especially in natural situations (as opposed to lab conditions), and there is no evidence to suggest that exhaust from vehicles using the Yosemite Slough bridge would result in substantial adverse effects on wildlife or plant communities. The hybrid buses that the BRT system would operate are low-emission vehicles. The infrequency with which such buses would be crossing the bridge, the low-emission nature of these buses, and the absence of other traffic on the bridge during non-game days limits the potential for exhaust from vehicles using the bridge to affect plants and animals in the slough. Furthermore, wind levels that are characteristic of the San Francisco Bay shoreline are expected to disperse exhaust, and there is no evidence that exhaust emissions could concentrate in any particular area near the bridge in concentrations or for durations great enough to result in adverse ecological effects.

Effects of deposition of certain emissions, such as nitrogen compounds, on plant communities in Yosemite Slough are not expected to be substantial. Adverse effects of nitrogen deposition have been documented in very nitrogen-poor plant communities, such as serpentine grasslands, where nitrogen deposition has the potential to alter plant and animal community composition by allowing plants that cannot tolerate low-nitrogen conditions to persist.³⁴ However, wetlands such as those along Yosemite Slough are comparatively nitrogen-rich, and thus addition of nitrogen in exhaust would not be expected to affect plant or animal communities. Also, flushing of intertidal wetlands by tides prevents the accumulation of any compounds that may be present in exhaust in tidal wetlands.

Exhaust emissions would be higher on the 10 to 12 days/year in which stadium traffic is using the bridge. However, there is no evidence that such emissions would result in such acute effects, before exhaust can be dispersed by wind, on those few days that substantial adverse effects on any plant or animal species would occur particularly given the temporary nature of such impacts (i.e., for a few hours before and after football games during those 10 to 12 days/year). In fact, since most games occur on Sundays, they would be during periods in which normal, weekday freeway emissions would not occur. Also, as discussed under “Expected Effects of the bridge on Wildlife Use of Yosemite Slough” below, most birds (and possibly mammals and reptiles) are expected to maintain a slight buffer between most of their activities and the bridge, a buffer that would likely be somewhat greater on game days than during other times of the year as discussed in “Potential Effects of Noise on Wildlife Use of Yosemite Slough” above. Thus exposure to exhaust from vehicles using the bridge is not expected to result in any adverse effects on the health of wildlife using Yosemite Slough, even on game days.

³³ Honour, S. L., J. N. B. Bell, T. W. Ashenden, J. N. Cape, and S. A. Power. 2009. Responses of herbaceous plants to urban air pollution: Effects on growth, phenology and leaf surface characteristics. *Environmental Pollution* 157:1279-1286.

³⁴ Weiss, S. B. 1999. Cars, cows, and checkerspot butterflies: nitrogen deposition and management of nutrient-poor grasslands for a threatened species. *Conservation Biology* 13:1476-1486.

Potential Effects of Lighting on Animals of Yosemite Slough

Some commenters suggested that lighting associated with the Project, including lights on the Yosemite Slough bridge and headlights from vehicles traveling around the project site, could adversely affect wildlife use of Yosemite Slough. Lighting in and adjacent to more natural areas on the Project site, including Yosemite Slough, is expected to increase as a result of the Project. Some night lighting would be required on the bridge but the effect of lighting is unclear. Artificial lighting has been demonstrated to cause changes in the physiology and behavior of a number of animal taxa; while some animals take advantage of artificial lighting to more easily detect prey at night, or take advantage of prey concentrations attracted to artificial lights, other animals are adversely affected by artificial lighting.³⁵ In more remote areas that are not already subjected to urban lighting, an increase in night lighting could disrupt behavior of animals, potentially increase predation on some nocturnal animals, and result in displacement of the most sensitive species from areas with increased lighting. However, Yosemite Slough is already subjected to some night lighting, including considerable night lighting from the stadium and parking lots during evening games at Monster Park. As a result, wildlife currently using the site are habituated to the lighting present within this urban area.

As discussed in Impact AE-7a of the Draft EIR, the final lighting design has not been completed, but the Project has developed standards for lighting in certain areas. Lighting in open space areas would be very limited and low-intensity. Area lighting would be subject to restrictions on fixture height, would be oriented toward the ground, or would be screened to minimize illumination in off-site areas such as Yosemite Slough. Headlights of vehicles using nearby roads and of buses using the bridge would be elevated above the slough, especially when on and near the bridge, and thus would not directly illuminate the aquatic and wetland habitats that are either currently present in the slough or that would be present following restoration. The increase in vehicular traffic on game days would result in a potential increase in indirect lighting of the slough by headlights due simply to the number of vehicles using their headlights that might be present, but again, these vehicles would be elevated above the slough, so that they would not directly illuminate the restored aquatic and wetland habitats. Therefore, the increase in lighting of Yosemite Slough as a result of the CP-HPS Project is not expected to be substantial.

In addition, the Draft EIR includes mitigation measures that reduce spill light and require shielding of light fixtures to reduce light pollution (refer to mitigation measures MM AE-7a.1 through MM AE-7a.3). Mitigation measure MM AE-7a.1 restricts light fixture direction and prescribes state-of-the-art light fixtures and shielding; mitigation measure MM AE-71.a requires the use of low-level and unobtrusive light fixtures for landscape illumination and exterior sign lighting; and mitigation measure MM AE-7a.3 requires the Applicant to prepare a Lighting Plan for each phase of the Project to be approved by the Agency prior to issuance of building permits to minimize glare and prevent spill light.

Given the urban context in which Yosemite Slough occurs, species using the area are already habituated to some lighting. Further, wildlife use of other urban sites, including many of the reference sites discussed in the following section, indicates the ability of the species that currently use the Yosemite Slough site, and that would use it following implementation of the Restoration Project, to habituate to both fixed and vehicular lighting. As a result, Dr. Rottenborn has inferred that increased lighting is not expected to result in a significant impact to wildlife use of Yosemite Slough.

³⁵ Rich, C. and T. Longcore (eds.). 2006. Ecological consequences of artificial night lighting. Island Press, Washington, D.C.

Wildlife Use and Habitat Conditions at Reference Sites

One of the major reasons why studies of the effects of noise or lighting on wildlife conducted in other areas and situations may be difficult to apply to the Yosemite Slough bridge project is that many wildlife species are known to habituate to stimuli that do not result in obvious harm to them. Many species are known to habituate to loud noises, movement of large equipment, artificial lighting, and other human activities. Providing an extreme but relevant example, some wildlife species even tolerate airport noise to the point that wildlife control is often required at airports to minimize the risk of airplane strikes. For example, as recently as December 2009, the abundance of waterbirds foraging near runways at Oakland International Airport was so great that lethal control of some birds by United States Department of Agriculture (USDA) wildlife services officials was necessary.³⁶ These birds were habituated to the extremely loud noise of airplane landings and take-offs, focusing instead on the resources present in the waters surrounding the runways.

There are a number of locations around the San Francisco Bay area where mud flat, aquatic, and marsh habitats occur in close proximity to areas of high-volume traffic, noise, and human use, and where wildlife (particularly birds) use areas in spite of this high human activity due to the high habitat quality those areas provide. Dr. Rottenborn concludes such areas serve as potential reference sites for the Yosemite Slough bridge in terms of allowing for at least some prediction of the effects of the bridge structure, traffic, and human use on wildlife use and habitat conditions at Yosemite Slough, and on the potential for wildlife using Yosemite Slough (either in its current or restored condition) to habituate to the bridge and vehicular use of the bridge. These reference areas, which Dr. Rottenborn has visited on a number of occasions to observe birds, include:

- Coyote Creek Reach 1A waterbird pond and South Coyote Slough (San Jose): heavily used by waterfowl, shorebirds, and gulls even though it is 500 feet from the Newby Island Sanitary Landfill entrance (heavily used by garbage trucks 6 days/week), 750 feet from Interstate 880, 150 feet from a two-lane interstate frontage road, and 100-200 feet from a recycling facility and associated storage loud that is subject to loud noise from heavy equipment, recycling operations, and even noisemakers intentionally employed to attempt to deter nuisance birds
- San Jose-Santa Clara Water Pollution Control Plant (San Jose): the settling ponds, which are bisected by numerous levee roads, support large numbers of waterfowl, shorebirds, and other birds despite frequent movement of noisy, heavy equipment throughout the plant (within 10 feet or less of the edges of the settling ponds)
- Pond A16, New Chicago Marsh, and Triangle Marsh (Alviso): Pond A16 and New Chicago Marsh support large numbers of waterfowl, gulls, and shorebirds, including nesting terns on islands and nesting snowy plovers in salt pannes, and Triangle Marsh supports high densities of marsh-nesting species, despite the proximity of these areas to active railroad tracks and recreational use of surrounding levees
- Shoreline Park (Mountain View): Shoreline Lake, the Coast Casey Forebay, Charleston Slough, and the Palo Alto Flood Control Basin support large numbers of waterbirds and marsh birds despite very heavy use by pedestrians, cyclists, golfers, and (on Shoreline Lake) boaters and despite the fact that this complex of habitats is bisected by a number of trails that are heavily used by pedestrians and cyclists

³⁶ <http://www.ktvu.com/news/22091151/detail.html>.

- Palo Alto Baylands (Palo Alto): supports high densities of a variety of waterbirds and marsh species despite heavy recreational use and its proximity to an adjacent landfill (with an entrance less than 150 feet from tidal marsh), water treatment plant (120 feet from tidal marsh), and airport taxiways and runways 75-100 feet from tidal marsh and lagoons
- South Bayside System Authority Plant (Redwood City): ponds adjacent to this water treatment plant, and encircled by a road used by trucks and other vehicles less than 10 feet from pond edges, with an adjacent dog park 65 feet from pond edges, support very high densities of waterfowl and shorebirds, as well as nesting terns on islands and nesting herons and egrets in ornamental trees around the plant, despite plant noise and frequent movement by trucks
- Crissy Field (San Francisco): supports at least locally high numbers and diversity of waterbirds despite intensive recreational use
- East San Francisco Bay shoreline along I-580 north of the Bay Bridge: heavily used by foraging shorebirds on lower tides, even though I-580 traffic lanes are within 50 feet of the bay shoreline

At all of these locations, heavy wildlife use (particularly by birds) occurs in close proximity to loud noise, high human activity, and/or heavy vehicular traffic because these birds are habituated to such activities and because the natural resources provided by the habitats on these reference sites are important to birds. These reference locations provide important, high-quality habitat for these species despite a level of human activity and noise similar to or even exceeding that expected at Yosemite Slough. Based on the habituation to such human activity by birds that he has observed at these reference locations, Dr. Rottenborn has inferred that bird use of Yosemite Slough, either in its current or restored condition, is not expected to be substantially reduced as a result of everyday, operational effects of noise, movement of buses, or human activity on the Yosemite Slough bridge. Birds at these reference locations do respond to sudden or excessive stimuli, such as sudden and unusually loud noises or very close approach by humans or dogs, by flushing or otherwise altering their behavior. Similarly, sporadic, temporary increases in disturbance levels at Yosemite Slough (e.g., unusually heavy traffic or noise occurring during the 10-12 game days/year) would likewise be expected to have a greater effect than everyday noise and vehicular movements occurring on non-game days.

There are also locations within the Bay area where birds regularly fly across roads that are wider and/or more heavily used by traffic than the Yosemite Slough bridge would be, even on game days. Such locations include the following:

- Highway 92 in Hayward, where waterbirds move between the Eden Landing Ecological Reserve on the south side of the highway and Hayward Regional Shoreline on the north (and between the Bay mudflats adjacent to each of these two areas) by flying over the highway
- Highway 84 in Menlo Park and Fremont, where birds move between ponds and along the bayshore on both ends of the Dumbarton Bridge by flying over the highway
- Highway 37 west of Vallejo, where birds move between San Pablo Bay to the south and the Napa River and associated marshes to the north by flying over the highway
- Highway 101 southeast of Mill Valley, where birds move between the portions of upper Richardson Bay on either side of the highway by flying over the highway

In each of these cases, birds fly across highways that are much more heavily traveled than the Yosemite Slough bridge would be as they move between important foraging areas on both sides of these roads. Based on these examples, Dr. Rottenborn has inferred that waterbirds using Yosemite Slough, either in its present

condition or after implementation of the Restoration Project, would move between Yosemite Slough and South Basin/San Francisco Bay areas to the east if they perceive the habitat value of Yosemite Slough to be high enough.

Further, there are a number of locations in the Bay area where marsh habitat exists immediately adjacent to freeways supporting much higher traffic volumes, and thus much higher exhaust emissions, than would be supported by the Yosemite Slough bridge. Such examples include:

- Palo Alto Flood Control Basin along Highway 101 and its frontage road in Palo Alto
- Marshes near Inner Bair Island along Highway 101 in Redwood City
- Tidal salt marsh at the Bay edge at the I-80/I-880 junction at the east end of the Bay Bridge in Oakland
- Tidal marsh along Highway 37 at the San Pablo Bay National Wildlife Refuge

Traffic volume is consistently heavier on these highways than would be the case on the Yosemite Slough bridge even on game days, yet marsh vegetation persists in these reference areas. Based on these examples, Dr. Rottenborn has inferred that the much lower overall exhaust emissions that would result from traffic use of the Yosemite Slough bridge, even on game days, would not result in substantial adverse effects on habitats of the slough, including tidal salt marsh that would be restored by the Restoration Project.

Expected Effects of the bridge on Wildlife Use of Yosemite Slough

Prior to construction of the bridge, pre-construction surveys for nesting birds would be conducted in accordance with MM BI-6a.1 if construction commences between February 1 and August 31, and buffers around active nests would be maintained to avoid impacts to such nests. Thus, bridge construction would not result in the loss of active nests of birds in surrounding areas such as the Yosemite Slough restoration site. To clarify that MM BI-6a.1 pertains to construction in Yosemite Slough, the text for Impact BI-6b, on page III.N-75 of the Draft EIR, has been revised as follows:

Similar to development at Candlestick Point, ... Implementation of mitigation measures MM BI-6a.1 and MM BI-6a.2 (as detailed in Impact BI-6a), both at HPS Phase II and Yosemite Slough, would reduce the effects of Project construction and implementation on nesting special-status and legally protected avian species to less-than-significant levels.

During construction of the bridge, construction equipment and personnel would be operating not only within the bridge footprint, but in adjacent areas on either side of the bridge. Potential construction-related impacts of the Project, including the bridge, are discussed in Impact BI-2 through Impact BI-15b of the Draft EIR. The number of pieces of heavy equipment and construction personnel and the magnitude of construction-related noise (e.g., pile driving) and vibrations associated with these construction activities are expected to disturb wildlife in Yosemite Slough and adjacent portions of South Basin while construction is ongoing. Wildlife use of the slough, at least in areas relatively close to the construction area, are expected to be low during the construction period, as few species would tolerate such high levels of disturbance. However, such activities are temporary in nature, and construction-related disturbance of wildlife would not have long-term effects on wildlife use of Yosemite Slough and South Basin. Small mammals, reptiles, and slender salamanders that are displaced or disturbed by construction activities are expected to retreat to areas farther from the bridge, where habitat would be present to support these species while construction is ongoing. After construction has been completed and habitat within temporary impact areas restored,

these small animals are expected to eventually move back into areas disturbed during bridge construction and occupy habitat closer to the bridge. Being more mobile, birds are expected to respond more readily to construction, both by moving away from areas of high disturbance during construction and quickly moving back in to occupy suitable habitat after construction has been completed.

Previous studies reported in the literature provide no clear evidence as to the longer-term effects of the bridge on wildlife use of Yosemite Slough. While studies conducted under circumstances different from those present on the Project site document adverse effects of noise and artificial lighting on wildlife under those specific circumstances, the phenomenon of habituation by wildlife to stimuli such as noise, lighting, and movement of people and vehicles is well documented. As an expert on birds of the Bay area, Dr. Rottenborn has observed the results of such habituation in the form of heavy wildlife use of high-quality habitat areas, such as the reference sites listed in the previous section, despite noise and human activity that in some areas exceeds what would occur on the Yosemite Slough bridge. Based on relevant literature coupled with extrapolations from observations of wildlife throughout the Bay area, the expected effects of the bridge on wildlife use of the slough, as described in the following paragraphs (which pertain to the effects of the bridge either under existing conditions or after implementation of the Restoration Project) can be assumed.

There would likely be some adverse impacts from the bridge on wildlife species, especially birds, during game days. However, these game-day impacts are very limited in area and temporary, being of much shorter duration than the ongoing human activities to which birds have habituated on the reference sites listed above. While the local impact on waterbird use of the slough would be expected, no substantial effect on the regional abundance of such species would occur, for two reasons:

1. There are numerous other locations throughout the Bay area that can be used by nonbreeding waterbirds as foraging and loafing sites. Many waterbirds using the Bay during migration and winter make regular movements between foraging and loafing or roosting sites, or between high-tide and low-tide foraging areas, and they are thus capable of making regular, fairly long-distance movements. If waterbirds are displaced from Yosemite Slough, they would be able to move to other locations providing suitable habitat.
2. Waterbirds using Yosemite Slough represent a very small fraction of the regional abundance of these species, because waterbirds expected to use the slough regularly are regionally common species, and because Yosemite Slough represents such a small proportion of the regional availability of waterbird habitats. For example, Yosemite Slough currently provides approximately 10 acres of tidally influenced habitats (primarily aquatic and mud flat habitat, with some vegetated tidal marsh), and the Restoration Project would restore 12 acres more of tidally influenced habitat (primarily vegetated wetlands).³⁷ In comparison, the San Francisco Bay estuary provides approximately 262,000 acres of baylands (which include 30,000 acres of tidal mud flats and 40,000 acres of tidal marsh) and 180,000 acres of shallow bay/channel habitat.³⁸ Combined with the limited and very temporary effect of game-day impacts, the impact on the Yosemite Slough would not be a substantial adverse effect.

³⁷ California State Parks Foundation. 2006. Initial Study/Mitigated Negative Declaration. Candlestick Point State Recreation Area Yosemite Slough Restoration Project.

³⁸ Goals Report. 1999. Baylands Ecosystem Habitat Goals. A report of habitat recommendations prepared by the San Francisco Bay Area Wetlands Ecosystem Goals Project. First Reprint. U.S. Environmental Protection Agency, San Francisco, CA/San Francisco Bay Regional Water Quality Control Board, Oakland, CA.

Such habitat is valuable wherever it occurs, for a variety of reasons, which is why the Draft EIR required mitigation for impacts resulting from direct fill and shading of wetland, aquatic, and mud flat habitat.

Other wildlife taxa, such as mammals and reptiles, may show greater avoidance of areas close to the bridge on game days than during non-game days. On game days, they may thus move to areas either within the Restoration Project site or on the east side of the bridge that are farther from the bridge, or they may spend more time in the cover of vegetation during game days. Movement by such species under the bridge may be inhibited, or in the worst case, may cease altogether on game days. However, due to the limited mobility of these species, they are not expected to move long distances, and they are expected to return to areas closer to the bridge, increase their activity in areas closer to the bridge, and continue movement under the bridge after game-day activity subsides. If noise and vibrations are great enough, fish may also avoid areas immediately adjacent to the bridge during game days, but such effects would be short-lived, and on non-game days, fish are expected to continue to move in and out of the slough by swimming under the bridge.

On non-game days, wildlife species are expected to make greater use of the areas under and immediately surrounding the bridge. During high-water conditions, fish would continue to swim under the bridge and use adjacent aquatic habitats as they currently do, and it is expected that swimming and diving birds would do the same to some extent given the height of the bridge above the water. During low tides, shorebirds, gulls, and other waterbirds are expected to use mud flats adjacent to the bridge. Terrestrial animals can continue to move along the shoreline, beneath the bridge, and marsh animals, which are expected to dominate the largely vegetated marsh that is planned for the portions of the restoration area closest to the bridge, would use tidal salt marsh areas there. Thus, as has been observed at a number of other sites around the Bay area, wildlife is expected to largely habituate to the bridge and its use, and the bridge would not conflict with the Restoration Project's objective of improving local foraging and roosting habitat for migratory and resident birds (or any of its other objectives).

However, some reduction in wildlife use of the bridge footprint and immediately adjacent areas, relative to the existing condition or the condition anticipated following Yosemite Slough restoration, is expected to occur. The movement of and noise associated with people and vehicles would likely have some effect on wildlife use of the immediate vicinity of the bridge. In many areas around the Bay, Dr. Rottenborn has observed waterbirds maintaining a buffer between themselves and shoreline edges supporting roads, tall vegetation, or structures. It is possible that this buffer is maintained due to the perceived threat from humans or vehicles moving along the shoreline, the perceived threat from predators that may be hiding along the shoreline, or a defense against the perceived threat from predators that may be blocked from view by structure along the shoreline. The presence of the Yosemite Slough bridge may impede the line of sight between wildlife on the ground or in the water and more distant areas; some animals may maintain some distance between the bridge and their activities out of concern that they would not be able to detect approaching predators when they are too close to the bridge. Collectively, these factors are expected to result in a localized reduction in the number of individuals of some species in areas immediately adjacent to the bridge.

Bird use of the nesting islands proposed to be created as part of the Restoration Project may be affected by the presence of the bridge to some degree as well, although the physical separation of these islands from the bridge limits adverse effects. However, as discussed previously, it is unlikely that these proposed nesting islands would provide high-quality nesting habitat for many bird species, particularly waterbirds. As a result,

the presence of the bridge is not expected to result in substantial effects to any waterbirds, and particularly any nesting waterbirds, using these islands.

Any reduction in use of the immediate bridge footprint, the roads between the proposed stadium and Candlestick Point, and their vicinity, compared to existing conditions and to potential conditions following Yosemite Slough restoration, is not expected to rise to the level of a significant impact, for reasons discussed in Impact BI-2 (page III.N-50) of the Draft EIR and for the reasons described for game-day circumstances above. The area in which the abundance of species such as waterfowl, shorebirds, or marsh bird species could potentially be reduced represents an extremely small impact on habitat for such species that is available in the region (which, on the scale of habitat use by these species, would be considered the entire San Francisco Bay area). Most of the waterbird species that use Yosemite Slough do not breed there, and most of the individual waterfowl, gulls, terns, shorebirds, cormorants, and grebes that might forage in Yosemite Slough originate from breeding sites outside the Bay Area. While non-breeding habitat is important to these species, the abundance of these species in the region (i.e., the Bay Area) is not necessarily a strict function of habitat availability in the Bay Area; conditions and factors associated with breeding grounds and migratory routes affect these species' populations in general, so that the number of individuals that use the Bay Area may not be limited by the availability of habitat in the region. In that case, the loss of a small proportion of habitat available to these species in the Bay Area would not be expected to result in any measurable reduction in the regional abundance of these species. Even assuming that regional availability of foraging or roosting habitat is limiting regional populations of these waterbird species, the proportion of the regional populations of these species that would be adversely affected by the bridge would be extremely small, and this impact does not rise to the threshold of a significant impact. Similarly, all the mammals and reptiles (and the single amphibian species) occurring in the terrestrial portions of the site are regionally abundant and widespread species. As a result, any reduction in abundance of these species that may occur as a result of the bridge would have a negligible effect on the regional abundance of these species, and thus the impact to these species would be less than significant.

Conclusion

There is no substantial evidence that special-status species are significantly impacted by the Project. As indicated in the Draft EIR and in this master response, impacts to wildlife in Yosemite Slough are less than significant because the species involved (1) are a small number of non-listed individuals, (2) represent a very small fraction of large regional abundance, (3) would not substantially affect the recovery or conservation of the species, and (4) are mostly locally common and abundant in the region. In addition, the localized impacts on the Yosemite Slough are minimally invasive, and the effects are temporary, mitigated, or insignificant to a real extent. For these reasons the biological impacts of the Project on Yosemite Slough are determined to be less than significant with implementation of mitigation measures proposed in the Draft EIR.

■ Master Response 4: Purpose and Benefits of the Yosemite Slough Bridge

Introduction

Overview

This master response addresses comments made questioning the need for the Yosemite Slough bridge.

This response is organized by the following topics:

- Introduction
- Transportation Plan Objectives and Regulatory Context
- Discussion of the Yosemite Slough Bridge and Alternative Routes

Commenters

Commenters who addressed this issue include:

- Federal, State, Regional, Local Agencies, Boards, and Commissions
 - > California State Parks (86-12)
 - > Planning Commissioner Antonini (SFPC-120)
 - > San Francisco Bay Conservation and Development Commission (BCDC) (103-15)
- Organizations
 - > Arc Ecology (82-28, 82-29, 82-32, 82-33, 82-34, 82-45, 82-46, 82-48, 82-50, 82-53, 82-55, 82-56, 82-57, 82-62, 82-63, 82-64, 82-65, 82-66, 82-67, 83-37, 83-38, 83-42, 83-45, 83-48, 83-54, 83-55, 83-56, 83-57, 83-58, 83-59, 84-20, SFPC-127)
 - > California State Parks Foundation (47-4, 47-7, 47-14, 47-31, 47-53, 47-58, 47-73, 47-104, 47-110, 47-111)
 - > Golden Gate Audubon Society (81-4, 81-5)
 - > San Francisco Tomorrow (64-3)
- Individuals
 - > Jaron Browne (SFPC-24)
 - > Linda Richardson (SFPC-4)
 - > Mishwa Lee (61-2)
 - > Robert Simms (51-2)
 - > Saul Bloom (SFPC-127, SFPC-136)

Comments received on the Draft EIR related to the Yosemite Slough bridge with respect to transportation issues were focused almost exclusively on issues addressed in Section III.D (Transportation and Circulation) of the Draft EIR; therefore, this master response provides further discussion to update and augment the analysis of the issues presented in Section III.D.

Comment Summary

This master response responds to all or part of the following comments: 47-4, 47-7, 47-14, 47-31, 47-53, 47-58, 47-73, 47-104, 47-110, 47-111, 51-2, 61-2, 64-3, 81-4, 81-5, 82-28, 82-29, 82-32, 82-33, 82-34, 82-45,

82-46, 82-48, 82-49, 82-50, 82-53, 82-55, 82-56, 82-57, 82-62, 82-63, 82-64, 82-65, 82-66, 82-67, 83-37, 83-38, 83-42, 83-45, 83-48, 83-54, 83-55, 83-56, 83-57, 83-58, 83-59, 84-20, 86-12, 103-15, SFPC-4, SFPC-24, SFPC-127, SFPC-120, SFPC-127, SFPC-136.

Summary of Issues Raised by Commenters

- Pedestrian and bicycle circulation between Candlestick Point and Hunters Point Shipyard can be accommodated by other routes that do not involve a new bridge
- Alternate alignments are available for the BRT that do not involve a new bridge
- The same Stadium ingress and egress capacity is available by other means than the bridge

Response

Introduction

Due to geography, topography and the current extent and condition of infrastructure, Candlestick Point and the Hunters Point Shipyard are comparatively isolated from the transit and roadway networks serving the City and region, and less accessible for pedestrians and bicyclists. These deficiencies have been identified as top community concerns in the extensive local and citywide planning efforts for the Project - and across southeastern San Francisco more generally.³⁹

As part of the City's transportation goals and plans, and to serve the increased travel demands from the project, a new Bus Rapid Transit (BRT) network has been proposed. BRT service generally provides faster and more reliable service compared to traditional local bus routes through the use of transit-exclusive lanes, signal priority treatments, pre-paid ticketing, and generally reduced conflicts with other vehicles. In the case of the Project, BRT service would link the area with the Bayview, Executive Park, Brisbane Baylands, and Visitacion Valley neighborhoods, and connect to Caltrain, BART and the T-Third light-rail and numerous Muni bus lines. In developing the Project's overall Transportation Plan, a key element of the overall system would be to provide the most direct route of travel for the BRT system, as well as bicycles and pedestrians, between the Hunters Point Shipyard, Candlestick Point, and destinations to the west.

A key goal of the Transportation Plan is also to provide effective ingress and egress for a possible new stadium site for the San Francisco 49ers. The NFL has stressed that an essential feature of any stadium access plan is the ability to clear the stadium parking lots within an hour or less. The City is also concerned that residential areas are not unduly impacted by stadium traffic.

The Draft EIR concluded that both these of these goals could best be realized by the construction of the Yosemite Slough bridge. The Yosemite Slough bridge would be 902 feet long, linking Candlestick Point and the Hunters Point Shipyard. To accommodate transportation needs for the stadium development alternative, as noted throughout the Draft EIR, the Bridge would be 81 feet wide. It includes an east-side bicycle/pedestrian path, two exclusive BRT lanes, and a west-side bicycle/pedestrian path that would be converted to four lanes of stadium automobile traffic on game days only. Without a stadium, the west-side path would be eliminated for a narrower 41-foot-wide bridge with one east-side bicycle/pedestrian path and two BRT lanes.

³⁹ Results of community outreach associated with the *Bayview Hunters Point Neighborhood Transportation Plan*, San Francisco County Transportation Authority, February 2010.

This master response includes a detailed description of the bridge and a discussion of alternatives to a bridge considered, in terms of meeting the BRT, pedestrian, cyclist, and game-day traffic goals.

Transportation Plan Objectives and Regulatory Context

Consistent with the policies endorsed by San Francisco voters with the passing of Proposition G in June 2008,⁴⁰ the Project's Transportation Plan was developed to improve integration of the Candlestick Point and Hunters Point Shipyard sites with each other, with the rest of the Bayview neighborhood, and with other regional transportation facilities. Further, the Transportation Plan was developed to provide the necessary infrastructure for conditions with a new NFL stadium in the Hunters Point Shipyard site.

The Transportation Plan was also developed within the context of other policies already adopted by the City of San Francisco, including the City's "Transit-First" policy, which consists of ten principles that generally promote the importance of transit use, bicycling, and walking as alternatives to travel by private automobile.

These guiding principles were used to formulate the Transportation Plan, which generally prioritizes transit, walking, and bicycling between the Candlestick Point and Hunters Point sites, and between the Project and the rest of the Bayview, and provides adequate automobile access for a new NFL stadium.

Discussion of the Yosemite Slough Bridge and Alternative Routes

The Draft EIR concluded that the Yosemite Slough Bridge would best achieve three primary transportation functions, consistent with the overall City goals. First, the Bridge's BRT lanes allow a more direct route (approximately $\frac{2}{3}$ mile shorter) between the Project neighborhoods and to and from BART, Caltrain, Muni light rail and local buses than an alternative route around the slough. Secondly, the Bridge provides pedestrians and cyclists a more direct connection between Hunters Point Shipyard and Candlestick Point, avoiding a diversion through or near the industrial area around Yosemite Slough not well suited for other types of traffic. Finally, the bridge provides automobile access between the NFL stadium site and US-101, via a planned reconstructed interchange at Harney Way, which is the only route that can meet NFL standards for traffic egress; other routes would create substantial risks that the NFL would not approve a stadium in the area.

For each of these three transportation functions, the analysis determined that the Yosemite Slough bridge would provide a superior and necessary function compared to alternatives without the bridge. A detailed discussion of each of these transportation functions, and why alternatives, such as routing transit, bicycles, pedestrians, and game day automobile traffic around Yosemite Slough, are not as effective in meeting City transportation goals, is provided below.

1. Bus Rapid Transit (BRT) Service

As described in the Draft EIR, the proposed bridge would serve a new bus rapid transit (BRT) route traveling between the Hunters Point Shipyard and the Balboa Park BART Station, through Candlestick Point, serving the Project and all existing neighborhoods along the Geneva Avenue corridor. This corridor was identified

⁴⁰ Proposition G, passed by San Francisco voters in June 2008 includes Policies 4(2) and 4(5), which generally state that the Project should provide transportation and associated infrastructure that integrates the Project with the Bayview neighborhood as well as integrates the Candlestick Point and Hunters Point Shipyard sites with each other.

in the City's recent Transit Effectiveness Project (TEP) as part of the City's Rapid Network, which is comprised of high-volume transit corridors that serve as the backbone to the City's transit network.

The Project would extend transit service from the Geneva Avenue corridor into the Project site, providing crucial linkages between the Project and regional transit services, including Caltrain and BART, as well as other local routes that connect to the Geneva Avenue corridor. As shown on Figure III.D-9 (Proposed Transit Improvements), Draft EIR page III.D-49, the Project would extend or increase service on seven total transit routes that would serve the Project site. The transit routes that are planned to serve the Project site were selected because they would generally radiate out in different directions from the Project site, providing comprehensive service throughout the City. As part of this strategy, the BRT route would provide the only direct connections between the Project and Caltrain.^{41,42}

A fundamental component of BRT service is direct, fast, and reliable travel in dedicated right-of-way, typically with signal priority given to the BRT vehicles. When these elements are combined, the BRT service takes on a higher-quality character than typical local bus service. In order to provide such a service in the Project study area, transit travel along the BRT corridor has been prioritized, including providing dedicated right-of-way, transit signal priority, implementing proof-of-payment systems to minimize boarding times, and providing the most direct route of travel between key destinations.

To provide a rapid connection between the Hunters Point Shipyard and points to the west, including Candlestick Point, the Bayshore Caltrain station, the T-Third light-rail line, and the Balboa Park BART station, in a manner consistent with the City of San Francisco's Transit First Policy, two primary options were considered: a new bridge over Yosemite Slough and a route around Yosemite Slough using an abandoned railroad right-of-way owned by the Navy. One variation of the potential route around Yosemite Slough is illustrated in Figure VI-1 (Alternative 2 Circulation Plan Right-of-Way for Bus Rapid Transit), which is further discussed and presented in Response to Comment 82-27. Other routes have similar or greater impacts.

The potential BRT routes (either across a new bridge or on a route around Yosemite Slough) were compared to determine whether the route around Yosemite Slough, avoiding a new bridge, would meet

⁴¹ Regional planning studies have proposed an extension of Caltrain from its current northern terminus at the 4th Street / King Street station to Downtown San Francisco. If this extension is constructed, both the CPX and HPX express bus lines would provide direct service from the Project site to Downtown San Francisco, where riders could technically transfer to Caltrain. However, this would require many passengers to travel north from the Project into Downtown San Francisco, and then travel south on Caltrain to their destination. Because this would require a substantial amount of redundant travel, this is not considered a practical option, and the connection to Caltrain via the BRT route would remain the only viable connection from the Project.

⁴² Since the closure of the Paul Avenue Caltrain Station in 2005, the San Francisco County Transportation Authority (SFCTA) has initiated a study of a potential new station at Oakdale Avenue. If constructed, this new station would also be served by two transit lines that also serve the Project site: the 24-Divisadero and the 44-O'Shaughnessy. There has been no environmental analysis of this new station, nor has there been a commitment of funding to construct or provide service to this station. However, even if a new station at Oakdale Avenue were constructed, the Bayshore Station is likely to be a more desirable connection to Caltrain from the Project. Due to the extensive amount of relatively high-density, transit-oriented development planned around the Bayshore Station and the anticipated extension of the T-Third light-rail line to the station, the Bayshore Station is likely to have more robust and higher-frequency service than what would likely be provided at a new Oakdale Station. Therefore, the BRT connection to the Bayshore Station is considered a high-priority feature of the Project's Transportation Plan.

the functional requirements of BRT service. The comparisons of the two routes with respect to the Project's transit objectives are summarized below.

- **Efficient BRT travel times.** The proposed bridge would minimize BRT travel times, particularly between major development and regional transit connections (e.g., Caltrain, T-Third light-rail service, and BART). As indicated in the Draft EIR, the bridge would reduce BRT travel times by at least 5 minutes compared to a route around Yosemite Slough. The estimate of travel time around Yosemite Slough was developed based on data regarding average vehicle travel speeds provided by SFMTA. That data notes that local bus service travels an average speed of 7 miles per hour (mph), while BRT service typically travels at 10 mph or greater. Although, without the bridge, the BRT would travel in exclusive right-of-way along part of the route around the slough, due to the large number of right-angle turns through signalized intersections, the analysis assumes that the BRT would operate at speeds more similar to local bus service through this portion (i.e., 7 mph). The route across the bridge would operate more similar to typical BRT speeds (i.e., 10 mph). Because it would have no intersections, no turns, and no conflicting bicycle, pedestrian, or traffic streams, travel across the bridge, which is a straight path with no stops, may actually permit higher speeds, potentially closer to 25 mph depending on other BRT criteria.

The distance across the Yosemite Slough Bridge (from Carroll Avenue to Shafter Avenue) is approximately 0.4 mile. The distance on the route around the slough is approximately 1 mile, a difference of 0.6 mile. The travel time for the BRT route across the bridge (assuming an average 10 to 20 mph travel speed) would be approximately 1.25 to 2.5 minutes. The travel time for the BRT route around the slough (assuming an average 7 mph travel speed) would be 8.7 minutes, an increase of over 6 to 7.5 minutes.

To predict transit mode choice for this analysis, a linear regression model was developed based on travel behavior surveys of San Francisco residents.⁴³ Development of the model involved identifying independent variables that can be used to predict transit ridership based on a number of factors. The analysis found five factors that have a statistically valid relationship to a traveler's likelihood to choose transit for a particular trip in San Francisco. Those factors include drive time, parking cost, transit wait time, the number of transfers involved in the transit trip, and the transit travel time. A more detailed discussion of the methods used in the transportation analysis to forecast transit mode choice are described in Appendix K of the Transportation Study.

Based on this model, a 5-minute difference in travel time associated with the route around Yosemite Slough would result in a ridership decrease of approximately 15 percent for users of the BRT traveling to or from the Hunters Point Shipyard. As a point of reference, the US Census found that the average commute trip in San Francisco was approximately 30 minutes in 2002.⁴⁴ A 5-minute increase in travel time would result in an increase of between 15 and 20 percent to the typical commute. As noted, the proposed BRT route could be 6 to 7.5 minutes faster, enhancing these benefits.

Although the effect of adopting the route around Yosemite Slough would be substantial for those affected, they represent only a portion of the Project's total transit riders. As noted throughout the Transportation Study and the Draft EIR, the only travelers affected by the Yosemite Slough Bridge or lack thereof are those travelers who would use the BRT service to and from the Hunters Point Shipyard. Transit riders from the rest of the Project who use other transit routes would not be affected. Similarly, passengers from Candlestick Point who use the BRT to travel to points west would also be unaffected.

⁴³ *Bay Area Travel Survey*, Public Data Release #3 (Metropolitan Transportation Commission (MTC), March 2005).

⁴⁴ American Community Survey 2002, US Census Bureau.

- **BRT reliability.** Surveys conducted of transit users in San Francisco as part of SFMTA’s Transit Effectiveness Project have shown that many users view transit reliability, that is, the regularity and predictability of service, as more important than travel times. Reliability problems tend to grow over the course of a transit route. A small deviation from planned schedules at the beginning of a transit route can easily lead to a much larger deviation further along in the route. It is this phenomenon which leads to “vehicle bunching” in which a long period of time will pass with no transit vehicle arrivals at a stop, and then multiple vehicles arrive almost simultaneously.

Because of its importance in the mind of riders, reliability on the BRT route should be ensured within the Project site, particularly in the westbound direction, which would be at the start of the BRT route. Reliability problems at this location could cascade into much larger problems outside of the study area.

The proposed bridge would maximize the reliability of the BRT route by providing the most direct, conflict-free right-of-way. Even under scenarios involving use of the former Navy railroad right-of-way, travel around the slough would require travel through a primarily industrial business area and through several additional intersections, most of which would require traffic signals that, even with transit signal priority treatments, would add delays and decrease transit service reliability when compared to the exclusive right-of-way provided by the proposed bridge.⁴⁵ Further, the route would require between four and seven 90-degree turns, depending on the ultimate alignment, which require substantial slowing and are uncomfortable to passengers. Each of these elements introduces some uncertainty into the overall travel time, which affects route reliability.

Features that would degrade the BRT route with respect to service reliability and travel times would be inconsistent with the goals of implementing such service. For example, according to the *Countywide Transportation Plan* (San Francisco County Transportation Authority, 2004):

The centerpiece of the [New Expenditure Plan (NEP)] is the development of a Network of Rapid Bus and Rail Transit corridors. Together, rapid transit corridors, both at street level and underground, will create an integrated citywide network of high speed transit, resulting in increased service reliability, shorter travel times and better, seamless connectivity between transit services provided by multiple transit operators throughout the city.

Whether the Hunters Point Shipyard would be home to a football stadium, additional research & development, or additional housing, BRT must offer fast, direct, and reliable transit connections to Muni light rail, BART and Caltrain if transit is to be viable and competitive in serving these destinations. A comparison of the two routes shows that the Yosemite Slough Bridge would provide the most reliable travel times (i.e., the least variation from bus to bus) between the Hunters Point Shipyard and points west because it would introduce the least number of variables (e.g., traffic signals, street crossings, speed changes at turns, etc.).

- **BRT safety.** The safest environment for the BRT is to minimize the number of intersections the route must traverse and maximize the visibility of the system. An alternate route around the slough would require travel through a number of closely spaced intersections, increasing conflicts and the potential for collisions between the BRT and autos, pedestrians, and cyclists. A non-stop bridge with no conflicting traffic concerns would be superior.
- **BRT operating costs.** It is well known that transit agencies across the country face a constant struggle to reduce operating costs, and the SFMTA is no exception. The proposed bridge would help the SFMTA to provide this new service more cost-effectively by reducing travel times compared to

⁴⁵ Other routes around Yosemite Slough that did not traverse as many intersections were considered. However, those routes would involve construction of new roadways immediately adjacent to Yosemite Slough, which would create many of the effects to Yosemite Slough that the proposed bridge may cause. Therefore, these routes were not considered further as alternatives to the bridge.

conditions without the bridge. Due to the anticipated high frequency of service, a route around Yosemite Slough that was 5 minutes longer in travel time than a route on the proposed bridge would require additional vehicles to maintain proposed vehicle spacing. For the BRT route, which is proposed to operate at frequencies of 5 minutes between buses, an additional 5 minutes of travel time in each direction would require an additional bus in each direction for a total of two additional vehicles (capital cost of \$2.4 million) and additional operating and maintenance cost for SFMTA (approximately \$850,000 annually).⁴⁶

- **Adaptability to possible future light rail.** According to *A Vision for Rapid Transit in San Francisco* (San Francisco Municipal Railway, 2002):

Bus Rapid Transit is appropriate in corridors with high ridership where there is sufficient right-of-way to provide dedicated lanes. Bus Rapid Transit does not require as much capital infrastructure as [light-rail transit (LRT)], and may serve as the first phase of implementing light-rail transit.

One key feature of the proposed BRT route and other BRT routes currently under study in San Francisco is that they not preclude future conversion to light rail. While light rail is not currently proposed for this route, it is important to recognize this as a key transit route within the City and long-term growth and transit plans may make converting this route to light rail desirable in the future. Should SFMTA decide to pursue that course in the future, the proposed bridge would be the most compatible with light rail, by minimizing sharp turns and angles that would be required by taking alternate routes around Yosemite Slough.⁴⁷ Although the proposed route around Yosemite Slough may physically accommodate light rail, it would provide a much less desirable operating environment for light rail due to the number of turns and crossings involved, and increased construction costs.

- **Effects on local industrial businesses.** Provision of an alternate route around Yosemite Slough would likely involve using Carroll Avenue, Hawes Street, Armstrong Avenue, the former Navy railroad right-of-way, and Shafter Avenue. On most of these facilities, despite the slower travel speeds, additional turns, and additional signalized intersections, the BRT route could be provided within exclusive right-of-way without substantial changes to the subject facilities. However, to provide exclusive transit lanes and maintain mixed flow travel lanes on Shafter Avenue would require prohibition of on-street parking, which would affect existing industrial businesses that rely on the on-street parking for loading/unloading. This would be inconsistent with City policies to retain Production, Distribution, and Repair (PDR) uses. In particular, the *San Francisco General Plan* Policy 8.1 (Maintain industrial zones for production, distribution, and repair activities in the Northern Gateway, South Basin, Oakinba, and India Basin Industrial Park subdistricts) supports retention of PDR uses in the Bayview.

Alternatively, this route could involve narrowing of existing sidewalks on Shafter Avenue from 15-feet to 11-feet, which would be inconsistent with the City's Draft Better Streets Plan. Although the Project proposes exceptions to the Draft Better Streets Plan minimum recommended sidewalk widths on Ingalls Street and Innes Avenue, such exceptions are generally discouraged when other options are available. Other potential routes around Yosemite Slough using existing roadways would have similar negative effects to the adjacent industrial area.

In this case, the Yosemite Slough Bridge would help maintain existing sidewalk widths along Shafter Avenue and ensure that on-street parking/loading spaces along Shafter Avenue are maintained.

⁴⁶ Based on Transit Cost Estimation Model developed by San Francisco MTA in 2008 for use with the Transit Effectiveness Project (TEP).

⁴⁷ The current bridge designs are not proposed to be constructed to structurally support light rail since no rail is currently planned for this route; instead, the bridge could be retrofitted in the future if light rail were to be initiated.

Based on the analysis described above, the Yosemite Slough bridge was determined to be substantially superior to alternative routes around the slough and would provide the quality of service associated with bus rapid transit. Based on these findings, SFMTA has stated that the additional travel time, cost, reduced ridership, and overall effect on route reliability associated with a route around Yosemite Slough would likely impact Muni's ability to operate the service to the Hunters Point Shipyard.⁴⁸

2. Gameday Traffic Associated with New NFL Stadium

The second transportation function of the Yosemite Slough Bridge is to accommodate vehicular traffic demands associated with the proposed new NFL stadium. Despite the Project's goals of increasing transit, walking, and bicycling as primary access modes to the stadium, a substantial number of patrons will continue to arrive via automobile. Based on recent stadium projects across the country and conversations with the NFL, a parking lot clearance time of approximately one hour or less for a typical game is required. Failure to provide adequate clearance time immediately following games is unlikely to be acceptable to the NFL or to the San Francisco 49ers, and could substantially impede or eliminate the stadium alternative, a major goal of the City.

Based on the proposed parking supply and typical gameday attendance and game departure patterns (as described in the Draft EIR) the egress capacity requirement for a new stadium is 11,000 vehicles per hour immediately following a game. Individual travel lanes near the stadium could accommodate approximately 1,000 vehicles per hour provided that certain targeted traffic measures are employed. These measures include the provision of a traffic management center in the stadium and the presence of traffic control officers at key intersections. The effect would be such that traffic exiting the stadium is prioritized and intersections are manually controlled (at both stop sign controlled and signal controlled intersections), stops are minimized, and exiting traffic is generally given priority over cross traffic, i.e., traffic is waved through stop signs and signals and opposing streams of traffic are held for longer periods than normal. Under these conditions, individual travel lanes near the stadium could accommodate approximately 1,000 vehicles per hour.

Project Constraints

The section of Crisp Road between Fitch Street and Griffith Street has been designed to its maximum width of 77 feet, and could accommodate five lanes of traffic: three peak direction auto travel lanes, one off-peak auto/bus travel lane, and one peak direction transit-only lane. Transit traveling in the off-peak direction would travel in mixed-flow auto lane between Griffith Street and Fitch Street.

Widening Crisp Road to the south to accommodate additional travel lanes would involve acquisition of property, demolition of existing buildings, and disruption to existing businesses, and is not considered feasible. Crisp Road cannot be widened to the north without major earthwork due to a large hill, which is not considered feasible. Converting the westbound transit-only lane on this section of Crisp Road to mixed-flow to accommodate additional vehicular traffic would violate the City's Transit First policy, which generally calls for prioritizing transit circulation over private autos.⁴⁹ Therefore, no additional auto travel

⁴⁸ Personal communication with Peter Albert, Manager, SFMTA Urban Planning Initiatives Program and Peter Strauss, Manager, SFMTA Muni Service Planning (since retired)

⁴⁹ A transit-only lane is more important in the westbound direction in the post-game scenario because that is the direction that most transit, including private shuttles, regular Muni service, and gameday express service would be traveling. There would only be minimal transit service traveling to the stadium in the eastbound direction immediately following games, and therefore, providing a dedicated travel lane for transit in this direction for a short distance is less vital.

lanes can be provided on Crisp Road, between Fitch Street and Griffith Street, and no additional traffic could use this route under any alternate plan.

The Draft EIR Transportation Plan

To meet the NFL's requirements, the Transportation Plan has been designed to accommodate 11 exiting travel lanes. Draft EIR Figure III.D-13 (Stadium Game Day Traffic Control Plan) illustrates the exiting plan for post-game conditions at the stadium. To the north, Innes Avenue provides egress for 4,000 vehicles per hour via four outbound (away from the stadium) lanes and one inbound (toward the stadium) lane. The inbound lane is necessary to provide vehicular access to non-stadium development at the Hunters Point Shipyard and does not affect the egress calculations. To the south, Crisp Road could accommodate seven exiting lanes, each also serving approximately 1,000 vehicles per hour, for a total of 7,000 vehicles in the hour immediately following games.

Under the Transportation Plan, three of the seven lanes on Crisp Road travel past Fitch Street, turning south on Griffith Street, west on Thomas Avenue, and south again on Ingalls Street. One of these three lanes then turns west on Carroll Avenue and exits onto Third Street; the other two lanes continue down Ingalls Street, turn west on Gilman Avenue, then exit to Third Street. Both the Carroll Avenue and Gilman Avenue exits onto Third Street will likely have capacities of less than 1,000 vehicles per hour per lane due to conflicts with the T-Third light-rail service and relatively higher cross-traffic volumes along Third Street that must be served.

The remaining four lanes coming from Crisp Road travel south on Fitch Street, cross the slough on the bridge, and intersect with Arelious Walker Drive south of the slough. These four lanes continue on Arelious Walker Drive until exiting onto US-101. The Transportation Plan closely approximates the NFL's egress requirements.

The comments to the Draft EIR, in addition to independent analysis, identify two alternative routes to provide vehicular egress from the stadium. Neither of the alternatives includes the use of a bridge. The alternatives all maintain the use of the Innes Avenue route included in the Transportation Plan. As noted, Innes Avenue will accommodate four lanes of traffic allowing 4,000 vehicles per hour to exit to the north. Thus, in order to meet the NFL standards, a viable alternate plan must provide for 7,000 vehicles to exit the stadium to the south and west within approximately an hour. The alternatives are discussed below.

Alternate Route 1: South on Fitch Street and West on Other East/West Streets between Palou Avenue and Shafter Avenue

The Yosemite Slough Bridge would not be constructed under this option. Innes Avenue would still provide an egress capacity of 4,000 vehicles per hour. Likewise, the Crisp Road-to-Griffith Street-to-Thomas Avenue route would remain unchanged from the Transportation Plan and would provide egress for 3,000 vehicles per hour. Mitigation measure MM TR-23 would be implemented, and Palou would be widened accordingly to accommodate two westbound lanes of post-game traffic in addition to a transit-only lane in each direction. The remaining four (of seven) lanes on Crisp Road would turn south on Fitch Street, which would connect to four east-west streets: Palou Avenue, Quesada Avenue, Revere Avenue, and Shafter Avenue.

Palou Avenue

Under this alternative route, on non-game days, Palou Avenue would have one auto travel lane in each direction, in addition to transit-only lanes. On game days, both auto travel lanes could be converted to peak direction lanes, and Palou Avenue could handle two lanes of stadium egress traffic. This traffic on Palou Avenue would ultimately be destined for the Harney Way interchange to the south, or other US-101 interchanges to the west. If the traffic were bound for Harney Way, it would likely turn south onto Third Street from Palou Avenue. As noted in the Transportation Plan, travel lanes crossing or turning onto Third Street would have a capacity of less than 1,000 vehicles per hour due to the signal priority given to light-rail vehicles and substantial vehicular traffic on Third Street.

This route relies on the implementation of MM TR-23, which requires the widening of Palou Avenue. MM TR-23 was identified as feasible to mitigate the impacts to transit travel times due to overall congestion, although it holds certain drawbacks. Specifically, it would increase pedestrian crossing distances, narrow sidewalks, and create a less desirable environment for pedestrians and residents of Palou Avenue. While these trade-offs were considered acceptable for purposes of improving transit travel times (and consistent with the City's Transit First policy), they would not be considered acceptable or consistent with the City's Transit First policy for purposes of accommodating additional vehicular traffic to or from the new stadium. If implemented as a project element to serve stadium traffic, this measure might be required sooner than if it were simply being used to mitigate the significant transit impacts identified in the Draft EIR. While mitigation measure MM TR-23 could provide a modest improvement to auto exit capacity, it would come at the expense of the pedestrian realm along Palou Avenue.

Quesada Avenue, Revere Avenue, and Shafter Avenue

Sending traffic down Quesada Avenue, Revere Avenue, or Shafter Avenue would require traffic to cross Griffith Avenue, conflicting with that street's ability to carry traffic from the stadium. These lanes would need to queue while traffic from Griffith passed, and then traffic on Griffith would need to queue while these three lanes cleared. Although this bottleneck might allow traffic ahead of this section to clear, it would still decrease the pace of egress traffic and the capacity of each of the affected routes.

This problem might potentially be resolved if another route were identified beyond Crisp Road and Fitch Street, such as Hawes Avenue, to provide additional vehicle capacity to the east-west streets traveling through the Bayview toward Third Street. Such a scenario, however, would require six lanes of traffic to continue on Palou past Griffith Street: the four lanes that would run on Palou and the additional two lanes that would exit on Hawes or some other identified street. Creating six lanes of traffic in this area would likely require condemnation and is not considered feasible.

Alternate Route 1 would, therefore, accommodate 4,000 vehicles per hour to the north along Innes Avenue and 3,000 vehicles per hour to the south along the Crisp Road-to-Griffith Street-to -Thomas Avenue route segment. It is not clear how many more vehicles would be accommodated under Alternate Route 1 associated with vehicles using Quesada Avenue, Revere Avenue, or Shafter Avenue, because of the cross traffic conflict at Griffith Avenue. It is reasonable to assume that there would be an overall increase in traffic flow, but the increase would not approach 1,000 vehicles per hour per lane. An optimistic calculation might peg the combined additional vehicle flow from these routes at 2,000 cars per hour. At a total of 9,000 vehicles per hour, Alternate Route 1 would be 18 percent lower than the required 11,000 vehicles per hour (based on the NFL's criteria).

Alternate Route 2: Use Rail Right-of-Way around Yosemite Slough for Auto Traffic

The Yosemite Slough Bridge would not be constructed under this option. Innes Avenue would still provide an egress capacity of 4,000 vehicles per hour. Likewise, the Crisp Avenue-to-Griffith Street-to-Thomas Avenue route would remain unchanged from the Transportation Plan and would provide egress for 3,000 vehicles per hour. Mitigation measure MM TR-23 would be implemented, and Palou would be widened accordingly to accommodate two westbound lanes of post-game traffic in addition to a transit-only lane in each direction.

Under this route, two additional lanes of traffic (2,000 vehicles per hour) are routed south along Fitch Street, generally following the abandoned rail right of way, formerly used by the US Navy. The two lanes of traffic follow the abandoned rail line around the western edge of the slough while heading south. After passing the slough, these two lanes of traffic would turn east down either Yosemite Avenue or Armstrong Avenue. In either case, the two lanes would continue east and eventually turn south to intersect with Arelious Walker Drive.

The three lanes of traffic coming from Thomas Avenue, turn south at Ingalls Street just like the route described in the Transportation Plan. The lanes then split at the intersection of Ingalls Street and Carroll Avenue. Two of the lanes head east on Carroll Avenue; these lanes eventually join the two lanes of traffic that followed the abandoned rail line around the slough. Thereafter, the combined four lanes of traffic exit south on Arelious Walker Drive, the same as the Transportation Plan. Routing traffic west down Carroll Avenue carries the benefit of not exiting traffic onto Third Street which, as described in the Transportation Plan, conflicts with the operation of the T-Third Rail Service. The third lane of traffic travelling on Ingalls Street continues southbound before turning west on Gilman Avenue, and then exiting onto Third Street. This lane of traffic would experience capacity of less than 1,000 vehicles per hour at Third Street because of conflicts with the T-Third light-rail service and substantial cross-traffic on Third Street.

These five lanes of traffic—the three lanes on Ingalls Street and the two lanes on the abandoned rail line—could accommodate 5,000 vehicles per hour. As previously mentioned, the Innes Avenue route to the north provides egress exiting capacity of 4,000 vehicles per hour. Thus, together these two routes accommodate an egress capacity of up to 9,000 vehicles per hour. The final egress needs of 2,000 vehicles could not be fully met through the use of mitigation measure MM TR-23, under which Palou would be widened to accommodate two westbound lanes of post-game traffic in addition to a transit-only lane in each direction. This is because the vehicular capacity would be considerably less than 1,000 vehicles per lane at Third Street, due to the conflicts associated with signal priority granted to T-Third light-rail service and substantial cross-traffic volumes on Third Street. While it is possible that the T-Third Rail Service schedule could be modified for game days, those changes might reasonably cause hardship for regular riders that rely on the T-Third Rail Service for transportation. As described, Alternate Route 2 would be closer to, but would still not meet the NFL's standards for egress traffic leaving the stadium.

Alternate Route 2 is not, however, consistent with the City's transit goals or the goal of efficient BRT service. Under this route, BRT service cannot operate directly from the Balboa Park BART Station and the Bayshore Caltrain Station to the stadium as the only available route around the slough is occupied by auto traffic. The lack of BRT service to the stadium would decrease connectivity from the stadium site to regional transit connections and proposed residential developments near Geneva Avenue.

Conclusion

Alternate Routes 1 and 2 are subject to a high number of subtle variations, although they broadly represent the circulation options for conditions without a Yosemite Slough bridge. Alternate Route 2 closely approximates the required egress clearance capacity but it comes with negative drawbacks, including elimination of BRT service from the Balboa Park BART Station and the Bayshore Caltrain Station and more serious conflicts with the operation of the T-Third light-rail service. In Alternate Route 1, the overall stadium exit capacity would be substantially below what is necessary to accommodate a new NFL stadium in Hunters Point Shipyard. The amount of time it would take to empty the stadium parking lot would increase substantially, increasing idling time, vehicle queues, and driver frustration.

The Transportation Plan, relying on the Yosemite Slough bridge, closely approximates the required exit capacity. The bridge would carry four lanes of auto traffic into/out of the stadium site prior to a game and after the game is over. These four lanes represent approximately 35 percent of all game day traffic. Without the bridge, this traffic would be forced to use other local roadways that are not capable of handling this amount of traffic, as described above.

The bridge also provides transit, bicycle, and pedestrian access to the stadium. During game days, similar to non-game days, the bridge would feature two dedicated lanes that would be used for BRT service and additional shuttle service to carry patrons between regional transit hubs and the stadium. Under scenarios without the bridge, transit travel times would be longer, reducing the appeal of transit by adding further delays and unreliability to transit service. The bridge would provide an important bicycle and pedestrian linkage to the stadium. Based on information from the team, 49ers patrons have consistently expressed a desire for additional transit service on game days. The Yosemite Slough bridge is a necessary component of delivering this service as it provides direct connections to the Bayshore Caltrain Station, Balboa Park BART Station, the T-Third light-rail line, and to other destinations served along the Geneva Avenue Rapid Network.

3. Bicycle and Pedestrian Circulation

One of the fundamental goals of the Project's Transportation Plan is to enable walking and bicycling, thereby reducing demand for parking and discouraging automobile use. Walking and bicycling distances between Candlestick Point and Hunters Point Shipyard would be shorter with the Yosemite Slough Bridge.

Currently, approximately two percent of all trips made during the PM peak hour in the Bayview neighborhood are by bicycle (2000 Bay Area Travel Survey [BATS 2000], Metropolitan Transportation Commission, 2000). On a typical day, just over two percent of all trips within San Francisco are made by bicycle, which is more than double the national average of one percent of all trips made by bicycle. Although no distinction is made in the data of existing peak hour trips in the Bayview between recreational and non-recreational trips, the majority of trips taking place during evening commute periods are typically work or shopping-related, and not recreational.

The travel demand forecasts for the Project conservatively assume that a similar portion of new Project-generated trips will be made by bicycle. This translates to over 250 bicycle trips in the AM peak hour, nearly 450 bicycle trips in the PM peak hour, and over 4,000 bicycle trips per day. This conservative assumption was made in the analysis to ensure that the vehicular and transit demand was not underestimated, but in reality, based on the substantial improvement to bicycle facilities proposed by the Project, it is likely that

the bicycle mode share will be higher than the existing two percent, and the number of cyclists during the PM peak hour could be greater than 250.

Without the bridge, the walking and cycling distance from the center of the Candlestick Point development area to the center of the Hunters Point Shipyard development area would increase by nearly $\frac{2}{3}$ mile, or 50 percent compared to conditions with the bridge. Pedestrians and cyclists would travel through an industrial area along Ingalls Street with a relatively large portion of heavy trucks and few pedestrian or bicycle amenities. This route would also involve crossing several additional intersections.

Some of these differences may be resolved or reduced with construction of the proposed Bay Trail route around Yosemite Slough. Under these conditions, the additional distance to travel between the two sites would be $\frac{1}{3}$ mile, compared to conditions with the bridge. The current design of the Bay Trail calls for an ADA-compliant, 12-foot-wide path made of decomposed granite. There would be lighting provided only at select locations along the trail (parking lots, overlook decks, etc.), and the facility would operate during park hours from 8:00 A.M. to sunset.

In general, an additional $\frac{1}{3}$ to $\frac{2}{3}$ mile is not a substantial increase for cyclists, particularly if the Bay Trail is constructed and a smooth route free of conflicting trucks and other industrial vehicle traffic is provided. However, the bridge does provide a better environment for pedestrians, who are more sensitive to increases in walking distance. Additionally, because the bridge would be lit, it would provide a better sense of personal security during evening hours, which are generally when the recreational fields at the Hunters Point Shipyard would be in use.

■ Master Response 5: Health of Bayview Hunters Point Community

Introduction

Overview

A number of comments on the Draft EIR have reflected concerns that the disproportionately adverse health outcomes observed among Bayview Hunters Point (BVHP) neighborhood residents and specifically among children within the community are related to effects of exposures to physical hazards (e.g., toxic chemicals) associated with the Shipyard. These comments have concerned a number of adverse health outcomes, including shorter life spans, excessive cancer incidence, higher asthma and bronchitis prevalence and morbidity. Comments also suggest that dust generated from construction on Parcel A has led to an increase in asthma and other illnesses. This response provides information on health outcomes among residents in the Bayview community, explores potential relationships to the Shipyard and redevelopment activities, describes environmental and health investigations that have been conducted in response to community concerns about environmental hazards, explores other environmental and social causes of adverse community health outcomes, and describes City actions to protect environmental health in the community. Overall, data do not support the contention that poorer health outcomes in BVHP are resulting from current conditions at the Shipyard.

This response is organized by the following topics:

- Health Outcomes in BVHP
- Potential Pathways for Environmental Exposure from Shipyard Conditions

- Shipyard-Specific Environmental Health Investigations
- Non-Shipyard Environmental Hazards
 - > Industrial Use Conflicts
 - > Housing Conditions
- Social and Economic Conditions Impacting Community Health
 - > Food Resources
 - > Park and Recreational Resources
 - > Violence/Crime
 - > Income and Poverty
- City Actions to Reduce Environmental Risk to Bayview Hunters Point Residents

Commenters

Commenters who addressed this issue include:

- Federal, State, Regional, Local Agencies, Boards, and Commissions
 - > None
- Organizations
 - > Arc Ecology (83-3, 84-47, 84-48)
- Individuals
 - > Alonzo Walker (SFPC-83)
 - > Dan Solberg (SFRA1-37)
 - > Daniel Landry (SFPC-26)
 - > Esselene Stancil (SFPC-20)
 - > Francisco Da Costa (105-3)
 - > Jaron Browne (SFPC-23)
 - > Jesse Tello (70-2, SFPC-21)
 - > Juana Tello (66-1)
 - > Leborea Peach Smoore (SFPC-25)
 - > Willie Ratcliff (SFPC-107)

Comments on the Draft EIR related to the health of the BVHP community were primarily focused on existing conditions related to environmental remediation at the Shipyard, which are addressed in Section III.K (Hazards and Hazardous Materials) of the Draft EIR, but also to some degree in the Setting section of Section III.H (Air Quality). This master response provides further discussion to update the analysis in Section III.H and Section III.K of the Draft EIR.

Comment Summary

This master response responds to all or part of the following comments: 66-1, 70-2, 83-3, 84-47, 84-48, 105-3, SFRA1-37, SFPC-20, SFPC-21, SFPC-23, SFPC-25, SFPC-26, SFPC-83, SFPC-107.

Summary of Issues Raised by Commenters

- Comments raised issues regarding community health issues, higher risks and occurrences of cancer, asthma, and respiratory illness, existing hazardous materials, children’s health, soil contamination, site remediation, release of hazardous materials due to geologic activity or construction and operation activities, additional concern regarding Superfund sites, lack of adequate medical care, lack of dust mitigation to control the potential for releasing asbestos, and higher mortality rates

Response

Health Outcomes in BVHP

In general, it is well established that residents of BVHP have poorer health outcomes than San Francisco as a whole. BVHP has the highest rates of low birth weight babies (13 percent of all 2008 BVHP babies were less than 2,500 grams, or less than 5.5 pounds) and highest rates of teen pregnancy in the City (42 of every 1,000 females aged 15 to 19 years old gave birth in BVHP, compared to 20 of every 1,000 citywide). BVHP and the Tenderloin have the lowest percentage of mothers receiving pre-natal care in their first trimester (66 percent).

Although hospitalization rates for asthma and pneumonia in BVHP decreased between 2004 and 2007, BVHP residents have substantially higher rates of hospitalizations and emergency room visits for preventable conditions such as asthma, congestive heart failure, diabetes, and urinary tract infections. Table C&R-3 (Hospitalization and Emergency Room Rates per 1,000 persons for Preventable Conditions [2005-2007 pooled discharge data]) provides the hospital rate and emergency room rate for the BVHP community as compared to the average for the City of San Francisco.

Table C&R-3 Hospitalization and Emergency Room Rates per 1,000 persons for Preventable Conditions (2005–2007 pooled discharge data)				
<i>Health Condition</i>	<i>Bayview</i>		<i>SF Average</i>	
	<i>Hosp. Rate</i>	<i>ER rate</i>	<i>Hosp. rate</i>	<i>ER rate</i>
Asthma	27	105.8	6.3	25.4
Diabetes	30.3	27.9	8.3	7.9
Chronic obstructive pulmonary disease (COPD)	11.4	27.8	4.9	5.3
Adult congestive heart failure	39.0	12.1	14.4	3.7
Pneumonia	48.9	33	23.1	14.5
Kidney/Urinary tract infections	18.2	n/a	7.6	n/a

SOURCE: Data compiled by Health Matters in SF, from the California Office of Statewide Health Planning and Development (OSHPD). For more info, visit: <http://www.healthmattersinsf.org/index.php>

Life expectancy is a key metric of population health and a recent study of the region found that residents of BVHP live fewer years than residents in most other neighborhoods, as evidenced by Table C&R-4 (2004 Leading Causes of Years of Life Lost [YLL] for BVHP [Zip Code 94124]).⁵⁰ According to the 2004 San Francisco Community Health Needs Assessment, the top ten leading causes of premature years of life lost in BVHP (ZIP code 94124) are violence, ischemic heart disease, tracheal/bronchial/lung cancer, HIV/AIDS,

⁵⁰ Bay Area Regional Health Inequities Initiative (BARHII). 2008. Health Inequities in the Bay Area.

cerebrovascular disease (often caused by hypertension), poisonings, nephritis/nephrosis (also known as kidney disease), other cardiovascular diseases, chronic obstructive pulmonary disease or COPD (often associated with chronic bronchitis and emphysema), and congenital anomalies (also known as birth defects).

Rank	Cause	YLLs	Deaths	Avg YLLs/Death
1	Violence	1,020	18	57.3
2	Ischemic heart disease	592	40	14.8
3	Tracheal/Bronchial/Lung Cancer	386	22	17.5
4	HIV/AIDS	384	10	38.4
5	Cerebrovascular Disease	350	27	13
6	Poisonings	268	8	33.5
7	Nephritis/nephrosis	221	9	24.6
8	Other Cardiovascular Diseases	221	13	17
9	Chronic obstructive pulmonary disease (COPD)	189	9	20.9
10	Other Congenital Anomalies	185	3	61.8

SOURCE: 2004 Community Health Needs Assessment, Building a Healthier San Francisco.
<http://www.healthmattersinsf.org/index.php?module=htmlpages&func=display&pid=26>

BVHP residents lose more years of life due to violence than from any other cause. In 2004, 25 percent of all San Francisco deaths from violence and 27 percent of all premature years of life lost due to violence occurred in BVHP.⁵¹ As noted on the Health Matters in SF website, “The high ranking of violence as a cause of YLLs reflects not just the number of deaths from it, but also the fact that victims of death from violence are overwhelmingly younger than those dying from other high-ranking causes of premature mortality.”⁵²

By comparison, BVHP deaths from ischemic heart disease (BVHP’s #2 leading cause of YLL) represent less than 4 percent of the City’s total deaths and 8 percent of the City’s total years of life lost from ischemic heart disease. BVHP deaths from tracheal/bronchial/lung cancer (BVHP’s #3 leading cause of YLL) represent 6 percent of the City’s total deaths and 6 percent of the City’s total years of life lost from tracheal/bronchial/lung cancer.⁵³

⁵¹ Specifically, 71 people died in 2004 from violence in San Francisco, 18 of those deaths (or 25 percent) occurred in Bayview. Years of life lost is a measure of assessing premature mortality. Of the 3773 years of life lost (YLL) from the 71 deaths from violence in San Francisco, 1020 YLL (or 27 percent) were from Bayview.

⁵² 2007 Community Health Assessment Mortality Data Key Findings:
<http://www.healthmattersinsf.org/index.php?module=htmlpages&func=display&pid=29>

⁵³ Specifically, 1,056 people died in 2004 from ischemic heart disease in San Francisco, 40 of those deaths (or 3.8 percent) occurred in Bayview. Of the 12,617 years of life lost (YLL) from the 1,056 deaths from ischemic heart disease in San Francisco, 592 YLL (or 8 percent) were from Bayview. 361 people died in 2004 from tracheal/bronchial/lung cancer in San Francisco, 22 of those deaths (or 6 percent) occurred in Bayview. Of the 5,947 years of life lost (YLL) from the 361 deaths from tracheal/bronchial/lung cancer in San Francisco, 386 YLL (or 6 percent) were from Bayview.

As demonstrated in the data above and stated concerns, asthma and lung cancer are major health issues in BVHP. Risk factors for lung cancer include tobacco smoking, exposure to secondhand smoke, exposure to radon or asbestos, arsenic in drinking water, family history of lung cancer, diet low in fruits and vegetables, and air pollution.⁵⁴ Exposure to tobacco smoke, either directly by smoking or through secondhand exposure, contributes to 90 percent of lung cancer nationwide.⁵⁵ Risk factors for asthma include family history, exposure to dust mites, cockroaches & secondhand smoke, and being overweight. Triggers for asthma attacks include respiratory infections, pollen, mold, pet dander, dust mites and cockroaches, tobacco smoke (both from smoking and secondhand smoke), air pollution, household and workplace chemicals, stress, and vigorous exercise.⁵⁶

Potential Pathways for Environmental Exposure from Shipyard Conditions

Physical and chemical environmental hazards at the Shipyard site are discussed in detail in the Draft EIR, Section III.K. Currently, specific areas at the Shipyard site require remediation to meet appropriate standards for residential and other uses planned as part of the Project. As stated in Draft EIR, Section III.K, on page III.K-2, the Navy is remediating the Shipyard to meet standards acceptable for planned future uses and this remediation would occur regardless of whether the Project development proceeds or not.

A harmful exposure to current residents in BVHP to Shipyard environmental hazards would require exposure to contaminated soil or water mediated through ingestion, inhalation, or drinking. At present, there are few pathways that would expose community residents to Shipyard hazards. No food is grown on the Shipyard nor is the Shipyard a source of drinking water for residents. Contaminated sites have restricted access and, therefore, are generally not physically accessible to residents and are covered with roads, buildings, asphalt and clean soil and vegetation limiting potential inhalation exposure. The predominant wind direction is away from the community.

Construction phase activities do pose potential for airborne exposure to constituents in contaminated soil, particularly during remediation activities. Possible hazards associated with the construction phase of Project development are assessed in detail and mitigation measures are identified in the Draft EIR, Section III.K, pages III.K-53 through -109. The evaluation and response to risks related to naturally occurring asbestos is discussed in Master Response 12 (Naturally Occurring Asbestos). Development work and remediation activity is being conducted in accordance with Federal, State and local regulations and under the oversight of associated regulatory agencies to prevent off-site exposures and hazards as outlined in Section III.K of the Draft EIR.

Shipyard-Specific Environmental Health Investigations

A number of environmental investigations have been conducted by public agencies in response to specific concerns about environmental hazards at the Shipyard. In January 2003, the San Francisco Department of

⁵⁴ Fact Sheets on Lung Cancer, Northern California Cancer Center.

http://www.nccc.org/site/c.fojNIXOyEpH/b.3362225/k.8D60/Fact_Sheets.htm

⁵⁵ Fact Sheets on Lung Cancer, Northern California Cancer Center.

http://www.nccc.org/site/c.fojNIXOyEpH/b.3362225/k.8D60/Fact_Sheets.htm

⁵⁶ California Breathing/CDPH. June 2007.

<http://www.californiabreathing.org/images/stories/publications/asthmaburdenreport.pdf>

Public Health (SFDPH) reported on an analysis of Hospital Admissions Data during the Hunters Point Shipyard Fire of August 2000. The brush fire occurred on the Parcel E-2 landfill at the Hunters Point Shipyard on August 16, 2000 but continued to smolder under the surface for a number of weeks. A study was conducted to ascertain whether this fire, in the form of particulate matter or hazardous chemicals, resulted in measurable and observable health effects to community residents by examining discharge data from all hospital admissions not only in San Francisco. Data did not suggest increases in hospital admissions for asthma or other respiratory illnesses among BVHP residents relative to admissions Citywide during the time of the landfill fire.

Criteria air pollutants and toxic air contaminants have also been measured within the community. In November 2006, the Department of the Environment reported on the results of the Bayview Community Air Monitoring Project (BayCAMP) which measured a number of air pollutants for one year at a site located in the BVHP community. This report concluded that, in general, the levels of air contaminants measured at the BayCAMP site were comparable to, or lower than, those measured at other locations within the Bay Area. Acute (short-term) health risks associated with the toxic air contaminants monitored at the BayCAMP site are similar to levels measured in Fremont and elsewhere in the city, while they are significantly lower than those measured in San Jose. Similarly, chronic (long-term) health risks associated with the toxic air contaminants monitored at the BayCAMP site are similar to levels measured elsewhere in the City and in San Jose. Projected cancer risks associated with toxic air contaminants monitored at the BayCAMP site are similar to those for the compounds measured in San Jose, and lower than that for the levels measured in the other Bay Area sites. Peak ozone levels measured at BayCAMP were slightly above state standards, but similar to measurements at comparison sites. However, the annual average concentration was much lower than the annual average at comparison sites and well below state and federal standards. For all other criteria pollutants, BayCAMP measurements complied with federal and state limits and were similar to or less than those at comparison sites.

Non-Shipyard Environmental Hazards

Exposure to environmental hazards may be occurring due to other sources within the community, but unrelated to the Shipyard. Historically, BVHP housed a number of industrial operations including the Hunters' Point power plant. Current notable industrial sources include the Southeast Water Pollution Control Plant and cement production and diesel bus storage on Port property adjacent to neighborhoods.

Industrial Use Conflicts

Currently, BVHP is home to 39 percent of the City's industrial land. The close location between industrially zoned land and residential areas may create land use conflicts and potential health hazards for nearby residents. Environmental conflicts from industrial uses may be related to noise, exhaust or ventilation systems, industrial processes, or freight traffic.

Extensive research demonstrates that living in proximity to busy roadways is linked to negative health outcomes, including exacerbation of respiratory diseases, sleep disruption and cognitive disturbance, and unintentional (traffic) injuries.⁵⁷ Exposures to roadway vehicle pollutants are significant for BVHP residents, but generally lower than for the city as a whole. Forty-two percent of BVHP residents live within a traffic-

⁵⁷ <http://thehdm.org/objectives/view/55>

related air quality hazard area (or within 150 meters of streets with 0.2 micrograms per cubic meter [$\mu\text{g}/\text{m}^3$] or greater of particulate matter 2.5 micrometers [$\text{PM}_{2.5}$] in diameter or less), which is lower than the city average of 68 percent. Thirty-eight percent of BVHP households live within 150 meters of designated truck routes, compared to 47 percent citywide. Although roughly 25 percent of the City’s stationary sources of air pollution are located in BVHP, a smaller proportion of people live within 300 meters of the source compared to the city average (1 percent vs. 4 percent). Table C&R-5 (Environmental Conditions Potentially Impacting BVHP Health) describes the various environmental conditions that could affect the health of BVHP residents and compares it to the same conditions for residents throughout the City.

Table C&R-5 Environmental Conditions Potentially Impacting BVHP Health			
	<i>Condition</i>	<i>BVHP</i>	<i>Citywide</i>
% of Total Brownfield reuse sites		25%	—
% of Total leaking underground fuel tanks		31%	—
% Land zoned for Industrial uses		39%	7%
% Land zoned for Residential uses		25%	54%
Average daytime and nighttime outdoor noise levels (in Decibels)		66dB	62dB
Proportion of households living within 150 meters of designated truck routes		38%	47%
Proportion of streets with 0.2 $\mu\text{g}/\text{m}^3$ or greater of $\text{PM}_{2.5}$ ^a		32%	27%
Proportion of households living within 150 meters of streets with 0.2 $\mu\text{g}/\text{m}^3$ or greater of $\text{PM}_{2.5}$		42%	68%
Proportion households living within 300 meters of major industrial stationary sources of air pollution		1%	4%

SOURCE: Information from SFDPH Healthy Development Measurement Tool. <http://thehdmt.org/neighborhoods/compare> (accessed on March 5, 2010)

a. A microgram per cubic meter ($\mu\text{g}/\text{m}^3$) is one one-millionth of a [gram](#) of substance per cubic meter of air. $\text{PM}_{2.5}$ are air pollutants with a diameter of 2.5 micrometers or less, small enough to invade airways. These particles generally come from activities that burn fossil fuels, such as traffic, smelting, and metal processing.

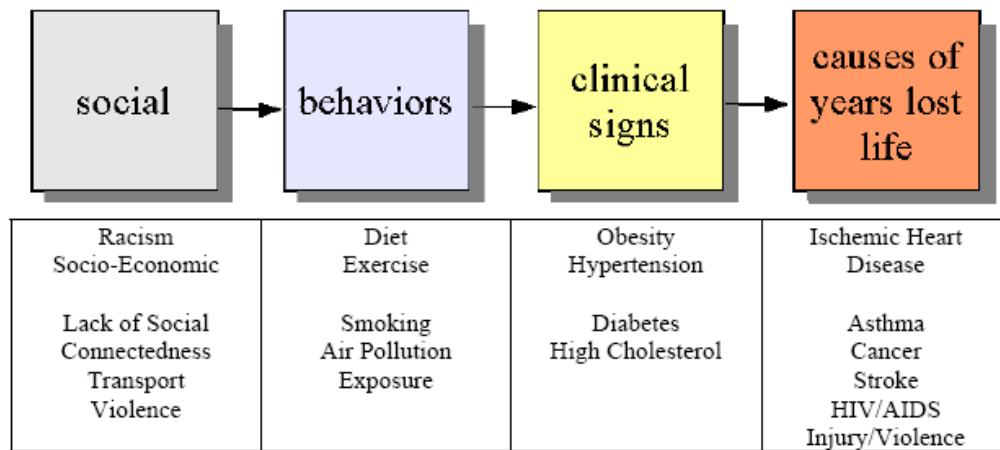
Housing Conditions

Although more than half of BVHP residents own their own homes (57 percent), a higher percentage of both homeowners and renters struggle financially to pay rent. One in four BVHP residents live in overcrowded living conditions, compared to one in seven residents citywide. BVHP is home to the majority of San Francisco’s public housing projects, the majority of which are housed in buildings originally designed as temporary housing for Shipyard workers during World War II. Bayview has a high concentration of substandard and poorly maintained housing, with poor ventilation, pests such as cockroaches, vermin and dust mites, and mold. Substandard housing conditions can lead to poor indoor air quality contributing to higher rates of asthma and other respiratory diseases.

Social and Economic Conditions Impacting Community Health

Over the past two decades, researchers have demonstrated that social and economic conditions impact health significantly. Inequitable distribution of health protective resources like healthy food, recreational space, and opportunities for high quality education, and living wage employment, result in the clustering of health disparities across neighborhoods, and significant differences in the residents’ quality and length

of life.⁵⁸ The diagram below from SFDPH illustrates how social conditions impact behaviors, which impact clinical symptoms resulting in premature years of life lost due to morbidity and mortality.



In general, BVHP has fewer options for accessing healthy foods, poorer performing schools, fewer jobs, poor housing conditions, fewer banks and credit unions, and a higher proportion of industrial and contaminated lands, compared to other neighborhoods in San Francisco.⁵⁹ Although the neighborhood does have a number of community assets that can positively impact health, such as strong civic engagement, community participation, and greater access to public open space, the historic context of economic deprivation, environmental racism and social marginalization following the closure of the Naval Shipyard has contributed to significant health inequities.⁶⁰ Table C&R-6 (Neighborhood Conditions Impacting Health Outcomes) compares neighborhood health resources in BVHP relative to San Francisco as a whole.

The following paragraphs briefly describe a couple of the major social and economic conditions impacting community health in BVHP.

Food Resources

Research has found that the absence of a supermarket in a neighborhood predicts lower fruit and vegetable consumption and an increased prevalence of overweight and obesity. Being overweight or obese are risk factors for heart disease, asthma, diabetes and various forms of cancer. Bayview has one of the worst retail food environments in the city, with little access to fresh fruits and vegetables. Although Bayview has a lower density of fast food and alcohol outlets per square mile compared to the city average, almost all of the fast food and alcohol outlets are concentrated along Third Street near residential areas.

⁵⁸ ACPHD. Life and Death from Unnatural Causes: Health and Social Inequity in Alameda County. 2008.

⁵⁹ SFDPH, BVHP Neighborhood Profile in SFDPH's Healthy Development Measurement Tool, www.thehdmtool.org.

⁶⁰ SFDPH, *Health Programs in Bayview Hunter's Point and Recommendations for Improving the Health of Bayview Hunter's Point Residents*, July 5, 2006; San Francisco Human Rights Commission. *Environmental Racism: A Status Report & Recommendations*, December 2003.

Table C&R-6 Neighborhood Conditions Impacting Health Outcomes

<i>Condition</i>	<i>BVHP</i>	<i>Citywide</i>
Proportion of population within ½ mile of a supermarket	63%	84%
Retail Environmental Food Index (REFI) ^a	3.5	3.18
Proportion of households with ¼ mile access to community garden	11%	25%
Proportion of households within ½ mile of a farmer's market	49%	35%
Proportion of population within ½ mile from bank or credit union	44%	80%
Weighted average Academic Performance Index (API) of API rated schools in neighborhood	661	764
Number of requests per seats available at public schools in neighborhood	1.1	3.3
% of students attending neighborhood elementary (K–5) school	30%	36%
Proportion of households living in overcrowded conditions	24%	14%
Proportion of population within ¼ mile of a neighborhood or regional park	98%	88%
Proportion of population within ¼ mile of a recreation facility	96%	86%
Density of off-sale alcohol outlets per square mile	6.1	18
Density of fast food outlets per square mile	1	4.7

SOURCE: Information from SFDPH Healthy Development Measurement Tool. <http://thehdmt.org/neighborhoods/compare> (accessed on March 5, 2010)

a. The Retail Food Environment Index (REFI) is a ratio describing the relative abundance of different types of retail food outlets in a given area. The REFI is constructed by dividing the total number of fast-food restaurants and convenience stores by the total number of supermarkets and produce vendors (produce stores and farmers markets) in the area. The result is the ratio of retail food outlets that offer little in the way of fruits and vegetables and other healthy foods to those in which fruits and vegetables are readily available. The higher the REFI index, the more likely consumers would find unhealthy food options.

Park and Recreational Resources

Proximity to neighborhood parks near one’s home is associated with increased physical activity in children and adults, reduced stress and depression, and better self-rated health. Although quantitatively, a higher percentage of households live near neighborhood parks and recreational facilities than San Francisco residents citywide, the qualitative experience of residents is quite different. Factors such as perceived and actual safety, gang lines, limited hours of operation, limited transportation, lack of lighting, the quality of the facilities, and the presence of major roads, highways, buildings, or gates can limit access to the facilities.

Violence/Crime

Cumulatively, community violence results in increased social isolation and depression and decreased mobility and physical activity. Physical inactivity is a major determinant of ischemic heart disease and stroke, overweight/obesity, hypertension, diabetes, and high cholesterol.⁶¹ Witnessing and experiencing community violence causes longer-term behavioral and emotional problems in youth.⁶²

⁶¹ SFDPH. San Francisco Burden of Disease & Injury Study: Determinants of Health. <http://www.healthysf.org/bdi/outcomes/94124.htm>

⁶² Perez-Smith AM, Albus KE, Weist MD. Exposure to violence and neighborhood affiliation among inner-city youth. *J Clin Child Psychol.* 2001;30(4):464-72. Ozer EJ, McDonald KL. Exposure to violence and mental health among Chinese American urban adolescents. *J Adolesc Health.* 2006;39(1):73-9.

The rate of homicide in BVHP between 2005 and 2007 was the highest in San Francisco and almost five times the city average (1.4 homicides per 1,000 BVHP residents vs. 0.3 per 1,000 SF residents). Rates of physical assault, rape/sexual assault, and property crimes are also higher than the city average. Risk factors for violence and crime include: poverty and economic disparity; discrimination and oppression, negative family dynamics, firearms, media violence, alcohol and other drugs, incarceration and re-entry, experiencing and/or witnessing violence, community deterioration, illiteracy and academic failure, truancy, mental illness, and traditional gender socialization.⁶³

Community violence impacts the perceived safety of a neighborhood, limiting social interactions between neighbors, the ability of children to walk to school and play outside, the accessibility of local resources (especially for the elderly), and adversely impacting on social cohesion.⁶⁴ Specifically, only 28 percent of residents in District 10 (which includes Bayview, Potrero Hill, and Visitacion Valley) stated that they feel very safe or safe at night, compared to 52 percent of residents citywide. During the day, residents of District 10 felt safer (72 percent feel very safe or safe) but still less frequently than residents citywide 84 percent.

Income and Poverty

Income is one of the strongest and most consistent predictors of health and disease in public health research literature. Higher income and accumulated or inherited wealth make it easier to buy health insurance and medical care, healthy foods, and quality childcare, and to live in a safe neighborhood with good schools and recreational facilities.⁶⁵ Poor health can mean lower earnings, creating a cycle between income and health that can continue across lifetimes and generations. Unemployment is associated with premature mortality, cardiovascular disease, hypertension, depression, and suicide.⁶⁶

According to the 2000 Census, 21 percent of the BVHP population lives in poverty, almost twice the citywide average. In 2000, unemployment in BVHP was double the rate of San Francisco (10 percent vs. 5 percent). In 2007, the per capita income of BVHP residents was roughly half the citywide average (\$18,258 vs. \$34,946) and the median household income was two-thirds the citywide average (\$46,323 vs. \$73,528). In December 2009, statewide African American and Latino unemployment rates in December 2009 were higher than Whites (14 percent vs. 11 percent).⁶⁷ Given that over 50 percent of the population in BVHP is African American and/or Latino, it is assumed that the economic depression has disproportionately impacted BVHP residents.

City Actions to Reduce Environmental Risk to Bayview Hunters Point Residents

In September 2006, the SFDPH issued a report entitled *Health Programs in Bayview Hunters Point and Recommendations for Improving the Health of Bayview Hunters Point Residents*. The report discusses a number of factors responsible for poor health in turn, and presents recommendations for further work addressing

⁶³Preventing Violence: A Primer, Prevention Institute, 2009.

<http://www.preventioninstitute.org/component/jlibrary/article/id-144/127.html>.

⁶⁴ Fullilove MT, Heon V, Jimenez W, Parsons C, Green LL, Fullilove RE. Injury and anomie: effects of violence on an inner-city community. *Am J Public Health*. 1998;88(6):924-7.

⁶⁵ <http://www.commissiononhealth.org/Income.aspx>.

⁶⁶ Jin RL, Shah CP, Svoboda TJ. The impact of unemployment on health: a review of the evidence. *The Journal of the Canadian Medical Association*. 1995;153, 529–540.

⁶⁷ <http://www.bls.gov/lau/ptable14full2009.pdf>.

each factor. The report notes substandard housing, poor quality of food resources, exposure to tobacco smoke, and economic all contribute to the relatively higher disease burden in the community. Recommendations for community health included efforts to improve residents' access to nutrition foods and safe neighborhood parks, as well as educational efforts to address tobacco use and other behaviors that negatively affect health. Appendix A of this report lists and describes 59 different programs that service the BVHP community that address issues ranging from gun violence prevention to HIV early intervention.

The city has conducted a number of coordinated actions to support public health in the past decade, including public health agency collaboration on land use and redevelopment planning and implementation. A number of City actions listed below are specifically responsive to environmental health needs and concerns of community residents.

- Facilitated the decommissioning of the PG&E Hunter's Point Power Plant
- Implemented truck route plan to reroute freight trucks away Third Street and residential areas and convert San Francisco Department of Public Works (DPW)/San Francisco Public Utilities Commission (SFPUC)/San Francisco Fire Department (SFPD) heavy vehicles to biodiesel fuel
- Constructed the electrified Third Street light-rail line, deployed non-diesel buses preferentially in BVHP and retrofitted remaining diesel buses with emissions reduction equipment
- Provided staffing for public schools Tools for Schools program to protect and improve school air quality
- Implemented a home environmental assessment program for asthma patients conducted by environmental health inspectors and San Francisco General Hospital Medical Clinic (SFGHMC) asthma clinic case managers
- Approved and implemented more stringent requirements to control the dispersion of construction dust during the first phase of Shipyard development (Health Code Article 31)
- Developed, approved, and implemented the country's first health code requirements for protecting new residential construction from traffic pollutants (Health Code Article 38)
- Implementing the HOPE SF program to rebuild dilapidated San Francisco Housing Authority (SFHA) public housing beginning with the Hunters View's project
- Developing an environmental education center for youth at Heron's Head Park with a community environmental justice organization

In summary, BVHP has poorer health outcomes relative to other neighborhoods in San Francisco. These disparities may be attributed to significant historical and current social, economic, and environmental inequities (i.e., the cumulative impact of higher unemployment, substandard housing, reduced access to nutritious food resources, and limited retail services, and community violence). The close proximity of residential and industrial uses in BVHP also contributes to unhealthy environmental conditions for many residents. The City and County of San Francisco has acknowledged the existence of community health disparities for many years and responded with a number of actions, including infrastructure and redevelopment initiatives as well as social and health programs to address health and welfare concerns in BVHP.

Nevertheless, there is currently no evidence to suggest that current and recent Shipyard conditions and activities are exacerbating BVHP health disparities. The Draft EIR analyzes how hazards at the Shipyard would be addressed during Project construction and identifies mitigation measures.

■ Master Response 6: Seismic Hazards

Introduction

Overview

Comments have been raised suggesting that the Draft EIR has not adequately addressed seismicity and the associated potential seismic hazards at the site. This master response addresses comments made concerning the potential for earthquakes and seismic hazards on the Project site given its proximity to major area faults. The response also discusses the site-specific geotechnical and seismic studies that would be required for the Project prior to issuance of any permits.

This response is organized by the following topics:

- Introduction
- Site-Specific, Design-Level Geotechnical and Seismic Studies
- Mitigation Measures to Address Potential Seismic Hazards
- Amplification
- Seismic Effects on Movement or Exposure to Toxics

Commenters

Commenters who addressed this issue include:

- Federal, State, Regional, Local Agencies, Boards, and Commissions
 - > None
- Organizations
 - > Breast Cancer Action (55-3)
 - > Green Action Health and Environmental Justice (58-8, SFRA1-83)
 - > POWER (52-3, 69-1)
 - > San Francisco Green Party (36-4)
- Individuals
 - > Ahimsa Porter Sumchai (SFRA2-18)
 - > Carol Harvey (67-2, 94-1)
 - > Colleen Muhammad (72-2)
 - > Dan Solberg (SFRA1-39)
 - > Daniel Landry (SFPC-26)
 - > Espanola Jackson (6-1, SFPC-8)
 - > Jaron Brown (SFRA1-43)
 - > Juana Tello (66-5, 66-13)
 - > Tim O'Miles (SFRA2-36)
 - > Willie Ratcliff (SFPC-107)

Comments received on the Draft EIR related to seismic activity were focused almost exclusively on issues addressed in Section III.L (Geology and Soils) of the Draft EIR; therefore, this master response provides further discussion to update and augment the analysis of the issues presented in Section III.L.

Comment Summary

This master response responds to all or part of the following comments: 6-1, 36-4, 52-3, 55-3, 66-5, 66-13, 67-2, 69-1, 72-2, 94-1, SFRA1-39, SFRA1-43, SFRA1-83, SFPC-8, SFPC-26, SFPC-107, SFRA2-18, SFRA2-36.

Summary of Issues Raised by Commenters

- Draft EIR has not adequately addressed seismic hazards
- Concern expressed regarding an earthquake or seismic activity mobilizing soil or groundwater contaminants

Response

Introduction

The entire San Francisco Bay Area is in a seismically active region. Seismic activity associated with a large earthquake on a nearby fault can potentially result in seismic hazards such as groundshaking, fault rupture, liquefaction, lateral spreading, ground settlement, ground oscillation, and seismic slope instability. As evidenced by the level of development throughout the San Francisco Bay, successful building construction is possible in a seismically active zone and can be readily accomplished even where seismic hazards are thought to exist through the implementation of appropriate structural and foundation design and/or ground improvement measures.

Seismic hazards for the site are defined in general terms in the Draft EIR; the Draft EIR is not intended to be a design-level document to address site-specific seismic hazards or mitigation of associated hazards. However, the Draft EIR points out that for final design, site-specific design-level seismic and geotechnical studies are required and appropriate mitigation measures, including ground improvement and/or structural design measures, would be implemented. This master response is intended to direct the reader to specific sections and figures in the Draft EIR that address these issues.

The Draft EIR states that the Project site is in a seismically active region (Section III.L, Draft EIR page III.L-11). Figure III.L-2 (Regional Fault Map) identifies the active nearby faults that could potentially generate an earthquake. Seismic activity associated with a large earthquake on a nearby fault could potentially result in seismic hazards at the site such as groundshaking, fault rupture, liquefaction, lateral spreading, ground settlement, ground oscillation, and seismic slope instability. Each of these potential seismic hazards is further discussed in the Draft EIR as follows:

- Groundshaking is expected to occur at the site during a large earthquake on one of the nearby faults. The intensity of seismic shaking or strong ground motion during an earthquake at any particular location is dependent on a number of factors, including the distance and direction of the site from the earthquake epicenter, the earthquake magnitude, and the geologic conditions at and in the vicinity of the site. Site-specific seismic and geotechnical studies would be undertaken prior to final design to evaluate the peak ground acceleration from an earthquake expected at the site and the structure would be designed to accommodate the anticipated groundshaking under the peak ground acceleration (Draft EIR page III.L-40).
- No known active faults cross the site, rendering hazards from fault rupture at the site unlikely (Draft EIR page III.L-14).

- Refer to Section III.L, Impact GE-5, and Master Response 7 (Liquefaction) for a discussion regarding the potential for and mitigation of liquefaction and liquefaction-induced seismic hazards, including lateral spread, sand boils, and ground settlement, at the site (Draft EIR pages III.L-40 through -46).
- Earthquake-induced settlement, other than that associated with liquefaction (refer to Master Response 7), which occurs only in soil below the groundwater level, could potentially occur in areas where loose sand is present above the groundwater (differential compaction). The upper fill layer at the site has been characterized as a heterogeneous mix of gravel, sand, silt, and clay that contains varying amounts of debris (wood, glass, etc.). There could be zones of soil within this layer above the groundwater level that contain loose sand. Because of the heterogeneous nature of the fill layer, settlements resulting from differential compaction could occur both uniformly and differentially, unless mitigation measures such as ground improvement and/or structural/foundation solutions are implemented (Draft EIR page III.L-16).
- Portions of the site have been mapped in a zone designated to have the potential for seismically induced landslides (Seismic Hazard Map, Figure III.L-3). Hazards associated with seismically induced landslides can be mitigated using methods generally accepted by California Certified Engineering Geologists (CEG) and California Registered Geotechnical Engineers (GE), including ground improvement and/or structural/foundation solutions (Impact GE-6 and mitigation measure MM GE-6 [Seismically Induced Landslides], Draft EIR pages III.L-46 through 49).
- Ground oscillation is a phenomenon where the surface soil layer, riding on a buried liquefied layer, is thrown back and forth by the shaking and can be severely deformed. While areas of the site have been identified as containing potentially liquefiable soils, there is no evidence of a broadly spanning buried liquefiable layer above or below the existing groundwater table on which the surface layer could be oscillated. Therefore, the potential for this hazard at the site would be considered low. Furthermore, mitigation measures MM GE-4a.1, MM GE-4a.2, and MM GE-4a.3, which would be implemented where liquefiable soils are identified, would also reduce the risk of damage to structures from ground deformation (Draft EIR page III.L-16).

Site-Specific, Design-Level Geotechnical and Seismic Studies

As discussed on page III.L-18 of the Draft EIR, the State has regulations protecting the public from geoseismic hazards that are contained in California Public Resources Code (PRC) Division 2, Chapter 7.8 (the Seismic Hazards Mapping Act) and 2007 California Code of Regulations (CCR), Title 24, Part 2 (the California Building Code [CBC]). The Seismic Hazard Mapping Act was passed in 1990 following the Loma Prieta earthquake to reduce threats to public health and safety and to minimize property damage caused by earthquakes. The Act requires site-specific geotechnical investigations to identify potential seismic hazards and formulate corrective measures prior to permitting of developments designed for human occupancy within the Zones of Required Investigation. The Seismic Hazard Map for the City and County of San Francisco shows portions of the Project site to be within a Zone of Required Investigation for liquefaction potential. For projects in a hazard zone, the Department of Building Inspections (DBI) requires that the geologic and soil conditions of the Project site be investigated and appropriate mitigation measures, if any, incorporated into development plans.

The Draft EIR points out that site-specific, design-level geotechnical and seismic studies, which are also discussed and described in mitigation measures MM GE-4a.1 and MM GE-4a.2 (Seismically induced groundshaking, Section III.L, pages III.L-37 and -38), MM GE-5a (Seismically induced ground failure,

Section III.L, pages III.L-42 and -43) and MM GE-6a (Seismically induced landslides, Section III.L, page III.L-47) would be performed prior to issuance of any building permits to identify the potential for seismic hazards at the site. These studies would consist of geotechnical investigations with site-specific seismic analysis and would provide ground improvement/mitigation and/or foundation design recommendations to address potential seismic hazards, should they exist. Seismic studies would evaluate the anticipated site-specific peak ground accelerations that would induce groundshaking so that the structure (foundation and superstructure) can be designed to accommodate the anticipated shaking. All Project structural designs would incorporate and conform to the requirements and recommendations in the site-specific geotechnical and seismic investigations. Furthermore, the City's DBI permit application, review, and inspection process ensures that structures would be designed and built to Code. The geotechnical engineer would review Project plans and specifications and observe ground improvement and foundation installation to check for conformance to the geotechnical and seismic recommendations and requirements.

Mitigation Measures to Address Potential Seismic Hazards

Mitigation measures to address potential seismic hazards include structural measures and ground improvement methods (Section III.L, MM GE-4a.1, MM GE-4a.2, MM GE-5a, and MM GE-6a, Draft EIR pages III.L-37 through -47). As discussed above, all structures, including the foundation (below ground portion) and superstructure (above ground portion), would be designed to accommodate the anticipated groundshaking under the peak ground acceleration (as determined by the site-specific seismic study) and other potential seismic hazards, including earthquake-induced ground settlement (refer to Master Response 7 for a discussion of liquefaction mitigation measures). Foundation mitigation measures could include the construction of deep foundations, which transfer building loads to competent soil or rock below the zone where seismic densification/differential compaction could potentially occur, or use of a structural, sufficiently reinforced mat foundation and/or a geotextile/geogrid beneath structures to distribute loads and reduce the potential for damage to the structure from earthquake-induced ground settlement. Ground improvement measures could include (1) overexcavation and replacement of soil potentially subject to earthquake-induced settlement with engineered compacted fill; (2) dynamic compaction (such as deep dynamic compaction or rapid impact compaction) to densify the loose soil; and (3) stone columns, soil-cement columns, or rammed aggregate piers (RAPs) to densify the loose soil and provide additional bearing support beneath building foundations.

As described in MM GE-6a, Draft EIR page III.L-47, if the design-level, site-specific geologic, seismic, and geotechnical studies identify the presence of landslides that could be triggered by an earthquake, recommendations for slope stabilization procedures shall be provided and implemented. Slope stabilization procedures could include (1) use of retaining walls, rock buttresses, screw anchors, or concrete piers; (2) provision of slope drainage or removal of unstable materials; (3) provision of rockfall catch fences, rockfall mesh netting or deflection walls; (4) provision of setbacks at the toe of slopes; and/or (5) avoidance of highly unstable areas.

Amplification

Comments have been raised suggesting that the Draft EIR has not adequately addressed amplification, a phenomena associated with seismic hazards, at the site. Amplification effects can occur when seismic waves travel through soft soils underlain by shallow bedrock. During the design-level site-specific seismic hazards

assessment, appropriate attenuation relationships would be selected to account for amplification effects. All structures and improvements would be designed based on the procedures in ASCE 7-05 Chapters 11.4 and 21.2 in accordance with the 2007 *California Building Code*, Chapter 21.

Seismic Effects on Movement or Exposure to Toxics

As discussed in Section III.K.1, Draft EIR page III.K-2, there are substantial ongoing remediation programs at known hazardous material release sites at portions of the Project site from former Navy operations throughout HPS Phase II. These are the only known hazardous material release sites requiring remediation at the Project site; there are no known hazardous material release sites requiring remediation at Candlestick Point, or at locations where off-site improvements are proposed, based on the results of investigations to date and a review of government agency databases. The Navy is providing soil and groundwater remediation (cleanup) at the HPS Phase II site to reduce chemical concentrations to meet cleanup levels approved by federal and state regulatory agencies. After completion of cleanup activities, chemicals present in concentrations below these cleanup levels would remain. Although residual chemicals may remain in soil after cleanup, the residual chemicals would be located under a physical barrier (e.g., soil cover, pavement, concrete building foundation) that prevents human exposure to these residual chemicals. It is also expected that federal and state regulatory agencies would allow a group of naturally occurring metals associated with fill material derived from native bedrock to remain under a final cover in concentrations above risk levels. In this scenario, the cover would limit exposure and protect humans from long-term health risks even if breaches in the cover temporarily occur. Operation and maintenance plans for these covers would be carried out to periodically monitor and repair any breaches. Breach of the cover would be required to be repaired so that no long-term health risk would occur. Therefore, even if ground rupture were to occur, contaminants and naturally occurring metals would not be released at levels presenting a concern to human or ecological health.

Section III.K of the Draft EIR page III.K-17 describes how surface covers are being installed or existing surface covers are expected to be required to remain in place as part of the Navy's Comprehensive Environmental Cleanup and Liability Act (CERCLA) program (refer to Master Response 9 [Status of CERCLA Process]), to support the development (e.g., building slabs, pavement for roads, concrete for sidewalks, soil or grass for landscaped areas) and minimize exposure to background metals (refer to Master Response 15 [Proposition P and the Precautionary Principle]). These covers would meet certain specifications of thickness and be maintained to prevent breaches.

Anticipated sea level rise is being taken into account during the development design process to ensure preservation of the planned land uses (refer to Master Response 8 [Sea Level Rise] for a discussions of sea level rise and potential exposure to toxics). Additionally, when specific buildings are being designed, this anticipated sea level rise would be taken into consideration when establishing surrounding grades, ground floor elevations and, if incorporated into a building, the type of below grade parking garage and associated foundation type to prevent groundwater infiltration. Note that in areas where below grade structures are installed below the groundwater table there are several well tested methodologies that have been used with success to prevent groundwater intrusion into these below grade structures. As stated in Master Response 8, the buildings would be designed for the anticipated groundwater levels to prohibit groundwater from entering basements.

In addition, the site is also known to contain a landfill, and possibly other areas of debris disposal. Under CCR Title 27, Section 21090, all closed landfills are required to have an engineered landfill cap if landfill materials are left on site. The landfill cap is intended to maintain a protective seal to keep moisture and rain from penetrating the landfill waste and prevent exposure of the public and the environment to the disposed waste. If the Navy proposes and USEPA concurs that engineered caps may be placed on top of an area of known or suspected residual contamination (typically a landfill) in order to prevent unsafe exposures from chemicals allowed by the regulators to be left on site, site-specific geotechnical studies, which would evaluate maximum potential earthquakes and liquefaction potential, would be used in the design of such caps to minimize potential breaches. In addition, operation and maintenance plans for these caps would be developed and be required to be carried out to monitor for and repair potential breaches should they occur. Additionally, emergency response plans would be carried out following major seismic events at which time caps and covers would be investigated for potential or actual breaches and repaired. Please also see Master Response 8 (Sea Level Rise) for discussion of effect of sea level rise on caps and covers.

■ Master Response 7: Liquefaction⁶⁸

Introduction

Overview

Comments have been raised suggesting that the Draft EIR has not adequately addressed liquefaction potential and mitigation of potential liquefaction-associated hazards at the site. This master response provides further information on the subject of liquefaction at the Project site and discusses specific hazards that could be connected with or amplify liquefaction potential, such as sea level rise or hazardous materials. The response also describes the design-level studies that would be required prior to issuance of any permits for the Project and the mitigation measures that would be implemented for the Project.

This response is organized by the following topics:

- Introduction
- Liquefaction Potential and Associated Hazards
- Site-Specific, Design-Level Liquefaction Studies
- Liquefaction Effects on Hazardous Materials
- Sea Level Rise Effects on Liquefaction Potential
- Mitigation Measures to Potential Liquefaction-Related Hazards

Commenters

Commenters who addressed this issue include:

- Federal, State, Regional, Local Agencies, Boards, and Commissions
- > None

⁶⁸ Liquefaction is a phenomenon in which saturated, cohesionless soil experiences a temporary loss of strength due to the buildup of excess pore water pressure, especially during cyclic loading such as that induced by earthquakes. Soil most susceptible to liquefaction is loose, clean, saturated, uniformly graded, fine-grained sand and silt of low plasticity that is relatively free of clay.

- Organizations
 - > Breast Cancer Action (55-3)
 - > POWER (52-2, 52-3, 69-1)
 - > San Francisco Green Party (36-4)
- Individuals
 - > Al Symon (SFPC-35)
 - > Carol Harvey (67-2, 67-4, 94-1)
 - > Cecille Caterson (SFRA1-83)
 - > Daniel Landry (SFPC-26)
 - > Espanola Jackson (6-1)
 - > Francisco Da Costa (105-1)
 - > Jaron Brown (SFPC-24)
 - > Jessie Tello (SFPC-21)
 - > Juana Tello (66-5, 66-13, SFPC-94)
 - > Karissa Cole (SFRA1-54)
 - > Nyese Joshua (65-1, 65-4)
 - > Saul Bloom (SFPC-133)
 - > Starr Miles (SFPC-75)
 - > Vivien Donahue (60-4)
 - > Willie Ratcliff (SFPC-107)

Comments received on the Draft EIR related to liquefaction and hazardous materials were focused almost exclusively on issues addressed in Section III.K (Hazards and Hazardous Materials) and III.L (Geology and Soils) of the Draft EIR; therefore, this master response provides further discussion to update and augment the analysis of the issues presented in Section III.K and Section III.L.

Comment Summary

This master response responds to all or part of the following comments: 6-1, 36-4, 52-2, 52-3, 55-3, 60-4, 65-1, 65-4, 66-5, 66-13, 67-2, 67-4, 69-1, 94-1, 105-1, SFRA1-54, SFRA1-83, SFPC-21, SFPC-24, SFPC-26, SFPC-35, SFPC-75, SFPC-94, SFPC-107, SFPC-133.

Summary of Issues Raised by Commenters

- Liquefaction has not been adequately addressed in EIR
- Concern expressed regarding the effect sea level rise can have on liquefaction potential
- Concern expressed regarding the risk liquefaction poses for release of hazardous materials

Response

Introduction

The potential for liquefaction associated with strong to very strong groundshaking during a major earthquake exists throughout the San Francisco Bay Area, as well as in many other seismically active areas throughout the world. Liquefaction can result in ground failure if the potential for liquefaction is not

mitigated through engineering design or ground improvement. Throughout San Francisco, including the Marina, Embarcadero, Financial District, South of Market Street, and Mission Bay neighborhoods, many buildings have been successfully constructed within potentially liquefiable zones through the implementation of proper foundation design and/or ground improvement.

Comments have been raised suggesting that the Draft EIR has not adequately addressed liquefaction potential and mitigation of potential liquefaction-associated hazards at the site. Liquefaction potential and associated hazards for the site are defined in general terms in Section III.L (Geology and Soils) of the Draft EIR; the Draft EIR is not intended to provide detailed individualized hazards assessments of each potential building site and the detailed design-specifications that would be used at each individual site to mitigate liquefaction hazards. Instead, the Draft EIR identifies the potential types of liquefaction hazards that may exist at the site and the approaches that can be used to mitigate these hazards along with the performance criteria that would be imposed on the development to assure that these techniques would fully mitigate the potential site hazards identified. The EIR points out that for final design, site-specific design-level liquefaction studies, as well as recommendations for appropriate techniques to be implemented to avoid the hazards, are required. Ground improvement and/or structural design measures would be implemented to fully mitigate liquefaction hazards. This master response is intended to direct the reader to specific sections and figures in the Draft EIR that address these issues.

Liquefaction Potential and Associated Hazards

Section III.L of the Draft EIR states that the project site is in an area of San Francisco that has been designated as potentially liquefiable (Section III.L, page III.L-15, Figure III.L-3 [Seismic Hazard Map]). Figure III.L-1 (Geologic Map) illustrates that the majority of the site is covered by artificial fill, which is a heterogeneous mix of gravel, sand, silt, and clay that contains varying amounts debris (wood, concrete, glass, etc.). There could be zones of soil within this layer that contain loose granular soil that may be susceptible to liquefaction. However, because of the heterogeneous nature of the fill, liquefaction within the fill is expected to occur in random layers and pockets, limiting the extent of seismically induced settlement and lateral spreading⁶⁹ to localized zones within the fill. Section III.L points out that there is a hydraulically placed sand fill in the vicinity of the southeast-facing shoreline of Parcels D and E at HPS Phase II that consists of a thick unit of predominantly uniform loose, dredged sand and is, therefore, more susceptible to liquefaction.

Flow failure, lateral spreading, differential settlement, loss of bearing strength, ground fissures, and sand boils are evidence of liquefaction. The Draft EIR indicates that, based on existing data, there is little or no risk of large translational ground movements at the site as a result of liquefaction. However, should liquefaction occur, there are five commonly recognized liquefaction-associated hazards, which site-specific, design-level studies should address. Design-level liquefaction studies, which are further described in mitigation measures MM GE-4 in Section III.L (Geology and Soils) of the EIR, would address five general types of localized potential hazards, and provide treatment methods. Mitigation measures require that the structure be designed to accommodate potential liquefaction-associated hazards or ground treatment/site

⁶⁹ Lateral spreading is a phenomenon in which surficial soil displaces along a shear zone that has formed within an underlying liquefied layer. Upon reaching mobilization, the surficial blocks are transported downslope or in the direction of a free face by earthquake and gravitational forces.

improvement techniques are implemented prior to construction. The specific potential liquefaction-associated hazards at the site are (1) potential foundation bearing failure, or large foundation settlements caused by ground softening, (2) potential structural and/or site settlements, (3) localized lateral displacement; “lateral spreading” and/or lateral compression, (4) flotation of light structures with basements, or underground storage structures, and (5) hazards to lifelines (utilities critical to emergency response). The response below explains the regulatory scheme that exists in California to address these liquefaction hazards and how the project would mitigate hazards.

Site-Specific, Design-Level Liquefaction Studies

The State has regulations protecting the public from geo-seismic hazards, such as liquefaction, that are contained in California *Public Resources Code* Division 2, Chapter 7.8 (the *Seismic Hazards Mapping Act*) and 2007 *California Code of Regulations* (CCR), Title 24, Part 2 (the *California Building Code* [CBC]). The *Seismic Hazard Mapping Act* was passed in 1990 following the Loma Prieta earthquake to reduce threats to public health and safety and to minimize property damage caused by earthquakes. The Act requires site-specific geotechnical investigations to identify potential seismic hazards and formulate corrective measures prior to permitting of developments designed for human occupancy within the Zones of Required Investigation. The Seismic Hazard Map for the City and County of San Francisco shows portions of the Project site to be within a Zone of Required Investigation for liquefaction potential. For projects in a hazard zone, the DBI requires that the geologic and soil conditions of the Project site be investigated and appropriate mitigation measures, if any, incorporated into development plans. Measures that can be employed, depending on the specific site conditions, include (1) overexcavation and replacement of potentially liquefiable soil with engineered compacted fill, (2) compaction grouting to densify the loose, potentially liquefiable soil, (3) dynamic compaction (deep dynamic compaction or rapid impact compaction) to densify the loose, potentially liquefiable soil, (4) vibro-compaction (also known as vibro-flotation) to densify the loose, potentially liquefiable soil, (5) stone columns to provide pathways for pore pressure to dissipate in potentially liquefiable soil, thus reducing the potential for liquefaction-induced settlement, and (6) soil-cement columns to densify the loose, potentially liquefiable soil and provide additional bearing support beneath building foundations. Alternatively, if appropriate and depending on the specific site conditions, the structure can be designed to accommodate the potential liquefaction-associated hazards, such as ground settlement. Mitigation measures, including structural measures and ground improvement techniques are discussed in the EIR in Section III.L, pages III.L-42 and -43.

Section III.L, page III.L-15 points out that site-specific, design-level liquefaction studies, which are also further discussed and described in mitigation measures MM GE-4a.1 and MM GE-4a.2 (Seismically induced groundshaking, Section III.L, pages III.L-37 and -38) and MM GE-5a (Seismically induced ground failure, Section III.L, pages III.L-42 and -43) would be performed prior to issuance of any building permits. These studies would consist of geotechnical investigations with site-specific seismic analysis and would provide ground improvement and/or other mitigative recommendations to address potential liquefaction-related ground hazards, should they exist. The recommendations would identify the specific recommended techniques for achieving the site-specific performance goals to mitigate liquefaction-related hazards (e.g., performance standards for specific ground improvement techniques, such as the level of densification to which the soil needs to be improved to mitigate liquefaction). Available, possible techniques, as discussed above in this document and identified in the EIR in Section III.L, pages III.L-42 and -43 include

overexcavation and replacement of liquefiable soil, compaction grouting, deep dynamic compaction, vibro-compaction and stone or soil-cement columns. All project structural designs would incorporate and conform to the requirements and recommendations in the geotechnical investigations. Furthermore, the geotechnical engineer would review project plans and specifications and observe ground improvement and foundation installation to check for compliance to the geotechnical recommendations and requirements.

Liquefaction Effects on Hazardous Materials

As discussed in Section III.K.1, Draft EIR page III.K-2, there are substantial ongoing remediation programs at known hazardous material release sites at portions of the Project site from former Navy operations throughout HPS Phase II. These are the only known hazardous material release sites requiring remediation at the Project site; there are no known hazardous material release sites requiring remediation at Candlestick Point, or at locations where off-site improvements are proposed, based on the results of investigations to date and a review of government agency databases. The Navy is providing soil and groundwater remediation (cleanup) at the site to reduce chemical concentrations to meet cleanup levels developed to protect human health and the environment and approved by Federal and State regulatory agencies. After completion of cleanup activities, chemicals present in concentrations below these goals would remain. It is also expected that regulators would allow a group of naturally occurring metals associated with fill material derived from native bedrock to remain under a final cover in concentrations above risk levels. The cover in this scenario would limit exposure and protect humans from long-term health risks even if breaches in the cover temporarily occur. Operation and maintenance plans for these covers would be carried out to periodically monitor and repair any breaches. Therefore, even if ground rupture were to occur, naturally occurring metals would not be released at levels presenting a concern to human or ecological health; further if such metals are allowed to be left in place and covered, any breach of the cover would be required to be repaired so that no long-term health risk would occur. Section III.K (Hazards and Hazardous Materials), Draft EIR page III.K-17, describes how surface covers are being installed or remaining in place as part of the Navy's cleanup program (refer to Master Response 9 [Status of CERCLA Process]), to support the development (e.g., building slabs, pavement for roads, concrete for sidewalks, soil or grass for landscaped areas), and minimize exposure to background metals (refer to Master Response 15 [Proposition P and the Precautionary Principle]), these covers would meet certain specifications of thickness and be maintained to prevent breaches.

In addition, the site is known to have a landfill, and possibly other area of debris disposal. Under CCR Title 27 Section 21090, all closed landfills are required to have an engineered landfill cap if landfill materials are left onsite. The landfill cap is intended to maintain a protective seal to keep moisture and rain from penetrating the landfill waste and prevent exposure of the public and the environment to the disposed waste. If the Navy proposes and USEPA concurs that engineered caps may be placed on top of an area of known or suspected residual contamination (typically a landfill) in order to prevent unsafe exposures from chemicals allowed by the regulators to be left on site, site-specific geotechnical studies, which would evaluate maximum potential earthquake and liquefaction potential, would be used in the design of such caps to minimize potential breaches or damage to the cap during a seismic event. Operation and maintenance plans for these caps would be carried out to monitor and repair any damage that occurs to the cap as a result of a seismic event. Additionally, emergency response plans would be carried out following major flooding and seismic (refer to Master Response 6 [Seismic Hazards]) events, at which time caps and covers would be investigated for potential breaches and repaired.

Sea Level Rise Effects on Liquefaction Potential

Concern has been raised regarding the impacts of future sea level rise on site liquefaction susceptibility. If sea level should rise in the future, it would be anticipated that there is a corollary rise in the groundwater table elevation. As liquefaction can only occur in saturated soils located below the groundwater table, this would cause soil not currently beneath the groundwater table to become saturated and potentially susceptible to liquefaction in the future. Site design would accommodate a future sea level rise of 36 inches (refer to Master Response 8 [Sea Level Rise]). To account for the future impact of sea level rise, design-level liquefaction analysis and modeling would be based on a groundwater table elevation that assumes groundwater is 36 inches higher than present conditions. Since liquefaction occurs only in soil below the groundwater table and the groundwater table would be higher because of sea level rise, depending on the site-specific soil conditions, the thickness of the liquefiable layer and corresponding liquefaction-induced settlement could be increased. Another, mitigating consideration, however, is that as the groundwater level rises, the thickness of soil that would potentially be subject to seismically induced differential compaction settlement (loose non-saturated sand above the groundwater level) would decrease. Depending on site-specific soil conditions, the settlement of soil induced by liquefaction (saturated soil below the groundwater) and the settlement of soil induced by differential compaction (non-saturated soil above the groundwater) would be expected to be of similar magnitude; therefore, the overall impact on the site from liquefaction would be unaffected or negligibly affected by sea level rise. Thus, the net effect of sea level rise on seismically induced settlement (increased thickness of potentially liquefiable layer and decreased thickness of layer subject to differential compaction) is expected to be minimal.

Mitigation Measures to Potential Liquefaction-Related Hazards

Mitigation measures that can reduce or avoid potential liquefaction-related hazards include structural measures and ground improvement methods. Structural measures could include the construction of deep foundations, which transfer building loads to competent soil or rock below the potentially liquefiable zone, or use of a structural, sufficiently reinforced mat foundation to distribute loads and reduce the potential for damage to the structure from liquefaction-induced ground settlement with flexible utility connections to allow some settlement beneath the buildings. If liquefaction estimates are such that these treatments would not address liquefaction and settlement-related impacts adequately, ground improvement measures could include (1) overexcavation and replacement of potentially liquefiable soil with engineered compacted fill, (2) compaction grouting to densify the loose, potentially liquefiable soil, (3) dynamic compaction (deep dynamic compaction or rapid impact compaction) to densify the loose, potentially liquefiable soil, (4) vibro-compaction (also known as vibro-flotation) to densify the loose, potentially liquefiable soil, (5) stone columns to provide pathways for pore pressure to dissipate in potentially liquefiable soil, thus reducing the potential for liquefaction-induced settlement, and (6) soil-cement columns to densify the loose, potentially liquefiable soil and provide additional bearing support beneath building foundations. These ground improvement methods are identified in the EIR in Section III.L, pages III.L-42 and -43. Performance standards that must be achieved are set forth in the geotechnical report recommendations specific to the site-specific ground improvement technique. For example, for compaction grouting, a minimum Standard Penetration Test (SPT) blow count in the compaction-grouting-improved soil would be specified that must be tested and achieved prior to construction.

■ Master Response 8: Sea Level Rise

Introduction

Overview

Several comments have been received regarding the project's approach to addressing sea level rise. These comments largely focus on the method for estimating total sea level rise; how the Project would be designed to accommodate sea level rise over time; and how sea level rise could impact other site conditions, such as groundwater, contamination, liquefaction, seismicity, and infrastructure. This master response specifically addresses:

- The approach used in addressing coastal flooding potential with and without sea level rise allowances
- The methodology used in developing sea level rise estimates
- The strategy developed to provide continued protection against future sea level rise

Responses to specific comments on sea level rise that are not covered in this master response are provided separately. Also, other topics indirectly related to sea level rise that were brought up in the comments are presented in separate master responses, including Master Response 6 (Seismic Hazards), Master Response 7 (Liquefaction), Master Response 11 (Parcel E-2 Landfill), and Master Response 13 (Post-Transfer Shipyard Cleanup).

This response is organized by the following topics:

- Introduction
- Approach to Address Sea Level Rise Effects on Flooding
 - > Coastal Flooding Studies
 - > Literature on Sea Level Rise
 - > Summary and Adopted Approach
- Mitigation Measures for Potential Sea Level Rise Hazards Related to Hydrology and Flooding
 - > Shoreline Protection
 - > Storm Drain System
 - > Development Areas
 - > Adaptation Strategy
 - > Potential Adaptation Measures
- Other Sea Level Rise–Related Issues
 - > Sea Level Rise Effects on Seismicity
 - > Sea Level Rise Effects on Liquefaction
 - > Sea Level Rise Effects on Movement of or Exposure to Toxics
 - > Mitigation Measures for Other Potential Sea Level Rise Hazards

Commenters

Commenters who addressed this issue include:

- Federal, State, Regional, Local Agencies, Boards, and Commissions
 - > California State Parks (86-9)
 - > Planning Commissioner Borden (SFPC-112)
 - > Redevelopment Agency President Swig (SFRA2-37)
- Organizations
 - > Arc Ecology (82-19)
 - > Golden Gate Audubon Society (81-25)
 - > Green Action Health and Environmental Justice (58-1, 58-3, 58-5, 58-6, 58-7)
 - > Hunters Point Shipyard Citizen's Advisory Committee (90-3, 90-10)
 - > POWER (People Organized to Win Employment Rights) (43-19, 50-3, 50-26, 50-32, 50-33, 52-4, 52-5)
 - > San Francisco Green Party (36-2, 36-3, 36-4, 36-5, SFRA1-87)
- Individuals
 - > Al Symon (SFPC-35)
 - > Alice Franklin (57-1, 57-2, 57-3, 57-4, 57-6)
 - > Carol Harvey (67-1, 67-2, 94-1, SFRA2-28)
 - > Colleen Muhammad (72-2)
 - > Eric Brooks (SFPC-102)
 - > Espanola Jackson (6-1, SFPC-8)
 - > Francisco Da Costa (SFRA2-4)
 - > Juana Tello (SFPC-94)
 - > Mishwa Lee (73-1, 73-4, SFPC-31)
 - > Nyese Joshua (65-4, 65-35)
 - > Starr Miles (SFPC-75)
 - > Tim O'Miles (SFRA2-36)
 - > Vivien Donahue (60-4)

Comments received on the Draft EIR related to sea level rise were focused primarily on issues presented in Section II.F.2 (Site Preparation and Earthwork/Grading) and Section III.M (Hydrology and Water Quality) of the Draft EIR; therefore, this master response provides further discussion to update and augment the analysis of the issues presented in Section II.F.2 and Section III.M.

Comment Summary

This master response responds to all or part of the following comments: 6-1, 36-2, 36-3, 36-4, 36-5, 43-19, 50-3, 50-26, 50-32, 50-33, 52-4, 52-5, 57-1, 57-2, 57-3, 57-4, 57-6, 58-1, 58-3, 58-5, 58-6, 58-7, 60-4, 65-4, 65-35, 67-1, 67-2, 72-2, 73-1, 73-4, 81-25, 82-19, 86-9, 90-3, 90-10, 94-1, SFRA1-87, SFPC-8, SFPC-31, SFPC-35, SFPC-75, SFPC-94, SFPC-102, SFPC-112, SFRA2-4, SFRA2-28, SFRA2-36, SFRA2-37.

Summary of Issues Raised by Commenters

- Method for estimating sea level rise at the Project site

- How the Project would be designed to accommodate sea level rise over time
- Potential impacts of sea level rise on site conditions, such as groundwater, contamination, liquefaction, seismicity, and infrastructure

Response

Introduction

With respect to flooding, the Federal Emergency Management Agency (FEMA) maps flood zones based on potential flooding caused by rainfall, or a combination of rainfall, tides, storm surge, and waves. Flood zones are geographic areas that FEMA has defined according to varying levels of flood risk. These zones are depicted on a community's Flood Insurance Rate Map (FIRM) or Flood Hazard Boundary Map. Each zone reflects the severity or type of flooding in the area.

The traditional approach to designing coastal developments is as specified by FEMA and local agency guidance policies, which is to set interior grades throughout a community such that finished floor elevations for buildings (e.g., the elevation of the first floor of inhabitable space) would be at or above the present-day Base Flood Elevation (BFE) (e.g., the water surface elevation that would occur during a 100-year flood event). Improvements along the shoreline are required only to protect nearby structures or facilities against storm wave run-up and overtopping during a flood event that has a one percent chance of occurring, as specified by FEMA (sometimes referred to as the “One Percent Annual Chance of Occurrence Event”).

The modest amount of sea level rise that has been estimated by the National Oceanic and Atmospheric Administration (NOAA) based on historical observations is about 8 inches over the past century, which is consistent with the estimates that traditional coastal developments have included in their design. However, based on climate change studies over the past two decades, the rate of sea level rise appears to be accelerating and climate change models are predicting greater rates of sea level rise in the future in response to warmer temperatures and melting ice caps.

In California, Executive Order S-13-08, which was issued in November 2008, recognizes the impact that sea level rise may have on coastal development in California. The executive order directs the California Resources Agency to request that the National Academy of Sciences convene an independent panel to complete the first California Sea Level Rise Assessment report. The report, to be completed by December 2010, would advise how California communities should plan for sea level rise.

Regional and local agencies have also taken a more proactive approach in addressing the issue of sea level rise. For example, the San Francisco Bay Conservation and Development Commission (BCDC), in a recently released study (BCDC 2009), is recommending that Bayfront developments consider a 16-inch sea level rise value by 2050 (mid-term) and a 55-inch sea level rise value by 2100 (long-term). The California State Coastal Conservancy (SCC) has issued a similar guidance policy (SCC 2009) with the same mid-term and long-term values. These values were based on work by the California Climate Change Center (CCCC 2006).

Although no specific design criteria related to sea level rise have been formally adopted by federal, state, or local agencies, this Project must be designed to account for sea level rise as part of the planning process to prevent future flooding or loss of infrastructure resulting from shoreline erosion. Therefore, a project-

specific approach was developed to address sea level rise for this Project. This approach is described in this master response, in this document.

Approach to Address Sea Level Rise Effects on Flooding

Section II.F.2, pages II-69 to II-70, and MM HY-12a.1 and MM HY-12a.2, pages III.M-100 to -103 of the Draft EIR provide a discussion of the project-specific study of and approach to address sea level rise. The study and approach are expanded upon in this master response in response to the comments raised on the Draft EIR.

As part of project planning studies, an assessment of existing shoreline conditions and anticipated sea level rise within the Project site was completed to develop planning and design guidance for the various phases of the project (Moffatt & Nichol 2009a, 2009b). The studies included:

1. A condition assessment of the existing shoreline and shoreline structures, along with a comprehensive review of as-built conditions
2. A coastal engineering analysis of tidal, wind-wave, and storm-wave processes for the Project site and vicinity, with the objective of developing recommendations for development and open-space grades for the Project, as well as edge treatment along the Project shoreline
3. A review of published, peer-reviewed literature related to sea level rise, with the objective of developing sea level rise allowance estimates for the future
4. A review of guidance and policy documents from state and regional agencies to establish design parameters for shoreline elevation and grades for development areas and open-space
5. Development of a strategy to address sea level rise at the Project site

A summary of the coastal flooding studies and the literature on sea level rise is provided in the following sections. The subsequent section, Mitigation Measures for Potential Sea Level Rise Hazards Related to Hydrology and Flooding, provides details related to the strategy developed for addressing future sea level rise at the Project site.

Coastal Flooding Studies

The primary factors that influence coastal flooding are water levels, which are influenced by a combination of astronomical tides and storm surges, and wave overtopping, which is caused by wind waves. Because these factors do not occur independent of each other (i.e., both are present at any given time), it is necessary to estimate the frequency of their combined occurrence. Tidal information was collected from NOAA gauges, which shows that the tidal range along the Project shoreline is between elevations -0.23 to 6.5 feet NAVD88. This analysis resulted in 10- and 100-year return period tides (meaning tides that would occur once in 10 or 100 years) of elevation +8.5 and +9.5 feet NAVD88, respectively. (NAVD88 is a vertical control [datum](#) established for the purposes of vertical control [surveying](#) in the [United States of America](#) based upon the General Adjustment of the North American Datum of 1988.) The BFE used for the purpose of establishing development and open-space grades was, therefore, estimated to be +9.5 feet NAVD88. As previously mentioned, the approach to designing coastal developments is to set finished floor elevations for buildings at or above the present-day BFE.

One of the primary methods recommended by FEMA for the purpose of estimating the total potential run-up along the shoreline is outlined by the Technical Advisory Committee on Flood Defense—The

Netherlands. The analysis resulted in One Percent Annual Chance of Occurrence Event for wave run-up elevations ranging from +10.5 feet to +14.3 feet NAVD88 along the Hunters Point Shipyard shoreline and +11.6 feet to 15.3 feet NAVD88 along the Candlestick Point shoreline. Recommended perimeter elevations were then developed based on allowable overtopping rates to achieve safe conditions for pedestrians during the One Percent Annual Chance of Occurrence Event for wave run-up. This resulted in an additional one foot of elevation for the most exposed portions of the perimeter (meaning those areas that are not provided some degree of protection from existing structures).

Allowances for sea level rise based on the literature described below were then added to these minimum required grades in the interior and along the perimeter, and a strategy for the future was then developed for higher sea level rise estimates such that the level of protection provided when the Project is constructed continues into the future.

Literature on Sea Level Rise

This section presents a summary of the most commonly quoted estimates of sea level rise in scientific and planning literature, with particular reference to California and San Francisco Bay. This portion of the Master Response provides a summary of technical papers written on the topic of sea level rise and, due to the subject matter and the sources reviewed, can be highly technical.

Thousands of journal articles, newspaper stories, and publications on the topic of climate change and associated sea level rise have been published in the past 20 years. For purposes of this literature review, eight documents that are widely recognized as credible sources in the scientific community were reviewed. They are summarized here briefly, listed in reverse chronological order as Documents A through H, and they are also listed in the References provided in Section G of this document (Reference Numbers 10-17). Additional documents that are less well recognized, but are illustrative of ongoing development in the scientific, engineering, and planning communities, are also listed in the References section of this document.

A summary of the sea level rise estimates presented in the reviewed literature is presented in Table C&R-7 (Summary of Reviewed Documents to Determine Sea Level Rise Estimates) and discussed in greater detail in the following paragraphs.

Table C&R-7 Summary of Reviewed Documents to Determine Sea Level Rise Estimates			
<i>Document</i>	<i>Sea Level Rise Estimate/Projection</i>		<i>Time frame (years)</i>
	<i>inches</i>	<i>meters</i>	
California Climate Change Center, 2009	24 to 55	0.6 to 1.4	2000–2100
CALFED Bay-Delta Program, 2007	20 to 55	0.5 to 1.4	2100
Intergovernmental Panel on Climate Change, 2007 (AR4) Rahmstorf, 2007	7 to 30	0.18 to 0.76	1990–midpoint of 2090–2099
California Climate Change Center, 2006	8 to 31	0.2 to 0.8	2000–2100
Intergovernmental Panel on Climate Change, 2001 (TAR)	4 to 35	0.09 to 0.88	1990–2100
US Environmental Protection Agency, 1995	5 to 34	14 to 86	2100
National Research Council, 1987	20, 39, and 59	0.5, 1.0, and 1.5	2100

Since building structures are generally “immovable,” whereas a shoreline protection system and/or storm drain system can be adapted to keep up with changing sea levels, different planning horizons need to be adopted for different elements of this project. In searching for guidance policies from agencies, the most relevant and recent policy statements that can be used are from BCDC and the SCC. The SCC’s policy statement on climate change includes the following:

Prior to the completion of the National Academies of Science report on sea level rise, consistent with Executive Order S-13-08, the Conservancy will consider the following sea level rise scenarios in assessing project vulnerability and, to the extent feasible, reducing expected risks and increasing resiliency to sea level rise:

- a. 16 inches (40 cm) by 2050
- b. 55 inches (140 cm) by 2100

The strategy for the Project is founded on using mid-term sea level rise values for the shoreline edge and storm drainage system. For a long-term planning horizon (for example, beyond 50 years from now), the evolving nature of climate change and sea level rise science needs to be recognized, and no single sea level rise value should be relied upon at this point in time. Instead, an adaptive management strategy should be put in place such that improvements for sea level rise beyond the mid-term planning horizon can be designed and implemented as sea levels rise.

A more detailed discussion of the strategy for addressing sea level rise for this Project is provided at the conclusion of the discussion of the various documents that were reviewed to determine the rate of sea level rise that could occur (Documents A through H).

Document A: California Climate Change Center, 2009 (Estimated range of 24 to 55 inches Sea Level Rise by 2100)

This assessment forms the basis of the increase of 55 inches (140 cm) by 2100 specified by the SCC. It was prepared as a contribution to the second California Climate Change Scenarios Assessment, which was mandated by Executive Order S-3-05 to “report to the Governor and the State Legislature by January 2006 and biannually thereafter on the impacts to California of global warming”. The assessment, which replaces the earlier 2006 assessment (CCCC 2006), was prepared by nine respected academics.

The assessment provides two sets of sea level rise estimates. Each set of estimates is based on a subset of the temperature projections provided in the *2007 IPCC Report* (refer to Document C, below). Specifically, two of the climate changes emission scenarios (A2 and B1) and a subset of the Global Circulation Models (those providing sufficiently detailed output data) were used. The assessment assumes that sea level rise along the California coast would continue to match global rates.

The first set of sea level rise estimates uses Rahmstorf’s semi-empirical method (Document D, described below) to estimate sea level rise based on the temperature projections contained in the Intergovernmental Panel on Climate Change Fourth Assessment Report.

The second set of sea level rise estimates further includes a method by Chao et al (2008) to account for the twentieth century growth of dams and reservoirs. By impounding water, these structures may have artificially decreased the rate of sea level rise in the twentieth century. Correcting for this possible decrease would increase the future rate of sea level rise.

The resulting range of projections for sea level rise between 2000 and 2100 is from 24 inches (60 cm) to 55 inches (140 cm). The increase of 55 inches by 2100 specified by the SCC is based on the upper limit of these projections.

Document B: CALFED Bay-Delta Program, 2007 (Estimated range of 20 to 55 inches by 2100)

This memorandum was prepared by the CALFED Independent Science Board, a committee consisting of nine respected academics, to examine the array of sea level rise projections available in published reports and, based on current scientific understanding, advise the CALFED Science Program about which projections are most appropriate for incorporating into ongoing planning for the California Delta. The report does not include any modeling or stand-alone analysis. However, as part of the Delta Vision strategy that is being developed as a guidance and policy document for the California Department of Water Resources, it has been widely quoted as a basis for flood planning in the San Francisco Bay Area.

The conclusions of the Independent Science Board are summarized as follows:

- The board recommends that planning efforts use three approaches to incorporate sea level rise uncertainty.
- First, given the inability of current physical models to accurately simulate historic and future sea level rise, until future model refinements are available, it is prudent to use existing empirically based models for short to medium term planning purposes. The most recent empirical models project a midrange rise this century of 28 to 39 in. (70 to 100 cm) with a full range of variability of 50 to 140 cm (20 to 55 in.). It is important to acknowledge that these empirical models also do not include dynamical instability of ice sheets and likely underestimate long-term sea level rise.
- Secondly, the Board recommends adopting a concept that the scientific and engineering community has been advocating for flood management for some time. This involves developing a system that cannot only withstand a design sea level rise, but also minimizes damage and loss of life for low-probability events or unforeseen circumstances that exceed design standards.
- Finally, the Board recommends the specific incorporation of the potential for higher-than-expected sea level rise rates into long term infrastructure planning and design. In this way, options that can be efficiently adapted to the potential for significantly higher sea level rise over the next century could be favored over those that use “fixed” targets for design.”

As a clarification, the *current physical models* referenced by the Independent Science Board are the models included in the 2007 IPCC Report (refer to Document C. below); while the *most recent empirical models* quoted correspond to the work of Stefan Rahmstorf (refer to Document D, below).

Document C: Intergovernmental Panel on Climate Change, 2007 (AR4) (Estimated range of 7 to 30 inches by 2100)

This report is often referred to as AR4 (the Fourth Assessment Report of the IPCC). It contains an exceptionally detailed synthesis of the available peer-reviewed science of climate change and sea level modeling and has received contributions and comment from a vast array of respected researchers in the field.

The AR4 gives a widely quoted projection of 7 inches (18 cm) to 23 inches (59 cm) for sea level rise in the twenty-first century. These are considered 5 to 95 percent ranges. The AR4 includes a second set of projections—from 7 inches (18 cm) to 30 inches (76 cm)—that include a scaled-up ice discharge term. The projections cover the period from 1990 to the midpoint of 2090–2099; the AR4 does not provide sea level rise values at intermediate periods (e.g., to 2050).

The models described in the AR4 give reasonable hindcasts of observed sea level rise between 1993 and 2003, although they under-predict observed sea level rise between 1961 and 2003.

The uncertainty in the quoted projections derives from two main sources:

- Different greenhouse gas emission scenarios—the IPCC defines six future scenarios of world population and economy that predict different levels of greenhouse gas emissions. The AR4 stresses that no scenario can be considered more likely than another.
- The second and larger uncertainty is associated with limitations to current scientific knowledge. The range of sea level rise projections for a given scenario is based on the range of results from 17 independently developed and peer-reviewed general circulation models (GCMs).

Compared to the 2001 IPCC Report, known as the Third Assessment Report (TAR) refer to Document F, below), the projections in the AR4 are 7 to 30 inches by 2100 as opposed to 4 to 35 inches (9 cm to 88 cm) between 1990 and 2100. The reasons for the differences are as follows:

- The projections in the AR4 are to the midpoint of the period 2090 to 2099, while those in the TAR are to 2100.
- The TAR included some small additional contributions (e.g., 0.5 cm additional rise in the twenty-first century due to permafrost), which are not included in the AR4.
- The modeling uncertainties have been decreased with improved information and modeling capabilities. The TAR uses simple climate models to estimate sea level rise, which are less detailed than the atmosphere-ocean general circulation models used in the AR4.

Mechanisms that may lead to sea level rise are not included in the AR4 projections unless there is a broad scientific consensus that they are well understood with quantifiable implications. In particular, the projections do not include potentially large and nonlinear effects such as an accelerated loss of the Antarctic and Greenland Ice Sheets because there are no broadly accepted models of these processes. It is not even known whether ice sheet discharge would increase or decrease sea level rise in the short term. However, the projections do include the best current understanding of polar ice dynamics.

Critics of the IPCC (Oppenheimer et al. 2007) have generally focused on its scientific conservatism. In particular, many planners have expressed concern that the upper limits of the IPCC projections do not represent a worst-case scenario. However, the scientific community has not attempted further synthesis of the wide range of available models and potential contributions to future sea level rise. Few numerical predictions of total sea level rise have been published in the peer-reviewed literature since dissemination of the AR4.

Document D: Rahmstorf, 2007 (Estimated range of 20 to 55 inches by 2100)

Stefan Rahmstorf of the Potsdam Institute for Climate Impact Research in Germany developed a semi-empirical approach to predict sea level rise. This semi-empirical model assumes that the initial rate of sea level rise is proportional to the increase in temperature relative to a previous equilibrium temperature:

$$\frac{dH}{dt} = a(T - T_0)$$

In this formula, H is the global mean sea level, t is time, T is the global mean temperature, T_0 is the previous equilibrium temperature value, and a is an empirically derived proportionality constant. Rahmstorf fits this

linear relationship with available observations of global sea level and global mean temperature between 1880 and 2001. This fit provides a proportionality constant, which allows him to use the temperature projections from the IPCC's 2001 TAR to project future sea level rise. An increase of 28 to 39 inches (70–100 cm) between 1990 and 2100 is obtained by using the best fit to the proportionality constant a and the range of temperature projections from the TAR. An increase of 20 to 55 inches (50–140 cm) is obtained by adding one standard deviation to the derived value of a . These are the values discussed by the CALFED Independent Science Board (refer to Document B).

Rahmstorf's work is, in part, based on the observation that the TAR under-predicts sea level rise from 1990 to 2006 (Rahmstorf et al. 2007), whereas the semi-empirical approach predicts sea level rise from 1990 to 2006 better than the TAR. However, Rahmstorf's work suggests that the 2007 AR4 adequately describes sea level rise from 1993 to 2003, although global measurements are still near the upper limits of the AR4 modeling range. Because the rate of global sea level rise has slowed since 2005 (Cazenave et al. 2008), this observation may be a less strong argument in favor of the semi-empirical approach than it was in early 2007. In addition, published comments on this paper have argued that it misuses statistical methods (Holgate et al. 2007; Schmith et al. 2007). However, it has been widely quoted by authors, particularly in the planning and policy fields, who are critical of the IPCC's focus on scientific consensus.

Document E: California Climate Change Center, 2006 (Estimated range of 8 to 31 inches by 2100)

The CCCC comprises the California Energy Commission, Scripps Institution of Oceanography at the University of California at San Diego, and the University of California at Berkeley. The CCCC report on sea level rise was based on the Atmosphere-Ocean General Circulation Model simulation results prepared by IPCC in AR4. However, at the time the CCCC report was published, the AR4 report was in preparation, with only partial results available. For example, the modeling of sea level rise associated with thermal expansion was complete for only a subset of the emissions scenarios, and the component of sea level rise associated with ice melt had not been finalized. The CCCC report used additional models (Hulme et al. 1995) to develop a full range of estimates of eustatic sea level rise. The results (20 to 80 cm or 8 to 31 inches between 2000 and 2100) are similar to those in the AR4 report. Given that the AR4 report has now been published, it seems reasonable to treat the sea level rise projections in the CCCC result as superseded.

The CCCC report goes on to discuss the potential implications of sea level rise for exacerbating storm effects (e.g., high surf combined with high tides) and on the Delta levees. This discussion uses an illustrative sea level rise increase of 12 inches (30 cm) in the twenty-first century. This illustrative value lies within the range published in the AR4, so that the CCCC report remains current in its discussion of implications.

Document F: Intergovernmental Panel on Climate Change, 2001 (TAR) (Estimated range of 4 to 35 inches by 2100)

The Third Assessment Report (TAR) of the IPCC, like the fourth (e.g., AR4), is a detailed synthesis of the available peer-reviewed science. It is similar to the AR4 in being consensus-driven – potential contributions to sea level rise are not included unless there is broad agreement that they are quantitatively understood.

The TAR projects a sea level rise of 4 to 35 inches (9 to 88 cm) between 1990 and 2100. As with the AR4, the largest contribution to the uncertainty is associated with modeling uncertainties, and in particular with

the potential for dynamic ice sheet instability. The West Antarctic Ice Sheet (WAIS) is particularly called out in regard to uncertainty.

Document G: US Environmental Protection Agency, 1995 (Estimated range of 5 to 34 inches by 2100)

The focus of this report is on an explicit probabilistic assessment of different sea level rise scenarios for the 21st century. The report bases its modeling on earlier IPCC work (IPCC 1990, IPCC 1992) and creates a simplified model that captures the dependence of the IPCC projections of sea level rise on 35 major uncertainties. The main contributions to sea level rise in this model are thermal expansion together with ice melt in Greenland, the Antarctic, and small glaciers. The report develops a probability distribution for each of these 35 variables through a literature review and by discussion with a panel of expert reviewers. Finally, the report develops explicit probability distributions for the potential future sea level rise (specifically, the increase in sea level rise relative to an increase at the current rate). Results are given both for a mix of future emissions scenarios used by the IPCC in 1990, and for each emission scenario.

The report is careful to state that:

... our probability estimates are not based on statistics. Our estimates simply convey what the probability of various rates of sea level rise would be if one is willing to assume that the experts we polled are each equally wise and that their collective wisdom reflects the best available knowledge [...] Our projections are less like a statistical weather forecast and more like handicapping a horse race.

For San Francisco, the 5 to 95 percent range for the global average sea level rise, assuming the current rate of global average sea level rise, is the central value of 1.8 mm/year or 5 to 34 inches (14 to 86 cm) between 1990 and 2100. The 1 to 99 percent range (the widest range reported) is -2 to +44 inches (-4 to +112 cm). These percentages are cumulative probabilities; therefore, the 1percent value indicates that there is a 1percent chance that the value would not be exceeded.

Document H: National Research Council (NRC), 1987 (Estimated range of 20 to 59 inches by 2100)

The focus of this document is on the anticipated effects of sea level rise and the recommended responses. The report does not make specific projections of sea level rise: rather, it adopts three plausible conditions of 20 inches, 39 inches, and 59 inches (50, 100, and 150 cm) by 2100. Also, this document serves as the basis for recent United States Army Corps of Engineers (USACE) (July 2009) document.

Summary and Adopted Approach

As described above and summarized in Table C&R-7, the estimates of sea level rise in the literature vary widely, from an observed value of 8 inches per century to a modeled value of about 35-inches per century based on IPCC high estimates. Semi-empirical studies by Rahmstorf and news articles have stated that sea level rise over the next 100 years could be substantially higher than that suggested by IPCC and could be as much as 55 inches by 2100. This sea level rise estimate was adopted by the CALFED Independent Science Board as a plausible, albeit high, value, and was also used as a basis for some of the estimates prepared by the CCCC. It is also the basis for the long-term estimate recommended by BCDC and SCC. High-resolution global altimetry data (which measures the altitude of an object above a fixed level) through the end of 2009 suggest that in the last two decades, global mean sea level has increased at a rate close to

the upper end of the IPCC projections. This corresponds to an increase in global mean sea level of around 10 inches by 2050 and 30 inches by 2100.

From the above, what is clear is that the science of climate change and sea level rise is evolving, implying that it is prudent to develop community designs that can accommodate various levels of sea level rise over the planning horizon, rather than design to a specific report or estimate.

In developing numerical allowances for future sea level rise for the CP-HPS Phase II project, two considerations went into the selection of a set of sea level rise projections and a planning horizon:

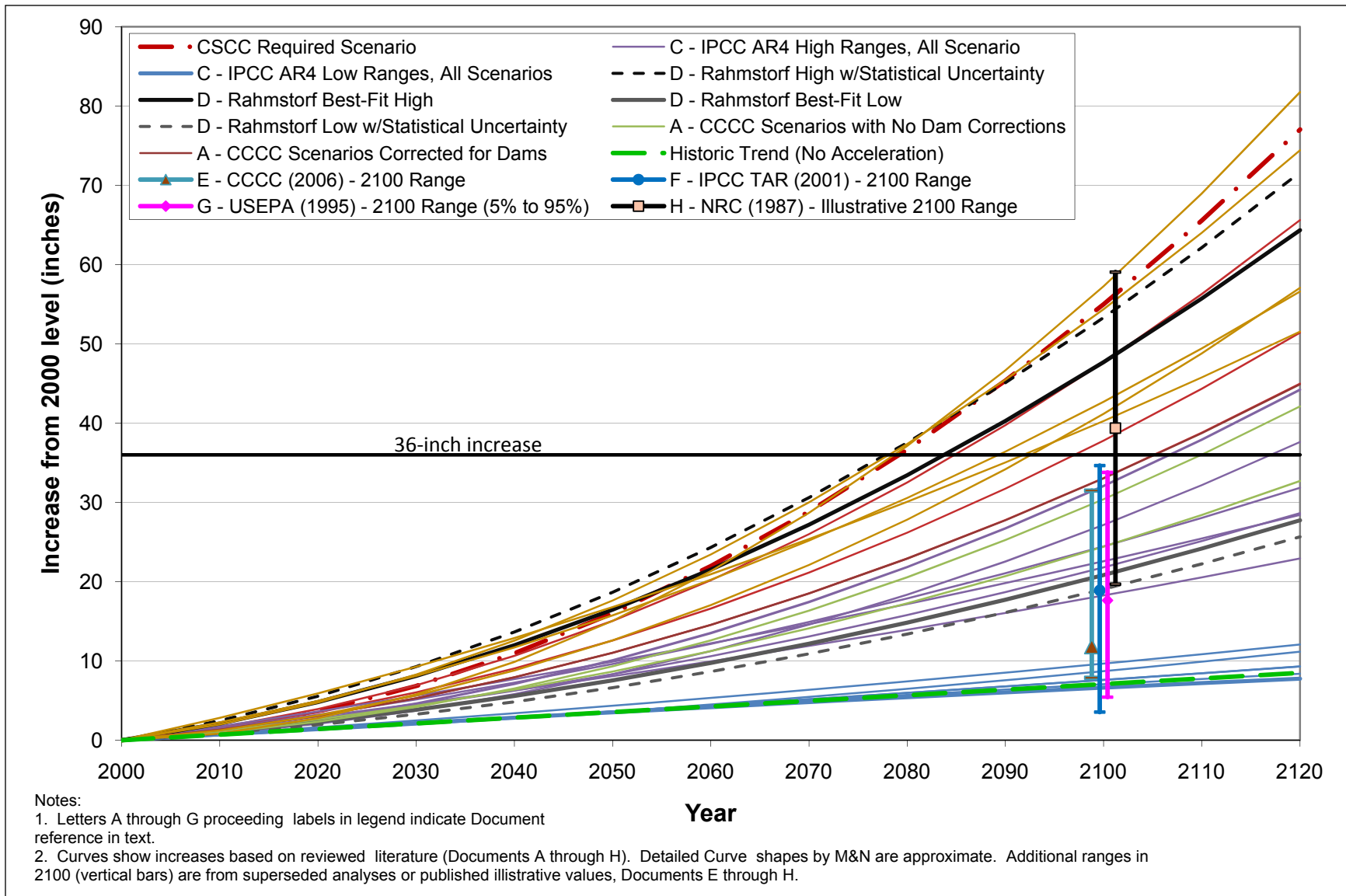
- First, the importance of distinguishing between scientific projections (prepared by the IPCC and by Rahmstorf) and illustrative cases (by the NRC).
- Second, the evolving and improving nature of the science of climate change and sea level rise. This fact does not necessarily lead to a narrower spread of projections over time. For example, ice sheet dynamics is a very active research field, and measurements of the polar ice caps are showing rapid melt in some areas. Improving measurement techniques could potentially highlight new mechanisms that were not previously understood.

Figure C&R-2 (Sea Level Rise Projections) illustrates the different projections of sea level rise reviewed and from 2000 to 2100 based on the literature discussed previously. The shapes on the curves are approximate, based on available data. Where rates of sea level rise were not provided in the literature or where the studies have been superseded by more recent studies, ranges are shown for the year 2100. The curves in Figure C&R-2 show projections from the following reports:

- **California Climate Change Center, 2009.** This report includes a number of projections, largely based on the IPCC AR4 temperature projections and the semi-empirical approach of Rahmstorf.
- **Intergovernmental Panel on Climate Change, 2007.** This report provides low, mid-level, and high values for six independent emissions scenarios, with and without a scaled-up ice discharge term. Thus, in principal, a total of 36 different estimates are available. Figure C&R-2 shows the low and high values for the different scenarios including the scaled-up ice discharge term.
- **Rahmstorf, 2007.** This paper includes four projections: low and high values based on the low and high temperature projections of the TAR (IPCC 2001), both with and without inclusion of a statistical uncertainty in an empirically derived proportionality constant. Figure C&R-2 shows all four curves.

The upper limit of sea level rise provided by the NRC in Document H is similar to Rahmstorf's upper curve; however the NRC curves are *not* projections, but rather illustrative cases. Finally, the figure shows how sea level would increase if there were no acceleration, based on the current (1961–2003) global average increase of 1.8 mm/year (IPCC 2007).

Recent news articles, based in part on recent measurements of ice cap melt, have stated that the increase in sea level rise over the next 100 years could be double that previously calculated. However, this doubling is relative to the IPCC predictions, which provide much lower curves. Therefore, these recent measurements do not change the conclusions stated above.



SOURCE: Moffat & Nichol, 2010.

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FIGURE C&R-2



Candlestick Point — Hunters Point Shipyard Phase II EIR
SEA LEVEL RISE PROJECTIONS

Since building structures are generally “immovable,” whereas a shoreline protection system and/or storm drain system can be adapted to keep up with changing sea levels, different planning horizons need to be adopted for different elements of this project. In searching for guidance policies from agencies, the most relevant and recent policy statements that can be used are from BCDC and the SCC. The SCC’s policy statement on climate change includes the following:

Prior to the completion of the National Academies of Science report on sea level rise, consistent with Executive Order S-13-08, the Conservancy would consider the following sea level rise scenarios in assessing project vulnerability and, to the extent feasible, reducing expected risks and increasing resiliency to sea level rise:

- a. 16 inches (40 cm) by 2050
- b. 55 inches (140 cm) by 2100

The strategy for the Project is founded on using mid-term sea level rise values for the shoreline edge and storm drainage system. For a long-term planning horizon (for example, beyond 50 years from now), the evolving nature of climate change and sea level rise science needs to be recognized, and no single sea level rise value should be relied upon at this point in time. Instead, an adaptive management strategy should be put in place such that improvements for sea level rise beyond the mid-term planning horizon can be designed and implemented as sea levels rise.

Project Design and Mitigation Measures for Potential Sea Level Rise Hazards Related to Hydrology and Flooding

Section II.F.2, pages II-69 to -70, MM HY-12a.1 and MM HY-12a.2, pages III.M-100 to -103, of the Draft EIR discusses the measures planned to address sea level rise. In response to comments on the Draft EIR, an expanded discussion of the adaptive management strategy that would be used for this Project and specific mitigation measures that would be used for the development areas, storm drainage system, and shoreline protection are presented here. Based on the coastal study, literature review, and numerous discussions with other City agencies (including SFPUC and DPW), the following strategy for protection against sea level rise has been incorporated into the project. It is comprised of four separate components:

- Construction of a shoreline protection system that is initially built to accommodate a mid-term rise in sea level of 16 inches, with a design that is adaptable to meet higher than anticipated values in the mid-term, as well as for the long-term
- Construction of a storm drainage system that is initially built to accommodate a mid-term rise in sea levels of 16 inches, with a design that is adaptable to meet higher than anticipated sea level rise values (similar to the first bullet)
- Construction of buildings and vital transportation infrastructure at elevations that would not be exceeded by flood waters, even if the shoreline protection does not function, for existing conditions and over a longer-term as compared to the two above
- Formation of an Adaptation Strategy that would include preparing an Adaptive Management Plan that outlines an institutional framework, monitoring triggers, a decision-making process, and creates an entity with taxing authority that would pay for infrastructure improvements necessary to adapt to higher than anticipated sea levels

The Project design for sea level rise, therefore, meets both near-term and longer-term objectives; in addition, it incorporates an adaptive management strategy to address improvements related to sea level rise

in the future. Each element of construction was designed to a specific planning horizon as described below. Implementation of mitigation measures MM HY-12a.1 and MM HY-12a.2 would require that all housing be elevated out of the floodplain by grading and fill, that the City's Interim Floodplain Maps (or the FEMA maps, if adopted prior to Project implementation) be updated to reflect finished grade elevations, and that open space setbacks be put in place to allow protection against future sea level rise.

Shoreline Protection

For the perimeter system, it is not preferable to build a high wall around the Project for a design condition that may not happen for several decades for a couple of primary reasons: one, it would pose a visual obstruction, and, two, it would severely limit public access. At the same time, it is not prudent to build to current sea level conditions and keep raising the grade and/or structures as sea levels rise. Therefore, an interim sea level rise estimate for the year 2050, as put forth by BCDC and the SCC, was selected as the design criteria to use for design and initial construction—that sea level is 16 inches higher than the existing conditions, which would ensure that adaptive management construction activities are not triggered until at least the year 2050. Mitigation measure MM HY-12a.2 provides for the protection of the Project site from sea level rise over the life of the Project by requiring the design to be adaptable to higher levels of sea level rise by leaving a significant development setback such that future improvements can be made. A funding source to construct these improvements is required by MM HY-12a.2 and would also be part of the Adaptation Plan.

Storm Drain System

The storm drain system would be constructed with an initial sea level rise allowance of 16 inches and, per MM HY-12a.2, would be adaptable to higher levels of sea level rise with minimal intervention. The system would function as a gravity-drained system until about 2050. After that date, the mitigation measure requires that a portion of the Adaptation Strategy would be implemented, which would consist of installing storm drain pumps or other system for which the establishment of a funding mechanism is provided for in the mitigation measure.

Development Areas

In accordance with MM HY-12a.1, all buildings and entrances to subterranean parking and streets would be set at an elevation that is 36-inches higher than the existing BFE. This 36-inch sea level rise allowance, plus a freeboard of 6 inches, is proposed to be used for finished floor elevations of all buildings. This would ensure that even if no shoreline protection improvements are undertaken, or in the event of a slope failure along the shoreline, neither buildings nor transportation infrastructure would be flooded when water levels rise 42 inches higher than current BFE. Additionally, this allowance provides subterranean parking a minimum of approximately 36 inches between parking finish floor and present groundwater levels. This increase in elevation would provide flood protection beyond the 2080 time frame according to the most aggressive sea level rise, and well beyond 2100 according to the highest IPCC projection (refer to Figure C&R-2).

Adaptation Strategy

As a part of MM HY-12a.2, a project-specific sea level rise Adaptation Strategy would be implemented to provide guidance, identify relevant stakeholders, define appropriate management actions and triggers, and establish a project-specific funding mechanism. It would be administered by an entity created for the Project that would have taxing authority and funding responsibility.

The strategy envisions incorporating ongoing measurements of sea level rise from the scientific community into a Monitoring Program that would guide the decision-making process for future improvements. The Monitoring Program would include protocols to compare observed changes in sea level with the as-built perimeter elevations, using updates of changes in sea level provided by the NOAA, National Geodetic Survey, or other appropriate agencies. The Monitoring Program would be administered by a public entity with similar funding responsibilities as a Community Facilities District (CFD). This entity would guide the decision-making process for implementation of future improvements, such as raising the perimeter.

The Adaptive Management Plan would define specific triggers for action, based on observed changes in sea level arising from ongoing measurements obtained during the Monitoring Program. The Plan would require 5- or 10-year updates based on observed changes in sea levels, as well as any other effects of climate change (i.e., more or less extreme storm wave conditions). The initial strategy, as well as any updates, would be coordinated with relevant stakeholders, including the City and County of San Francisco, State Parks, FEMA, and BCDC.

Future improvements that may be needed to respond to sea level rise are as follows:

- When the mean sea level rises 16 inches above existing values, the crest elevation of the shoreline protection system would be raised 20 inches and storm drain system pumps would be installed
- When the mean sea level rises 36 inches above existing values, the shoreline protection system would be improved to act as a flood barrier

Potential Adaptation Measures

The proposed development setback distances would enable a variety of future perimeter modifications to accommodate at least 55-inches, with the ability to accommodate sea level rise even higher than 55 inches. The adaptive management strategy described above is based on elevation and structural characteristics of the shoreline along the project boundaries. The varied nature of this shoreline, ranging from protected and unprotected slopes, beaches, seawalls, and wharves, results in a multitude of potential adaptive management measures.

Perimeter adaptations would likely include a combination of the following components in response to varying land uses and wave run-up characteristics at different locations around the Project site:

- Raising the shoreline embankment in place to function as a storm surge or flood barrier
- Constructing a series of embankments of increasing heights away from the water. Land between sets of embankments could hold periodic wave overtopping that “drain out” between high tides
- Constructing sea walls, particularly along Parcel B where they would also function as a public amenity
- Where feasible, “lay back” the shoreline to create cobblestone beaches or tidal marshes that limit wave run-up and overtopping, rather than increasing embankment heights

Other Sea Level Rise–Related Issues

Sea Level Rise Effects on Seismicity

Seismicity can be described as the relative frequency and geographic and historical distribution of earthquakes (refer to Master Response 6 [Seismic Hazards]). The intensity of seismic shaking or strong ground motion during an earthquake at any particular location is dependent on a number of factors, including the distance and direction of the site from the earthquake epicenter, the earthquake magnitude,

and the geologic (soil and rock) conditions at and in the vicinity of the seismic event. The frequency, intensity, and distribution of earthquakes are unrelated to the groundwater level; that is, fluctuations in the groundwater level do not increase or decrease the likelihood or intensity of an earthquake. Other than to increase the thickness of the potentially liquefiable layer (by an amount proportional to the sea level rise), sea level rise would have a negligible effect on seismicity or potential seismic hazards at the site.

As discussed in the Draft EIR Section III.M.2 (Setting), page III.M-13, the potential hazard related to tsunamis in San Francisco Bay have been analyzed in regional studies. The expected 100-year tsunami wave run-up elevation at South Basin (which is adjacent to both Candlestick Point and HPS Phase II) is +4.8 feet (National Geodetic Vertical Datum [NGVD29]) or -3.8 feet (San Francisco City Datum [SFCD]). As discussed in the Draft EIR Impact HY-15 (Seiche, Tsunami, and Mudflows), page III.M-106, the development of the Project site, which takes sea level rise into account, as described above, would be protected from tsunami wave run-up with increases in sea levels up to 46 inches, if shoreline improvements were to fail during the seismic event.

Sea Level Rise Effects on Liquefaction

The discussion following Impact GE-5, Draft EIR page III.L-46, states:

... The structural design review required by MM GE-4a.1, MM GE-4a.2, MM GE4a.3, and MM GE-5a would ensure that all necessary methods and techniques would be incorporated in the design for Project foundations and structures to reduce potential impacts from ground failure or liquefaction to a less-than-significant level.

Additionally, as stated in Master Response 7 (Liquefaction), the potential for liquefaction is discussed, including site-specific geotechnical investigation and seismic analysis that would be completed prior to final design and construction. To account for the future impact of sea level rise, design-level liquefaction analysis and modeling would be based on a range of groundwater table elevations that are higher than existing conditions. Recommended mitigation measures for liquefaction, which would be developed during the geotechnical investigation and seismic analysis, and may include structural design measures and/or ground improvement, would be implemented at each site as determined necessary by the Lead Agency. Refer to Master Response 7 (Liquefaction) for a discussion of the potential for and mitigation of liquefaction and liquefaction-induced seismic hazards, including lateral spread, sand boils, and ground settlement at the site.

Sea Level Rise Effects on Movement of or Exposure to Toxics

Sea levels will increase over time and, therefore, there is a potential for residual levels of contaminants to interact with potentially rising levels of groundwater. As discussed the Draft EIR in Section III.K.1, page III.K-2, there are substantial ongoing remediation programs at known hazardous material release sites in throughout HPS Phase II (refer to Master Response 13 [Post Transfer Shipyard Cleanup]). There are no known hazardous material release sites requiring remediation at Candlestick Point, or at locations where off-site improvements are proposed, based on the results of investigations to date and a review of government agency databases. The Navy is providing soil and groundwater remediation (cleanup) at the HPS site to reduce chemical concentrations to meet cleanup levels approved by federal and state regulatory agencies. If the potential for the interaction with groundwater were to present a risk to human health or the environment, further remedial activities would be required by law. Additionally, the Institutional

Controls placed on areas with residual contaminants, as described in Section III.K.2, would require actions to maintain the protection to the environment and prevent human exposure.

Mitigation Measures for Other Potential Sea Level Rise Hazards

Sea level rise impacts and associated mitigation measures are described in Section III.M (Hydrology and Water Quality) of the Draft EIR. Anticipated sea level rise is being taken into account during the development design process to ensure preservation of the planned land uses. When specific buildings are designed, anticipated sea level rise would be taken into consideration when establishing grades, ground floor elevations and, if incorporated into a building, the type of below grade parking garage and associated foundation type to prevent groundwater infiltration. In areas where below grade structures are installed below the groundwater table, there are several well-tested methodologies that are successful at preventing groundwater intrusion into these below grade structures. As stated above, the development areas, including buildings would be designed for increased levels of sea level rise. This allowance would provide protection to sub grade levels against sea level rise and prohibit groundwater from entering basements.

Residual chemicals in soil (refer to Master Response 15 [Proposition P and the Precautionary Principle]) largely consist of certain specific metals, which are typically associated with the rock and soil that were historically used to fill in the Bay to expand the Shipyard; thus, they are not part of a “spill” or “release” of contaminants, but rather reflect metal concentrations normally associated with Franciscan Formation bedrock and/or reflect metals concentrations normally associated with the type and quality of soil used during the period the Shipyard was filled. The metals that are found in soil at the Shipyard are predominantly immobile (meaning they are not readily soluble) and, therefore, would not dissolve into groundwater at concentrations of concern and cause problems associated with human health effects or ecological effects. Thus, a rise in the groundwater level caused by a rise in sea level would not mobilize these metals. As a further protective measure, there would be a strict prohibition against pumping groundwater for domestic, commercial, industrial or irrigation purposes. Any groundwater pumped to support construction efforts would be disposed of in accordance with San Francisco Public Utilities Commission discharge requirements.

Although residual chemicals may remain in soil after cleanup, the residual chemicals would be located under a physical barrier (e.g., soil cap, pavement, office building) that prevents human exposure to the residual chemicals. This requirement to cover the entire site to prevent access to residual contamination is required by the Navy CERCLA clean up documents, which have been approved by the USEPA, DTSC, and the Regional Water Quality Control Board. Furthermore, the requirement to install a cover is one that would be a requirement of each landowner within the former Shipyard.

Currently, existing groundwater contamination would be remediated prior to development to levels that would allow safe reuse of the property (refer to Master Response 9 [Status of CERCLA Process]). After remediation is complete, there may still be low levels of residual volatile organic compound (VOC)-affected groundwater and soil that, in turn, could cause the potential for vapor intrusion into buildings constructed over these areas. In order to address this potential, the Navy would conduct a subsurface soil vapor sampling program to define areas where this vapor intrusion may be an issue. If this soil vapor sampling program results in the definition of areas where vapor intrusion could be an issue, the data would be used to properly design vapor mitigation systems to be constructed within and underneath building foundations. These vapor

mitigation systems are common, well tested, and protective of building occupants, whether they include residential or commercial occupants. All soil vapor sampling programs, definition of areas requiring vapor controls, and the design and installation of vapor mitigation systems would be overseen and approved by the regulators (USEPA, DTSC, and RWQCB). Furthermore, any soil vapor mitigation system would be subject to periodic inspection and maintenance to ensure proper operation.

VOC vapors occur in soil that is not totally saturated with water. Therefore, if sea level were to rise and if there was an associated rise in groundwater, generation of VOC vapors would actually be reduced. VOC vapors migrate from impacted soil and groundwater into soil pore spaces that would become saturated due to this higher groundwater level.

If the potential for the interaction with groundwater were to present a risk to human health or the environment then further remedial activities would be required by law. Additionally, the Institutional Controls placed on areas with residual contaminants, as described in Section III.K.2, would enforce action to maintain the protection to the environment and prevent human exposure.

Sea level rise would not compromise covers and/or engineered caps that may be placed on top of an area of known or suspected residual contamination. Operation and maintenance plans for these covers and caps would be carried out to monitor and repair potential breaches. Additionally, emergency response plans would be carried out following major flooding events, at which time caps and covers would be investigated for potential breaches and repaired. These caps and covers would prevent contaminants from interacting with the environment and retain in place any sea level rise interaction with residual contamination. Master Response 9 (Status of the CERCLA Process), Master Response 11 (Parcel E-2 Landfill), Master Response 12 (Naturally Occurring Asbestos), and Master Response 13 (Post-Transfer Shipyard Cleanup) further discuss the cleanup process and residual contamination that could remain on the Project site after transfer.

■ Master Response 9: Status of the CERCLA Process

Introduction

Overview

Comments have been raised asking for clarification of the CERCLA process at HPS Phase II and the status of the various HPS parcels within the CERCLA process. The Navy is conducting the environmental cleanup at HPS, and will do so independent of whether this project proceeds or not. The Navy conducts the cleanup in accordance with a process set forth in an agreement between the Navy, USEPA, the state Department of Toxic Substances Control (DTSC), and the regional water quality control board (RWQCB). That agreement is called the Federal Facilities Agreement (FFA). This ongoing remedial program is required to implement all remedial actions necessary to protect human health and the environment from risks associated with hazardous materials released into soil or groundwater, in consideration of the uses contemplated by the Project. This master response is intended to direct the reader to specific sections and figures in the Draft EIR that address these issues.

This response is organized by the following topics:

- Introduction
- Summary of Navy Cleanup Process

- Navy Radiological Cleanup Process
- Current Status of Navy Clean-up Activities at HPS Phase II
 - > Parcel B
 - > Parcels C and UC-2
 - > Parcel D (including new Parcels D-1, D-2, UC-1, and G)
 - > Parcel E
 - > Parcel E-2
 - > Parcel F

Commenters

Commenters who addressed this issue include:

- Federal, State, Regional, Local Agencies, Boards, and Commissions
 - > California Department of Transportation—Transportation Planning (71-11)
 - > Planning Commissioner Borden (SFPC-111, SFPC-113, SFPC-114, SFPC-118, SFPC-119)
 - > San Francisco Bay Conservation and Development Commission (BCDC) (103-6)
- Organizations
 - > Breast Cancer Action (55-1, 55-4)
 - > Green Action Health and Environmental Justice (58-1)
 - > POWER (People Organized to Win Employment Rights) (50-6, 52-1, 52-3, 69-1)
 - > San Francisco Green Party (36-6, 36-7)
- Individuals
 - > Ahimsa Porter Sumchai (SFPC-46)
 - > Bernadette Sambrano (SFPC-78)
 - > Car Green Action Health and Environmental Justice (SFRA1-83)
 - > Carol Harvey (67-2, 67-3)
 - > Dan Solberg (SFRA1-38)
 - > Daniel Landry (SFRA2-34)
 - > Francisco Da Costa (SFPC-51)
 - > Jaron Browne (SFPC-23)
 - > Juana Tello (66-3, 66-4, 66-5, 66-8, 66-12, 66-16)
 - > Juana Tello (SFRA1-59)
 - > Michael E. Boyd (SFPC-39)
 - > Nyese Joshua (65-4, 65-31, 65-33, SFPC-59)
 - > Perry Matlock (74-3)
 - > Starr Miles (SFPC-74)
 - > Willie Ratcliff (SFPC-107)

Comments received on the Draft EIR related to the CERCLA process were focused almost exclusively on issues addressed in Section III.K (Hazards and Hazardous Materials) of the Draft EIR; therefore, this master response provides further discussion to update and augment the analysis of the issues presented in Section III.K.

Comment Summary

This master response responds to all or part of the following comments: 36-6, 36-7, 50-6, 52-1, 52-3, 55-1, 55-4, 58-1, 65-4, 65-31, 65-33, 66-3, 66-4, 66-5, 66-8, 66-12, 66-16, 67-2, 67-3, 69-1, 71-11, 74-3, 103-6, SFRA1-38, SFRA1-59, SFRA1-83, SFPC-23, SFPC-39, SFPC-46, SFPC-51, SFPC-59, SFPC-74, SFPC-78, SFPC-107, SFPC-111, SFPC-113, SFPC-114, SFPC-118, SFPC-119, SFRA2-34.

Summary of Issues Raised by Commenters

- Inquiring about the status of the cleanup on the various Shipyard parcels

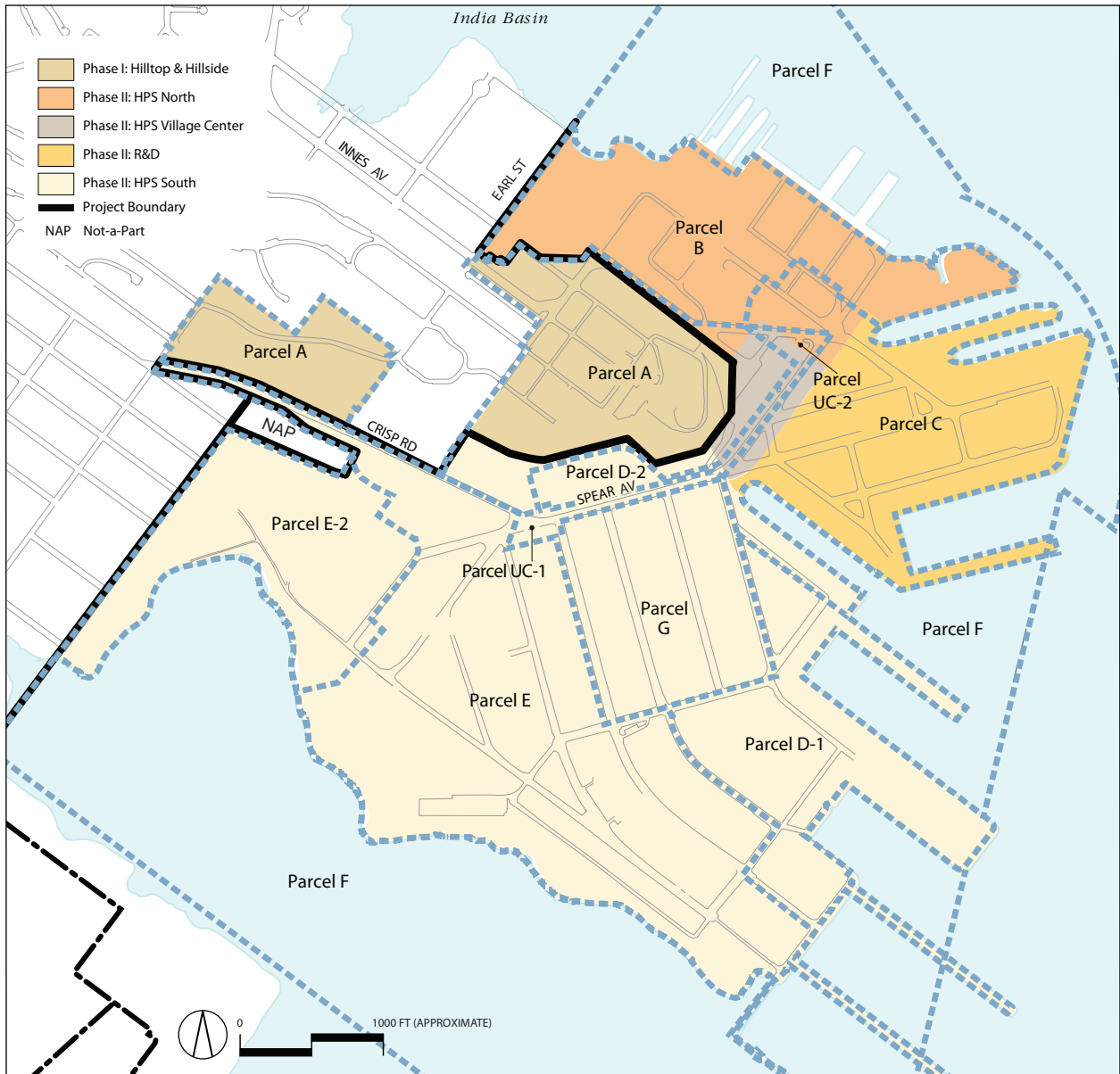
Response

Introduction

The *Comprehensive Environmental Cleanup and Liability Act* (CERCLA) process is defined in general terms in the Draft EIR in Section III.K.1 (Introduction), page III.K-2. A summary of the steps in the CERCLA process is presented below. Revised Figure III.K-5 (Hunters Point Shipyard Phase II Navy Parcel Overlay) and new Figure III.K-6 (Status of CERCLA Process) provide a map of the various parcels that are described below and illustrate the steps in the CERCLA process and the current status of the parcels in that process. For greater detail on these steps and status, consult the Draft EIR, pages III.K-11 through -26. As stated in the Draft EIR, the goal of the EIR is not to assess the adequacy or impacts of the Navy's remediation actions but instead to assess the impacts of implementing the Project. The relevant environmental regulatory agencies would require performance of the remedial activities that the Navy is undertaking regardless of whether this Project or any other development proposals were proceeding. Potential environmental effects of the remedial activities (i.e., of soil excavation, soil transport, and operation of treatment systems) have been, and will continue to be, evaluated by the Navy and regulatory agencies in conjunction with the approval process for specific remedial actions, and appropriate environmental controls have been, and will continue to be, incorporated into the design and implementation of those remedial actions. Therefore, although the Draft EIR evaluates the potential for construction and occupancy of the Project to affect, or be affected by, hazardous materials release sites, it does not evaluate the potential impacts of the specific remedial activities conducted as part of the ongoing programs that the Navy is conducting as required by CERCLA and the FFA.

Summary of Navy Cleanup Process

The Navy is carrying out each of the steps listed below for each parcel (or subparcel in some cases) at the Shipyard. Each step results in the preparation of a document which is available to the public at the official document repository which the Navy is required to maintain for the project (located at the San Francisco Public Library located at 100 Larkin Street, San Francisco, California). All of the documents related to the Navy's remedial actions that are referenced in the Draft EIR or these responses to comments are also available at the San Francisco Redevelopment Agency, One South Van Ness Avenue, Fifth Floor, as part of File No. ER06.05.07, or at the Planning Department, 1650 Mission Street, Fourth Floor, San Francisco, CA 94103 as part of File No. 2007.0946E. Many of these documents (e.g., the Feasibility Study and Proposed Plan) are made available in draft form for public review and comment before they are

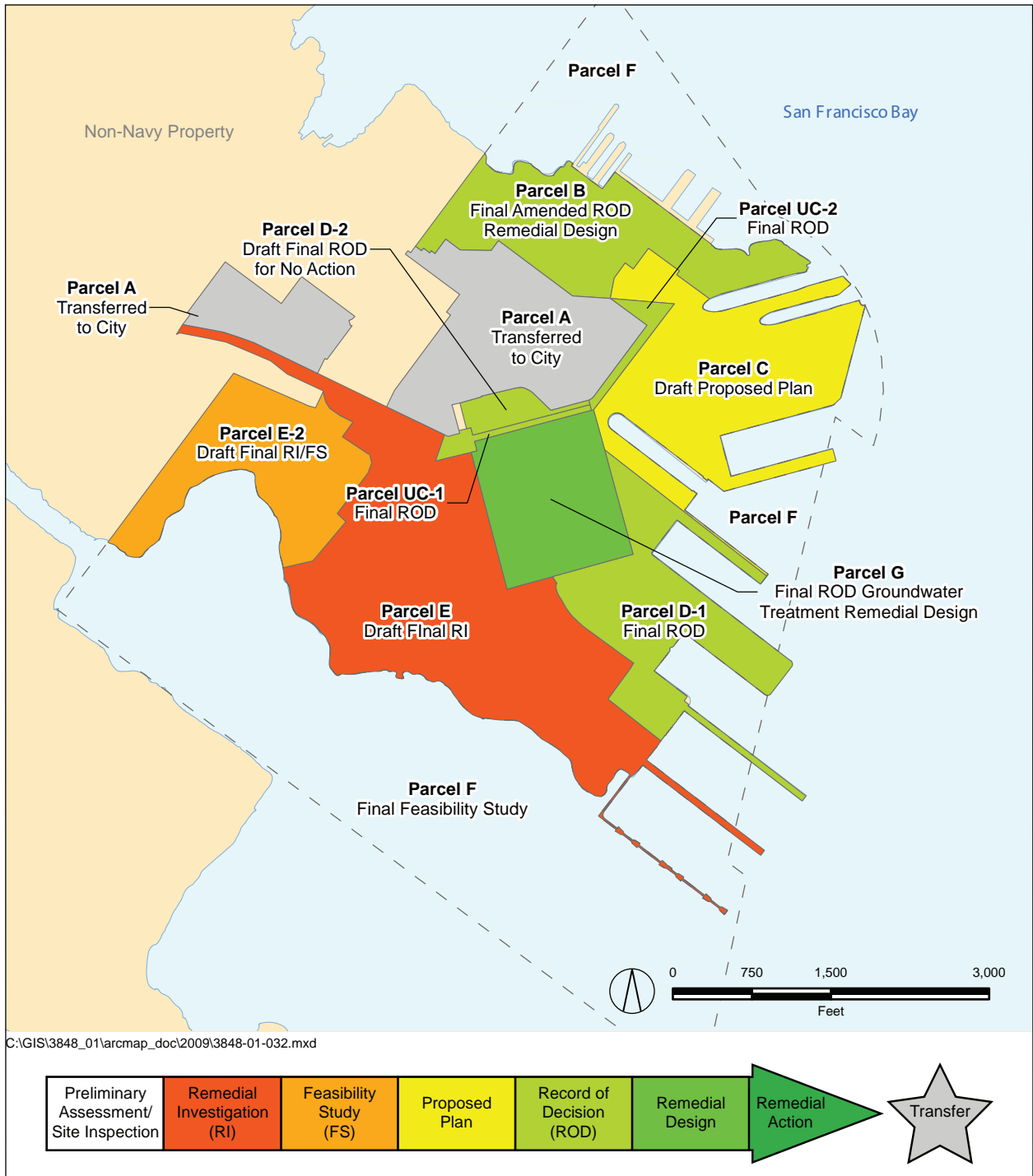


SOURCE: Lennar Urban, 2009.

PB5&J 04.21.10 02056 | JCS | 10

Candlestick Point — Hunters Point Shipyard Phase II EIR
HUNTERS POINT SHIPYARD PHASE II NAVY PARCEL OVERLAY

FIGURE III.K-5



SOURCE:PBS&J, 2010.

PBS&J 04.09.10 02056 | JCS | 10

Candlestick Point — Hunters Point Shipyard Phase II EIR
STATUS OF CERCLA PROCESS

FIGURE III.K-6

finalized. Pursuant to the Community Involvement Plan implemented by the Navy and approved by the regulatory agencies, various types of community outreach activities are conducted in association with each of these steps.

- **Preliminary Assessment/Site Inspection**—An initial review of the site, including review of historic records and visual inspections. Sampling and analysis of soil, surface water, and/or groundwater may occur to evaluate whether the site needs to move to the next phase for further investigations.
- **Remedial Investigation**—A closer look including collecting and analyzing samples to assess risk to human health and the environment. Treatability studies may occur in conjunction with or alongside physical investigation and alternative evaluation. A Removal Action may also be performed at this point.
- **Feasibility Study**—Results of the risk assessment, along with other data collected during the Remedial Investigation, are used to evaluate cleanup alternatives that have been screened for effectiveness, implementability, and cost.
- **Proposed Plan**—A fact sheet that describes cleanup alternatives evaluated in the Feasibility Study and explains the preferred alternative. This step requires a meeting to be held to provide information to the public and allow the public to comment on the preferred cleanup alternative.
- **Record of Decision (ROD)**—The selected cleanup alternative is documented and publicized in this document. A summary and responses to all comments on the Proposed Plan are included in this document.
- **Remedial Design**—A design for implementing the selected cleanup alternative is prepared. A fact sheet is sent to the public before the Navy begins work on the cleanup.
- **Remedial Action**—The cleanup remedy is carried out and the public is kept informed.

Navy Radiological Cleanup Process

As part of the CERCLA process at HPS, the Navy is surveying for radionuclides at structures, former building sites, and areas potentially impacted by radiological activities. The Navy is decontaminating structures found to contain radionuclides above established remedial goals. The Navy is removing all of the storm drains and sanitary sewer lines across HPS, testing soil below the lines for radionuclides, excavating materials and soils that contain radionuclides above established remedial goals and disposing of these materials and soils at off-site facilities. The Navy is seeking to have structures and areas of the sewer system and storm drain system that are impacted with radionuclides cleared for unrestricted use related to the radionuclides. But, in the Parcel B ROD, the Navy has identified a remedial approach for two areas of Parcel B that would result in a restricted use designation for radionuclides. For example, the ROD for Parcel B proposes a restricted use designation for a large fill area in Parcel B referred to as IR-07 and IR-18. This area of Bay fill has not been found to contain radionuclides but the Navy has determined that the presence of radionuclides in the fill cannot be ruled out, as described in more detail in Master Response 13 (Post-Transfer Shipyard Conditions). The Navy proposed remediation consisting of conducting a surface scan and removing any radiological anomalies detected to a depth of 1 foot (the maximum effective depth of the surface scan). A 1-foot-thick layer of clean soil would be added above the screened and radiologically cleared surface. A demarcation layer would be installed on the new soil surface and a new 2-foot-thick soil cover would be constructed over all of IR-07 and IR-18 area that may contain radionuclides. When the property transfers, institutional controls would be imposed that would restrict use of the property to

recreational uses and open space and require the Agency to maintain the soil cover in place. Radiological related activities and potential impacts at Hunter's Point Naval Shipyard that may result during the Project construction and implementation as a result are discussed in Section III.K.2 (Setting) page III.K-9 and page III.K-27 of the Draft EIR. The Draft EIR references the Historical Radiological Assessment (HRA) for more information about the radiological impacts to the site (Reference #313 of Section III.K [Hazards and Hazardous Materials] of the Draft EIR). The Agency will not accept radiologically impacted property for transfer until the Navy has completed radiological surveys, investigations, and cleanup as approved by Federal and State regulatory agencies.

Current Status of Navy Clean-up Activities at HPS Phase II

Parcel B

The Navy has completed the preliminary investigation, site inspection, remedial investigation, feasibility study, proposed plan, and ROD. The Navy issued an initial ROD in 1997, prepared a remedial design, and proceeded with remedial action implementation. After a decade of work and additional study, it developed a revised remedy. The Navy issued an amended ROD in 2009.

The Navy has been carrying out remediation of radiologically impacted sewers and storm drains and buildings since 2007 and this work is expected to be completed by early 2010. Remediation means that the sewers and storm drains are removed from the ground and adjacent soil is excavated until confirmed clean. The Navy has completed the remedial design (RD) for Installation Restoration (IR) Sites IR-07 and IR-18, an area of fill in the northwestern area of the parcel. This RD includes plans for remediation of near-shore sediments and construction of a protective revetment along the shore of San Francisco Bay in IR-07. The Navy is completing a remedial design for the remaining work on the rest of the Parcel. Also, under California law, the corrective action work plan for the petroleum hydrocarbon program in Parcel B was finalized in 2009, fieldwork has been completed, and reporting is ongoing. For further detail on the status of Parcel B, refer to pages III.K-13 through -18 of the Draft EIR.

Parcels C and UC-2

The Navy has completed the preliminary investigation, site inspection, remedial investigation, feasibility study and proposed plan and a ROD is currently being prepared. The ROD will describe the remedial actions that have been approved by the Navy, the USEPA, and the state regulatory agencies for remediating soil and groundwater in Parcel C. A study to evaluate methods to clean up solvents and metals in groundwater (known as a "treatability study) is in progress at Buildings 134, 211, 231, and 253 in the eastern area of Parcel C. There is a draft final ROD for UC-2, which is a utility corridor along Fisher Avenue that has recently been separated from Parcel C. For further detail on the status of Parcel C, refer to pages III.K-18 and -19 of the Draft EIR.

Parcel D (including new Parcels D-1, D-2, UC-1 and G)

The original Parcel D consisted of 101 acres of the southeast-central portion of HPS. After completing the preliminary investigation/site assessment, remedial investigation, and feasibility study for Parcel D, the Navy prepared a Proposed Plan that presented a proposal for remedial action to be selected in the ROD for the entire Parcel. Although the Proposed Plan covered all of Parcel D, for final remedy selection, the Navy divided Parcel D into four new parcels: Parcels D-1, D-2, G, and UC-1 (UC" stands for Utility

Corridor). One combined ROD for Parcels D-1 and UC-1 was issued and separate draft RODs were prepared for Parcel D-2 and Parcel G.

- **Parcel D-1**—The Final Parcel D-1 ROD was issued in 2009. A groundwater treatability study was recently completed for Parcels D-1 and G and the final treatability study report will be issued and describes the success of the treatment method to clean up solvents and metals in groundwater. For further detail on the status of Parcel D-1, refer to pages III.K-19 through -21 of the Draft EIR.
- **Parcel D-2**—Radiologically impacted sewers and storm drains were recently removed for clean up in Parcel D-2. The Parcel D-2 Removal Action Completion Report is being prepared. The final “No Further Action” ROD for Parcel D-2 is expected in spring 2010. The property will then be ready to be transferred after the Navy issues, with the concurrence of regulators, a Finding of Suitability to Transfer. For further detail on the status of Parcel D-2, refer to pages III.K-19 through -21 of the Draft EIR.
- **Parcels UC-1**—The Navy is currently cleaning up radiologically impacted sewer and storm drain lines along Spear Avenue in Parcel UC-1. There is a Final ROD for UC-1. For further detail on the status of Parcel UC-1, refer to pages III.K-19 through -21 of the Draft EIR.
- **Parcel G**—The Navy issued a final ROD for Parcel G in March 2009. A draft Remedial Design document is currently under review. These documents call for excavation and off-site disposal of contaminated soils and installing soil covers; treating groundwater at specific locations by injecting chemicals or biological nutrients to break down the chemicals, along with groundwater monitoring; and continuing the removal of radiologically contaminated building materials and soils. For further detail about the status of Parcel G, refer to page III.K-21 of the Draft EIR.

Parcel E

The Navy has completed the preliminary assessment/site investigation and the remedial investigation, and has prepared a draft feasibility study (FS) for Parcel E that provides and evaluates a list of various methods, known as remedial alternatives, to address impacts to soil and groundwater. The Navy began a groundwater treatability study in 2009. For further detail on the status of Parcel E, refer to pages III.K-22 through -24 of the Draft EIR.

Parcel E-2

The Navy has completed the preliminary assessment/site investigation is expected to issue the final combined remedial investigation and FS (RI/FS) Report for Parcel E-2 in spring 2010. This report will provide information on the distribution of impacts to soil and groundwater in Parcel E-2 and evaluates a list of available alternatives to clean up the impacts. In addition, an addendum to the FS is being prepared to address radiological impacts in Parcel E-2. For more information about Parcel E-2, refer to Master Response 11 (Parcel E-2 Landfill) and pages III.K-22 through -24 of the Draft EIR.

Parcel F

The Navy has completed the preliminary assessment/site investigation and a combined remedial investigation/feasibility study, as well an updated feasibility study. A Proposed Plan is expected to be issued in 2011. For further detail about the status of Parcel F, refer to pages III.K-26 and -27 of the Draft EIR.

■ Master Response 10: Pile Driving through Contaminated Soils

Introduction

Overview

Comments have been raised suggesting that the Draft EIR has not adequately addressed the potential effects of pile driving through contaminated soil at the site. This master response addresses the ongoing remediation programs in process on the site and describes the mitigation measures that would ensure that pile driving is not done through contaminated soil or, if it cannot be avoided, require the implementation of methods that case the pile through the contaminated zone and allow the pile installation through zones of contamination without adversely impacting the environment or spreading the contamination to other subsurface layers.

Commenters

Commenters who addressed this issue include:

- Federal, State, Regional, Local Agencies, Boards, and Commissions
 - > California State Parks (86-3)
 - > Planning Commissioner Borden (SFPC-111)
- Organizations
 - > Arc Ecology (82-4)
 - > Breast Cancer Action (55-5)
- Individuals
 - > Carol Harvey (67-4)
 - > Francisco Da Costa (105-1)
 - > Karissa Cole (SFPC-15)
 - > Nyese Joshua (65-1, 65-34)
 - > Sam Lao (SFPC-69)

Comments received on the Draft EIR related to hazardous materials were focused almost exclusively on issues addressed in Section III.K (Hazards and Hazardous Materials) of the Draft EIR; therefore, this master response provides further discussion to update and augment the analysis of the issues presented in Section III.K.

Comment Summary

This master response responds to all or part of the following comments: 55-5, 65-1, 65-34, 67-4, 82-4, 86-3, 105-1, SFPC-15, SFPC-69, SFPC-111.

Summary of Issues Raised by Commenters

- Pile driving through contaminated soil could cause spread of the contamination

Response

It is likely that deep foundations would be required for support of some new buildings and structures at the site including Yosemite Slough bridge and other structures near the Bay where soft sediments are present near the ground surface. To provide adequate support for these structures, the foundations may extend below the soft sediments into competent soil or bedrock.

As discussed in Section III.K.1, Draft EIR page III.K-2, there are substantial ongoing remediation programs at known hazardous material release sites at portions of the Project site from former Navy operations throughout HPS Phase II. These are the only known hazardous material release sites requiring remediation at the Project site; there are no known hazardous material release sites requiring remediation at Candlestick Point, or at locations where off-site improvements are proposed, based on the results of investigations to date and a review of government agency databases. The Navy is providing soil and groundwater remediation (cleanup) at the site to reduce chemical levels to meet cleanup levels approved by federal and state regulatory agencies (refer to Master Response 9 [Status of CERCLA Process]). Residual chemicals in soil, largely consisting of certain specific metals which are typically associated with the rock and soil that were historically used to fill in the Bay to expand the Shipyard, may remain. These chemicals are not part of a “spill” or “release” of contaminants, but rather reflect metals concentrations normally associated with Franciscan Formation bedrock and/or reflect metals concentrations normally associated with the type and quality of soil used during the period the Shipyard was filled. Therefore, the site should not be contaminated and pile driving should not present any concern of cross-contamination. However, should contamination still be a concern at the site, there are available pile installation methods that case the pile through the contaminated zone and allow the pile installation through zones of contamination without adversely impacting the environment or spreading the contamination to other subsurface layers. Section III.K, page III.K-63 through III.K-66 points out the potential impacts related to installation of foundation or utility support piles and mitigation measure MM HZ-5a (Foundation Support Piles Installation Plan, Section III.K, page III.K-65) would be performed prior to issuance of any building permits.

Additionally, if contaminants were encountered in a location where piles are to be installed, the site mitigation plan required by Article 22A and mitigation measure MM HZ-1a would specify procedures necessary to prevent pile installation from creating a vertical conduit for chemicals occurring in shallow groundwater to move along the pile to deeper groundwater zones, and avoid degradation of the deeper groundwater. The measure would require all excess fill or native soil materials generated during pile driving to be properly managed. Implementation of mitigation measures MM HZ-1a and MM HZ-2a.1 would ensure the safe handling of potentially contaminated materials encountered during improvement or installation of underground utilities and effects on human health and the environment would be reduced to a less-than-significant level.

■ Master Response 11: Parcel E-2 Landfill

Introduction

Overview

This master response addresses comments made on the method for cleaning the Parcel E-2 landfill located on the west side of the Shipyard near Yosemite Slough. Comments were also made concerning radiation on the site, the past brush fire, methane and landfill gas, and other hazards such as liquefaction, sea level rise, and seismic hazards.

This master response is organized by the following topics:

- Parcel E-2 and Landfill Remedial Process
- Radiation Assessments and Remedial Investigations
- Parcel E-2 Alternatives for Remediation
- Removal Actions and Other Remediation Actions Taken
- Liquefaction, Sea Level Rise, and Seismic Hazards

Commenters

Commenters who addressed this issue include:

- Federal, State, Regional, Local Agencies, Boards, and Commissions
 - > None
- Organizations
 - > Arc Ecology (85-19)
 - > Breast Cancer Action (55-5)
 - > Green Action Health and Environmental Justice (58-1, SFRA1-83)
 - > POWER (People Organized to Win Employment Rights) (52-3, 69-1)
 - > San Francisco Green Party (36-6)
 - > Technical Assistance For Communities (TASC) (68-2)
- Individuals
 - > Ahimsa Porter Sumchai (SFRA1-23, SFPC-46)
 - > Bernadette Sambrano (SFPC-79)
 - > Carol Harvey (67-2, 67-3, 67-4)
 - > Dan Solberg (SFRA1-38)
 - > Diane Wesley Smith (SFRA1-61)
 - > Francisco Da Costa (105-1, SFPC-51)
 - > Jaron Browne (SFPC-23, SFPC-24)
 - > Juana Tello (66-4, SFRA1-59, SFPC-94)
 - > Karissa Cole (SFRA1-54, SFPC-15)
 - > Nyese Joshua (65-1, 65-34, SFPC-59)
 - > Sam Lao (SFPC-69)
 - > Saul Bloom (SFPC-134)

- > Starr Miles (SFPC-74)
- > Willie Ratcliff (SFPC-107)

Comments received on the Draft EIR related to hazardous materials and the landfill were focused almost exclusively on issues addressed in Section III.K (Hazards and Hazardous Materials) of the Draft EIR; therefore, this master response provides further discussion to update and augment the analysis of the issues presented in Section III.K.

Comment Summary

This master response responds to all or part of the following comments: 36-6, 52-3, 55-5, 58-1, 65-1, 65-34, 66-4, 67-2, 67-3, 67-4, 68-2, 69-1, 85-19, 105-1, SFRA1-23, SFRA1-38, SFRA1-54, SFRA1-59, SFRA1-61, SFRA1-83, SFPC-15, SFPC-23, SFPC-24, SFPC-46, SFPC-51, SFPC-59, SFPC-69, SFPC-74, SFPC-79, SFPC-94, SFPC-107, SFPC-134.

Summary of Issues Raised by Commenters

- The landfill should be excavated and cleaned, not covered or capped
- If landfill is not cleaned properly, there would be adverse health effects
- Radiation on the site has not been adequately analyzed
- Methane and other landfill gas has not been adequately considered
- Other factors could influence spread of contamination, such as sea level rise, seismic activity, or liquefaction

Response

Parcel E-2 and Landfill Remediation Process

The Navy is remediating Parcel E-2 under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The remediation process and the current status of the various parcels in the Shipyard are discussed in Master Response 9 (Status of the CERCLA Process). The Navy has completed the preliminary assessment and site investigation for Parcel E-2, and has also published a Draft Final Parcel E-2 RI/FS Report (Draft Final RI/FS).⁷⁰ The Navy has also performed various removal actions at the parcel. Remediation of radiological materials in the E-2 landfill generally consists of: surveying structures, former building sites, and radiologically impacted areas; decontaminating buildings; disposing of excavated materials and soils at off-site facilities; and conducting surveys to ensure that sites are safe.

Radiation Assessment and Remedial Investigations

The Navy assessed radiological and other potential hazards at Parcel E-2 through preparation of a comprehensive base-wide radiological assessment, and also through the Parcel E-2 specific Remedial Investigation and Feasibility Study. As discussed in Section III.K.2 beginning on page III.K-27 of the Draft EIR, the Navy prepared the Historical Radiological Assessment (HRA) to identify all sites that have a potential for or are known to contain radioactive contamination based on historical information. These

⁷⁰ Engineering/Remediation Resources Group, *Draft Final Remedial Investigation / Feasibility Study Report for Parcel E-2*, February 1, 2009.

sites are identified as radiologically impacted sites and include: sites where radioactive materials were used or stored; sites where known spills, discharges, or other activities involving radioactive materials have or may have occurred, that could have resulted in the release or spread of contamination; and sites where radioactive materials might have been disposed of or buried. The Draft Final RI/FS provides information on the distribution of impacts to soil and groundwater in Parcel E-2 and addresses in detail radiological impacts in an addendum.⁷¹ The Draft Final RI/FS Report addressed CERCLA hazardous substances except for radionuclides. The radiological addendum presents characterization data for radionuclides at Parcel E-2, quantifies the potential risk to future site users, and develops and evaluates remedial alternatives for potential radionuclides of concern at Parcel E-2. Both nonradiological and radiological contaminants would be addressed together in the proposed plan and record of decision documents which are anticipated to be completed in 2011.

The Draft Final Parcel E-2 RI/FS Report identifies four distinct but contiguous areas contained within Parcel E-2 (refer to Figure 2 in the RI/FS):

- The “Landfill Area,” which comprises the closed industrial landfill and its immediate perimeter
- The “East Adjacent Area,” located to the east of the Landfill Area
- The “Panhandle Area,” located west and southwest of the Landfill Area
- The “Shoreline Area,” located at the interface with San Francisco Bay

The HRA concluded that low levels of radiological contamination exist within Parcel E-2 including in the following areas (refer to RI/FS Figure 3):

- Experimental Ship-Shielding Area
- Installation Restoration (IR) Site 01/21 (which encompasses most of the land area at Parcel E-2)
- IR Site 02 (located partially within Parcel E-2)
- Metal Slag Area
- Parcel E-2 shoreline
- Storm drains and sanitary sewer system

Most of the land area within Parcel E-2, except for small portions of the East Adjacent Area, is considered radiologically impacted. RI sampling and analysis results indicate that concentrations of radioactive chemicals in surface soil pose a potential unacceptable risk to future site users, and remedial alternatives should be evaluated to address the potential risks. Although the extent of radioactive contamination in subsurface soil has not been defined, the radiological addendum to the Draft Final RI/FS conservatively assumes, consistent with the findings of the HRA, that potential radioactive chemicals may be present in subsurface soil at Parcel E-2 and therefore require analysis of remedial alternatives as do non-radioactive chemicals in soil.

Groundwater radionuclide data from two investigations, performed in 2002 and 2008, were compared with drinking water standards and were found not to exceed the standards at statistically significant levels. As a result, groundwater does not appear to have been impacted by radionuclides. However, the RI/FS Report

⁷¹ Engineering/Remediation Resources Group, *Draft Final Radiological Addendum to the Remedial Investigation / Feasibility Study Report for Parcel E-2*, March 2, 2010.

concluded that non-radioactive chemicals in groundwater within and in close proximity to the Landfill Area require analysis of remedial alternatives. The RI/FS Report evaluated remedial alternatives for groundwater that include monitoring, institutional controls, source removal, and containment. Note, as documented in the Draft Final RI/FS Report, A-aquifer groundwater is not a potential source of drinking water.

Parcel E-2 Alternatives for Remediation

The method of remediation of Parcel E-2 and the landfill is determined through the CERCLA process. The CERCLA process is a regulatory process that is independent of the project, requires the selected remedy to be protective of human health and the environment in light of planned future land use, and provides opportunity for public participation. Through CERCLA, the Navy has identified four alternatives for remediation of the Parcel E-2 area, as discussed below.

Determining Remediation Options

Independent of whether the Project proceeds or not, the Navy is required by law and is conducting comprehensive remediation activities at HPS, including at Parcel E-2. The Navy has not yet issued a formal decision about how it intends to remediate the landfill. That decision, known as “remedy selection,” will have to be concurred in by USEPA and the other FFA signatories, which include the Cal/EPA’s Department of Toxics Substances Control (DTSC) and San Francisco Bay Regional Water Quality Control Board (RWQCB), implemented under their supervision, and then they will have to concur in the Navy’s decision that it has fully implemented the remedy. USEPA and the other FFA signatories may determine that restrictions must be placed on the property to protect human health and the environment while the remediation is ongoing and after the remediation is complete. Refer to Section III.K.2 of the Draft EIR and the subsection entitled, “Regulatory Process for Cleanup Process at HPS Phase II,” beginning on page III.K-31 for a discussion of why restrictions may be placed on the property and the nature of these possible restrictions. Refer to Master Response 17 (Enforcement of Environmental Restrictions and Mitigation Measures) for a discussion of the enforcement of those restrictions.

As noted above, the CERCLA process is presently ongoing at Parcel E-2, and the Navy has prepared a Draft Final RI/FS for Parcel E-2. The City and County of San Francisco regularly reviews and comments on Navy documents related to the CERCLA process. The Navy has received comments from the FFA signatories, the City of San Francisco Department of Public Health, and Arc Ecology, technical consultant for the Citizen’s Advisory Committee and is in the process of responding to comments and revising the RI/FS. Parcel E-2 is proposed for use as open space. The remedial alternatives identified in the Draft Final RI/FS summarized below, with the exception of Alternative 1 (No Action), are compatible with the open space land use, and if necessary would include restrictions on uses and activities to protect human health and the environment during and after Project development. As a general matter, the voters and the Board of Supervisors have taken the position that the Navy should remediate the Shipyard to be compatible with unrestricted use to the extent it is feasible to do so. Refer to Master Response 14 (Unrestricted Use Alternative) and Master Response 15 (Proposition P and the Precautionary Principle) for discussions of an unrestricted use alternative and Proposition P, respectively. In any case, as indicated in Section III.K.2, pages III.K-31 through III.K-36, the Agency would not accept fee transfer of the E-2 area until the Navy has completed the approved remediation and issued a FOST concurred upon by the USEPA, DTSC, and RWQCB. Upon transfer, the Agency and any developer on E-2 would be required to comply with any

environmental restrictions placed on the property by the regulatory agencies. Thus, regardless of the remedial alternative selected by the Navy, the Project would not be expected to result in adverse effects to humans or the environment. The City's Health Department would continue to review Navy documents to ensure that the selected remedial alternative would effectively protect human health and the environment and gives due consideration to input from members of the Bayview/HPS community. The CERCLA documents are also being reviewed and approved by federal and state regulatory agencies. The public is invited to participate in the Navy's Community Involvement Plan and comment on documents prepared as part of the CERCLA process (see Master Response 9).

Formal Alternatives for Remediation

The Navy's remedial objective is to prevent exposure to radionuclides at levels exceeding remediation goals. The Draft Final RI/FS Report for Parcel E-2 developed four remedial alternatives for Parcel E-2 that are also presented in the radiological addendum. The four remedial alternatives for Parcel E-2 are:

- Alternative 1: No Action
- Alternative 2: Excavate and Dispose of Solid Waste, Soil, and Sediment (including monitoring and institutional controls)
- Alternative 3: Contain Solid Waste, Soil, and Sediment with Hot Spot Removal (including monitoring and institutional controls)
- Alternative 4: Contain Solid Waste, Soil, Sediment, and Groundwater with Hot Spot Removal (including monitoring and institutional controls)

Alternative 2 would involve excavation of all solid waste and contaminated soil from the Landfill Area, the Panhandle Area, and East Adjacent Area, and excavation of contaminated sediment from the Shoreline Area. Alternative 3 would involve capping the Landfill Area and excavation of solid waste and contaminated soil in the Panhandle Area and East Adjacent Area and excavation of contaminated sediment from the Shoreline Area. Alternative 4 includes Alternative 3 components as well as a slurry wall to limit groundwater flow to the Bay. Alternatives 2, 3, and 4 were developed to address nonradioactive chemical contamination throughout Parcel E-2, and include varying amounts of intrusive work within radiologically impacted areas. As a result, Alternatives 2, 3, and 4, as presented in the Draft Final RI/FS Report, specify radiological control procedures to properly screen, segregate, characterize, and dispose of radioactive materials. The radiological addendum includes a post-remediation risk analysis that evaluates the protectiveness of Alternatives 3 and 4 with respect to radionuclides. Results demonstrated that Alternatives 3 and 4 are health protective for future recreational receptors. The radiological addendum also identifies additional components of the alternatives that are needed to meet remedial action objectives for radioactively contaminated media. The additional components, to be implemented regardless of which of the Alternatives is selected are:

- Removal and remediation of sanitary sewer, storm drain, and septic sewer lines that extend into the East Adjacent Area but are located outside of the IR-01/21 site boundary (refer to RI/FS Figure 3)
- Removal and remediation of the ship-shielding berm in the Panhandle Area
- Final status surveys of the excavated subgrade of Parcel E-2 to locate and remove any radiological anomalies prior to backfilling with soils meeting the radiological acceptance criteria

Removal Actions and Other Remedial Actions Taken

Under CERCLA, as discussed in Section III.K.2 of the Draft EIR on page III.K-12, the Navy often does not wait for the Remedial Investigation / Feasibility Study process to be complete before beginning physical cleanup activities. The Navy has completed various removal actions and time critical removal actions (TCRAs), as well as treatability pilot studies, all in conjunction with investigation and evaluation of alternatives for remediation. At Parcel E-2, the Navy has removed radiological material in removal actions, and has performed various TCRAs associated with the brush fire in fall 2000 and migration of landfill gases (discussed below).

Removal of Radiologically Contaminated Materials

The Navy has performed two removal actions at Parcel E-2 that have involved excavation and offsite disposal of low-level radioactive waste. At the Metal Slag Area, the Navy removed and disposed of off-site approximately 8,200 cubic yards of soil, metal slag, and debris; of this removed material, approximately 74 cubic yards of the soil was identified as radiologically impacted. Also, the Navy removed and disposed of off-site 32 radiological devices, 15 cubic yards of radiological debris (primarily fire bricks), and approximately 30 cubic yards of metal debris. At the PCB Hot Spot Area, the Navy removed and disposed of off-site, approximately 44,500 cubic yards of soil and debris; 533 cubic yards of the removed soil and fire brick debris was identified as radiologically impacted. Also, the Navy removed and disposed of off-site 40 radiological devices, 78 cubic yards of metal debris, and 19 pieces of other radioactively contaminated debris and two drums of mixed waste.

Response to Brush Fire

As described in Section III.K, page III.K-23 of the Draft EIR, on August 16, 2000, a brush fire burned approximately 45 percent of the Parcel E-2 landfill surface area; small subsurface areas continued to burn for approximately one month after the surface fire was extinguished. As part of a TCRA, an interim cap was constructed over the majority of the landfill in order to extinguish the fire and prevent future fires until the Record of Decision has been completed and chosen remediation implemented. The cap covers approximately 14.5 acres; it reduces water infiltration, thereby reducing the potential for hazardous substances to leach out from the landfill. Because the interim cap effectively limits air intrusion into the landfill, the effect was a smothering of any smoldering subsurface areas remaining from the fire. In addition, the interim cap significantly reduces storm water infiltration through the landfill, thereby reducing the potential for hazardous substances to leach out from the landfill. The interim cap has been vegetated to stabilize surface soils and limit erosion. Additional information on construction of the interim cap is provided in the *Final Removal Action Landfill Cap Closeout Report*⁷². As discussed above, the Navy is in the process of selecting a final remedy for the landfill and all of the Navy decisions on the Parcel E-2 landfill will undergo regulator review and approval and provide opportunities for public input.

Controlling Landfill Gas and Methane

A TCRA was also implemented to address human health risks associated with off-site migration of landfill gas toward the UCSF property located immediately north of the landfill. Methane and carbon dioxide are

⁷² TtEMI. 2005a. *Final Removal Action Landfill Cap Closeout Report, Parcel E-2, Hunters Point Shipyard, San Francisco, California*. February 7.

the two main components of landfill gas. Methane is non-toxic but it can create a potential explosion hazard if it collects inside of a structure. In 2002, the Navy installed, on the north side of the landfill, and between the landfill and Parcel A, a gas control system that includes a subsurface gas cutoff wall, passive and active landfill gas extraction wells and three tiers of gas monitoring probes (GMPs) which are sampled monthly and results reported quarterly.⁷³ The three tiers of GMPs primarily monitor whether the gas is migrating beyond the boundaries of the landfill and onto the immediately adjacent UCSF property. If gas (volatile organic compounds or methane) is detected above the trigger levels in the GMPs, the Navy promptly activates its extraction system to remove the gas from the subsurface. The Navy has a detailed Landfill Gas Monitoring and Control Plan in place, which includes steps for notifying the relevant regulators and extracting the gas from the UCSF property. In addition, as the cleanup of the Parcel E-2 landfill continues, the Navy will select a final remedy for the landfill and for monitoring and controlling the landfill gas. All of the Navy decisions on the Parcel E-2 landfill will undergo regulator review and approval and provide opportunities for public input. There are 13 GMPs located on Crisp Avenue north of the landfill which are monitored for methane to demonstrate whether methane has migrated into the subsurface under Crisp Avenue. To date these GMPs have been sampled 50 to 100 times and there has been no detection of methane or landfill gases in the Crisp Avenue probes indicating that the cutoff wall is effective in preventing offsite migration of landfill gas including methane.

Liquefaction, Sea Level Rise, and Seismic Hazards

Master Response 6 (Seismic Hazards), Master Response 7 (Liquefaction), and Master Response 8 (Sea Level Rise) discuss seismic hazards, liquefaction, and sea level rise. Refer to those master responses for detailed discussions on those topics. With respect to remediation of the Parcel E-2 landfill, the CERCLA documents the Navy is preparing take these considerations into account, as will any approved remedies for the site.

As described in Section III.K of the EIR, **if** the Navy proposes and USEPA concurs that engineered caps be installed on top of an area of known or suspected residual contamination (typically a landfill) as part of the Navy's CERCLA program, site-specific geotechnical studies would be used in the design of such caps to minimize potential breaches. The cover would limit exposure and protect humans from long-term health risks even if breaches in the cover temporarily occur. Operation and maintenance plans for these covers and caps would be carried out to monitor and repair potential breaches. Therefore, if ground rupture were to occur, contaminants should not be released at levels presenting a concern to human or ecological health.

The Navy's Draft Final RI/FS Report included a liquefaction and slope stability evaluation. The evaluation concluded that, for soil layers that could liquefy during the largest potential earthquakes, lateral movement of soil below the waste may be approximately 4 to 5 feet. This estimate is conservative because of the discontinuous layers and resistance from nonliquefiable soils at the boundaries, which would likely reduce the amount of lateral movement to less than the estimated 4 to 5 feet. Settlement of liquefiable soil below the waste may be up to 10 inches. The evaluation also concluded that, if containment were selected as the final remediation measure, further analysis would be required on response of the landfill cap, overall stability of the landfill site, slope stability, and other closure features. The Navy will also consider sea level

⁷³ ITSI. 2008d. *Final Landfill Gas Monitoring Report For July-September 2008, Post-Removal Action, Parcel E-2, Industrial Landfill, Hunters Point Shipyard, San Francisco, California*. October 27.

rise when developing remedial designs for the Parcel E-2 landfill. Parcel E-2 Groundwater is not a source of drinking water and results show that leaching from landfill has the potential to impact to the Bay. The Parcel E-2 FS has identified containment remedies to mitigate these potential impacts through containment and monitoring.

Residual chemicals in soil would largely consist of certain specific metals, which are associated with the rock and soil that were historically used to fill in the Bay to expand the shipyard, thus they are not part of a “spill” or “release” of contaminants but rather reflect metals concentrations normally associated with Franciscan Formation bedrock. These metals that are predominantly immobile and are not associated with any existing groundwater contamination. Thus, a rise in the groundwater level would not mobilize these metals. Although residual contamination may remain after cleanup, these residuals would be below levels that may present a threat to human health or the environment and/or they would be located under an engineered cap that prevents human exposure to these residuals. Sea level rise would not compromise covers and/or engineered caps that may be placed on top of an area of known or suspected residual contamination as operation and maintenance plans for these covers and caps would be carried out to monitor and repair potential breaches. Additionally, emergency response plans would be carried out following major flooding and seismic events, at which time caps and covers would be investigated for potential breaches and repaired.

■ Master Response 12: Naturally Occurring Asbestos

Introduction

Overview

This master response addresses comments made concerning naturally occurring asbestos dust and how the Project Applicant can be required to adequately mitigate this hazard.

Commenters

Commenters who addressed this issue include:

- Federal, State, Regional, Local Agencies, Boards, and Commissions
 - > Planning Commissioner Lee (SFPC-126)
- Organizations
 - > Arc Ecology (82-5)
 - > Breast Cancer Action (55-5)
 - > POWER (People Organized to Win Employment Rights) (52-3)
 - > San Francisco Green Party (36-6, 36-8)
- Individuals
 - > Ahimsa Porter Sumchai (SFPC-46, SFRA2-19)
 - > Bernadette Sambrano (SFPC-78)
 - > Carol Harvey (67-2, 67-3, 67-4)
 - > Francisco Da Costa (105-1, SFPC-51)
 - > Juana Tello (66-9, 66-10, SFPC-95)

- > Karissa Cole (SFPC-15)
- > Michael E. Boyd (SFPC-41)
- > Nyese Joshua (65-1, 65-4, 65-34)
- > Sam Lao (SFPC-69)

Comments received on the Draft EIR related to naturally occurring asbestos were focused almost exclusively on issues addressed in Section III.K (Hazards and Hazardous Materials) and Section III.H (Air Quality) of the Draft EIR; therefore, this master response provides further discussion to update and augment the analysis of the issues presented in Section III.K and Section III.H.

Comment Summary

This master response responds to all or part of the following comments: 36-6, 36-8, 52-3, 55-5, 65-1, 65-4, 65-34, 66-9, 66-10, 67-2, 67-3, 67-4, 82-5, 105-1, SFPC-15, SFPC-41, SFPC-46, SFPC-51, SFPC-69, SFPC-78, SFPC-95, SFPC-126, SFRA2-19.

Summary of Issues Raised by Commenters

- Concern expressed regarding the control of asbestos dust
- The Project Applicant does not have a good track record with regard to monitoring of asbestos dust.

Response

The Draft EIR states that Hunters Point Shipyard contains serpentinite, chert, and basalt bedrock typical of the Franciscan Complex (Section III.K [Hazards and Hazardous Materials], page III.K-29). Serpentinite may contain naturally occurring asbestos, which is identified as a potential health hazard requiring control measures outlined in Section III.K, page III.K-98 of the Draft EIR. As shown on Figure III.L-1 (Geologic Map) of Section III.L (Geology and Soils) of the Draft EIR, there is an area of serpentinite mapped in Parcel A, Parcel B, a portion of Parcel C, and a small area of Parcel G.

Due to the health concerns surrounding naturally occurring asbestos, both the Project Applicant and the Agency have been monitoring the vicinity of Parcel A for asbestos that may become airborne due to soil-disturbing activities (e.g., grading) since September 2006. As described in Section III.K, pages III.K-98 to -103 of the Draft EIR, this monitoring program is being carried out in accordance with a Dust Control Plan (DCP), approved by the SFDPH, and an Asbestos Dust Mitigation Plan (ADMP), approved by the Bay Area Air Quality Management District (BAAQMD).

Numerous measures to control asbestos dust during the Project are described in Section III.K, pages III.K-98 to -103 of the Draft EIR, including applying water during and after grading activities, covering stockpiles and truckloads, operating wheel washing stations, and placing cover material over any exposed naturally occurring asbestos at the end of grading.

Section III.K of the Draft EIR (on pages III.K-97 and III.K-98) also acknowledges significant community concern about the implementation of asbestos and dust control measures arising from the fact that during Phase I, the Project Applicant's former asbestos air monitoring contractor failed to ensure proper operation of the air monitoring stations for the first several months of grading activities in 2006 and could not validate the sampling results. As the Draft EIR indicates, after this problem was reported by the Project

Applicant, the SFDPH, the BAAQMD, and independent experts from the UCSF, along with the federal Centers for Disease Control (CDC) and the CDC Agency for Toxic Substances and Disease Registry (ATSDR) reviewed the potential health risks from construction dust containing asbestos in HPS Phase I. The reviews concluded that there was no significant health risk created by the grading activities at the Shipyard. BAAQMD pursued enforcement action against the Project Applicant, who entered into a consent agreement to pay civil penalties for its air-monitoring contractor's failure to properly monitor and for its grading contractor's failure to fully implement components of the BAAQMD-approved asbestos dust-monitoring plan. The City also implemented a number of actions to enforce the requirements of its required DCP in order to minimize the potential for airborne asbestos during grading in HPS Phase I, including issuing several notices of violation requiring corrective action. Since then, the SFDPH has worked with the Project Applicant to improve the dust-monitoring program, and required preparation of a Revised DCP for HPS Phase I, which was implemented in February 2007. Currently, the SFDPH conducts random daily inspections to monitor dust control measures. BAAQMD has also worked with the Project Applicant to improve the ADMP required by the State Airborne Asbestos Toxics Control Measure.

As indicated on pages III.K-98 through -101, MM HZ-15 would be implemented to reduce impacts related to asbestos exposure during construction activities including enforcing proper implementation of dust control and monitoring procedures. In addition to developing approved DCPs through *San Francisco Health Code* Articles 22B and 31 and ADMPs, as required by CCR Title 17 (Section 93105), MM HZ-15, San Francisco ordinances, and state regulations, the Project Applicant must ensure that the construction activities comply with SFDPH and BAAQMD standards. Applicants are required to implement specified dust control measures throughout the construction Project to meet SFDPH and BAAQMD standards. These measures may include any or all of the following, as needed at a particular site and for a particular activity: operating particulate monitors and sampling air for asbestos as required; controlling traffic and limiting vehicle speeds to 15 mph; limiting construction areas; sufficiently wetting ground surfaces to prevent visible dust emissions from crossing the property line; minimizing soil stockpiled; washing down equipment before moving on to a paved public road; covering, wetting and/or hydroseeding soil stockpiles; covering and limiting the amount of soil placed in trucks; installing dust curtains and windbreaks on windward and downwind sides of the property lines; cleaning all visible track out from paved public roads, and stabilizing disturbed areas following construction. The Project Applicant would be required to shutdown construction work based on wind, dust migration, or if dust is contained within the property boundary but not controlled after a specified number of minutes or if asbestos levels reach work-shutdown criteria which have been developed by BAAQMD. A hotline would be established for surrounding community members who may be potentially affected by Project-related dust and a contact person shall respond and take corrective action within 48 hours. For areas covered by an ADMP, publicly visible signs would be posted around the site with the hotline number as well as the phone number of the BAAQMD and the numbers would be given to adjacent residents, schools, and businesses.

■ Master Response 13: Post Transfer Shipyard Cleanup

Introduction

Overview

Comments have been raised regarding the relationship between the Navy's cleanup program and the Navy's transfer of the property to the Agency. These comments have included requests for clarification regarding who would be responsible for any cleanups necessary after transfer and regarding what types of residual contaminants (in particular radiological contaminants) would remain at the site after transfer and after completion of cleanup activities.

This response is organized by the following topics:

- Introduction
- Cleanups Necessary After Transfer
- Site Conditions Following Cleanup
- Non-Radiological Materials Present in the Subsurface at HPS Phase II
 - > Parcel B
 - > Parcels C and UC-2
 - > Parcel D
 - > Parcels E and E-2
- Radiological Materials Present in the Subsurface at HPS Phase II

Commenters

Commenters who addressed this issue include:

- Federal, State, Regional, Local Agencies, Boards, and Commissions
 - > California Department of Transportation—Transportation Planning (71-11)
 - > Planning Commissioner Borden (SFPC-113, SFPC-114, SFPC-118, SFPC-119)
- Organizations
 - > Breast Cancer Action (55-1, 55-5)
 - > Green Action Health and Environmental Justice (58-1, SFRA1-83)
 - > POWER (People Organized to Win Employment Rights) (50-6, 52-1, 52-3, 69-1)
 - > San Francisco Green Party (36-5, 36-6, 36-7)
 - > Technical Assistance For Communities (TASC) (68-2)
- Individuals
 - > Ahimsa Porter Sumchai (SFRA1-23, SFPC-46)
 - > Bernadette Sambrano (SFPC-78)
 - > Carol Harvey (67-2, 67-3, 67-4)
 - > Colleen Muhammad (72-2)
 - > Dan Solberg (SFRA1-38)
 - > Daniel Landry (SFRA2-34)
 - > Francisco Da Costa (105-1, SFPC-51)

- > Jaron Browne (SFPC-23, SFPC-24)
- > Juana Tello (66-3, 66-4, 66-5, 66-10, 66-12, 66-17, SFRA1-59, SFPC-94)
- > Karissa Cole (SFRA1-53, SFPC-15)
- > Michael E. Boyd (SFPC-39)
- > Nyese Joshua (65-1, 65-4, 65-31, 65-32, 65-34, SFPC-59)
- > Perry Matlock (74-3)
- > Sam Lao (SFPC-69)
- > Saul Bloom (SFPC-134)
- > Starr Miles (SFPC-74, SFPC-75)
- > Willie Ratcliff (SFPC-107)

Comments received on the Draft EIR related to cleanup of the Shipyard were focused almost exclusively on issues addressed in Section III.K (Hazards and Hazardous Materials) of the Draft EIR; therefore, this master response provides further discussion to update and augment the analysis of the issues presented in Section III.K.

Comment Summary

This master response responds to all or part of the following comments: 36-5, 36-6, 36-7, 50-6, 52-1, 52-3, 55-1, 55-5, 58-1, 65-1, 65-4, 65-31, 65-32, 65-34, 66-3, 66-4, 66-5, 66-10, 66-12, 66-17, 67-2, 67-3, 67-4, 68-2, 69-1, 71-11, 72-2, 74-3, 105-1, SFRA1-23, SFRA1-38, SFRA1-53, SFRA1-59, SFRA1-83, SFPC-15, SFPC-23, SFPC-24, SFPC-39, SFPC-46, SFPC-51, SFPC-59, SFPC-69, SFPC-74, SFPC-75, SFPC-78, SFPC-94, SFPC-107, SFPC-113, SFPC-114, SFPC-118, SFPC-119, SFPC-134, SFRA2-34.

Summary of Issues Raised by Commenters

- Concerns were expressed over who would be responsible for cleanup at the site
- Concerns expressed regarding the residual contamination left at the site
- Concerns expressed regarding how the radiation would be cleaned up on the site

Response

Introduction

The cleanup process required by the FFA (and the current status of cleanup activities) is described in Master Response 9 (Status of the CERCLA Process). The Navy is performing remedial activities in accordance with the process described in Master Response 9 under the supervision of the regulatory agencies. As indicated in Master Response 9, for much of the property the Navy already has completed many of the steps required by the remediation process. Under the transfer process envisioned by the Navy and Agency, the Navy will at a minimum complete a ROD for any property it proposes to offer to the Agency for transfer. The Navy then will complete the remedy called for by the ROD and transfer the property to the Agency with regulatory concurrence that no further remediation is required, or it will enter into a transfer agreement with the Agency in which the Navy will pay the Agency to complete the remedial work. This latter scenario is referred to as an early transfer and requires the approval of USEPA, with the concurrence of the Governor of California. Both of these transfer processes are explained in the Draft EIR, Section III.K, pages III.K-31 through -36. Below is a summary of the cleanup actions that could

occur after transfer. Also explained below are the types of residual contaminants that may remain at the site after the remediation process is complete.

Cleanups Necessary After Transfer

If the Navy completes the remediation process and transfers the property after the regulators determine that no further remediation is required, the Agency would not be obligated to complete any further remediation. Under the CERCLA law, Section 120(h), the Navy will provide a warranty upon transfer that the property has been cleaned to a level that is protective of human health and the environment given the intended use and that if additional remedial action is found to be necessary after transfer, the Navy will be responsible for completing any required cleanup. The Conveyance Agreement between the Agency and the Navy acknowledges that the Navy will indemnify subsequent owners and retain liability for unknown or newly discovered hazardous materials even after the transfer to the Agency and subsequent developers.

The Agency is considering whether to seek approval of an “early transfer” of Parcel B and Parcel G (except for IR 7/18, for which the Navy would complete remediation before transfer). Subsequent early transfers of other parcels may also be considered once RODs for the parcels are complete and where the remediation does not involve radionuclides. Further, due to the complexity of remediation at Parcel E-2, the Agency is not considering early transfer of that area. In an early transfer, USEPA and the Governor would authorize the Navy to transfer ownership before the remediation has been completed, subject to use and activity restrictions to ensure human health and the environment are protected from potential exposures to hazardous materials that may not yet have been fully remediated. After an early transfer, the Agency would be responsible for implementing those remedial activities in accordance with the approved remedial design documents, i.e., the groundwater and soil vapor treatment systems, the surface cover, the vapor barriers and the shoreline revetment wall. All remediation related to radioactive contaminants would be completed by the Navy prior to the transfer.

The Navy would provide a grant to the Agency of the funds necessary for the Agency to implement the remedial activities identified in the ROD that have not been completed by the Navy at the time of transfer. The funds would also be used to procure environmental insurance covering cost over-runs and discovery of unknown contaminants. The Agency would be supervised by the same regulatory agencies supervising the Navy, and would be held to standards at least as strict as those the Navy is held to, under a legal agreement called an Administrative Order of Consent (AOC) which would be signed by USEPA, DTSC, and the RWQCB. MM HZ-12 requires any remediation activities undertaken on behalf of the Agency or Project Applicant at the Project to be in compliance with the provisions of the AOC. If the Agency or Project Applicant were found to be in default of the AOC, the regulatory agencies could require the Navy to reassume its responsibilities for completing the cleanup. More detail about early transfer is included in the Draft EIR at pages III.K-31 through -34.

Site Conditions Following Cleanup

Commenters have asked for information about the types, locations, and concentrations of residual contaminants that may be left in place after the environmental cleanup is complete and development commences. Generally speaking, chemicals left in place would consist largely of specific metals that are associated with the native rock quarried for use as fill and associated soil historically used to fill in the Bay to expand the shipyard. The ubiquitous nature of these naturally occurring metals indicate they are not the

result of a “spill” or “release” of contaminants from operational activities, but rather reflect metals concentrations normally associated with Franciscan Formation bedrock described in Section III.L (Geology and Soils) and similar to those found in other Bay fill sites throughout the City, such as Mission Bay. Like Mission Bay, which has been approved for development with a “cover” remedy to assure that long-term exposure to metals in soil and groundwater would not occur, at HPS Phase II, a final cover would be placed over existing soil through the use of new building foundations, roads, sidewalks, parking lots and/or placement of clean fill in open space areas.

In all cases, pursuant to CERCLA and the FFA, any chemical left at any location in the Shipyard would be in concentrations and conditions determined by USEPA, DTSC, and RWQCB to be protective of human health and the environment (refer to Section III.K, pages III.K-2 and III.K-11). In reviewing and approving the remedy selected by the Navy in the ROD, these agencies set a target concentration for chemicals in soil and groundwater; concentrations above the target level are subject to remedial action. The types of chemicals present in the various parcels as well as the Navy’s ongoing remedial action are discussed at length in Section III.K.2, beginning on page III.K-13 of the Draft EIR. The specific target concentration levels associated with each remedial action are available in the associated CERCLA documents, and specifically in the Remedial Action Objectives sections of those documents. Chemicals may remain on the parcels at levels below the target concentrations, and/or in conditions that eliminate exposure pathways at target concentrations. The Draft EIR does not evaluate the remedial target concentration levels of chemicals determined by the regulatory agencies to be protective of human health and the environment, nor the methods determined to attain cleanup goals. This is because, as stated on page III.K-2 of the Draft EIR, the Navy’s ongoing remediation activities are not part of the Project, and it is thus not the goal of the EIR to assess the adequacy or impacts of the Navy’s remediation actions. Instead, the Draft EIR presents information on the location of contamination and the Navy’s remediation in the Environmental Setting Section (III.K.2). For the reader’s convenience, that information is summarized in part below with references to pertinent sections of the CERCLA documents.

Non-Radiological Materials Present in the Subsurface at HPS Phase II

Parcel B

As discussed on page III.K-14 of the Draft EIR, the primary chemicals of concern in the soil at Parcel B include volatile organic compounds (VOCs), semi-volatile organic compounds (SVOCs), polychlorinated biphenyls (PCBs), and metals. The groundwater contains VOCs, chromium VI (hexavalent chromium), and mercury. Petroleum hydrocarbons exist at certain levels in both soil and groundwater, and methane was detected at IR Sites 7/18. The presently ongoing remedial action associated with these contaminants was documented in a ROD, and most recently in a ROD Amendment of February 2009. Section 8 (Amended Remedial Action Objectives) of the ROD outlines the remediation concentration goals for each specific chemical of concern in various exposure scenarios and from various sources (see *Final Amended Record of Decision for Parcel B*, January 14, 2009, pages 8-1 through 8-3, Tables 8-1 through 8-4). Chemical concentrations below these goals could remain after completion of cleanup activities. The Amended ROD was prepared in part to present updated information gained through sampling and excavation during remedial actions. The discrete release of chemicals referred to as the “spill model” was the basis for the initial remedial actions. Under the spill model, high chemical concentrations occur near the center of the release and decrease outward. Verification sampling for remedial excavations involved collecting successive

“step-out” samples. At 13 of 106 excavation areas, successive step-out excavation and sampling did not yield delineation and removal of all contaminants indicating that the spill model and excavation was not an appropriate remedy for these areas. A group of metals, especially arsenic and manganese, consistently exceeded cleanup goals at locations across Parcel B. The widespread or “ubiquitous” nature of these metals is related to the occurrence of these metals in local bedrock that was quarried for fill during the expansion of the Shipyard in the 1940s. The Navy acknowledges that industrial sources of metals exist at HPS, and there is a potential that some concentrations of metals could have sources other than naturally occurring materials. The Navy has worked to remove these sources during the response actions taken to date. Cleanup levels and remedial alternatives developed in the Amended ROD address concentrations of metals that may occur above risk levels but within the range of naturally occurring (or background) metals, regardless of their source. Thus, naturally occurring metals would remain in some cases at concentrations above risk levels, but would be under the final cover placed to cutoff the exposure pathway. Refer to the Draft EIR pages III.K-14 through -18 and to the ROD for detail on the Navy’s selected remedy and the manner in which it attains cleanup goals.

Parcels C and UC-2

As discussed on page III.K-18 of the Draft EIR, the primary chemicals of concern in Parcel C soil and groundwater include COCs, SVOCs, PCBs, petroleum hydrocarbons, and metals. The remedial action taking place on Parcel C is documented in a Draft Proposed Plan, and action taking place at UC-2 is documented in a Final ROD. Tables 4 through 7 in the Proposed Plan for Parcel C outline the concentration goals for each specific chemical of concern in various exposure scenarios and from various sources (see *Draft PP for Parcel C*, January 2009, pages 8-9, 31-36). Section 2.7 (Remedial Action Objectives) of the ROD for UC-2 outlines the remediation concentration goals for each specific chemical of concern in Parcel UC-2 for various exposure scenarios and from various sources (see *Final Amended Record of Decision for Parcel UC-2*, December 17, 2009, pages 27-29). After completion of cleanup activities, these chemicals present in concentrations below these goals would remain, and a group of naturally occurring metals associated with fill material derived from native bedrock is expected to remain under the final cover in concentrations above risk levels throughout the parcel. Refer to the Draft EIR pages 18-19 and to the RODs for detail on the Navy’s selected remedies and the manners in which cleanup goals are attained.

Parcel D

As discussed on pages III.K-19 and -20 of the Draft EIR, the primary chemicals of concern in soil and groundwater at Parcel D are metals and VOCs. Chemical contaminants include petroleum hydrocarbons, beryllium, and various other metals found in serpentinite-derived fill materials, such as arsenic, chromium, nickel, and manganese. Other contaminants detected in the soil include PCBs and elevated concentrations of lead in several areas. The groundwater underneath IR-09, the former pickling and plating yard, was shown to contain Chromium VI as well. For remedy selection, Parcel D was divided into four new parcels: Parcels D-1, D-2, G, and UC-1. Section 2.7 (Remedial Action Objectives) of the ROD prepared jointly for Parcels D-1 and UC-1 outlines the remediation concentration goals for each specific chemical of concern in those parcels for various exposure scenarios and from various sources (see *Draft Final ROD for Parcels D-1 and UC-1*, May 20, 2009, pages 30-33). Section 2.7 (Remedial Action Objectives) of the ROD for Parcel G outlines the remediation concentration goals for each specific chemical of concern in Parcel G for various exposure scenarios and from various sources (see *Final ROD for Parcels G*, February 18, 2009, pages 28 through 32,

Tables 4 and 5). The Navy prepared a ROD for No Action at Parcel D-2, which recommends no action because no source of chemical contamination above the target concentrations was identified on that parcel (refer to *Draft Final ROD for No Action at Parcel D-2*, January 16, 2009, pages 2, 3, and 10). If these chemicals were present below the target concentrations, they would remain. Additionally, as described above for Parcels B and C, it is expected that naturally occurring metals would remain under the final cover in concentrations above risk levels throughout the parcel. Refer to the Draft EIR pages 20 and 21 and to the RODs for detail on the Navy's selected remedies and the manners in which it attains cleanup goals.

Parcels E and E-2

As discussed beginning on page III.K-22 of the Draft EIR, the chemicals of concern at Parcel E include metals and organic compounds such as VOCs, polycyclic aromatic hydrocarbons (PAHs), PCBs, and pesticides, while the chemicals of concern at Parcel E-2 include metals, PCBs, SVOCs, pesticides, and petroleum hydrocarbons. E-2 also contains the radionuclides cobalt-60, cesium-137, radium-226, and strontium-90, discussed below. Studies are currently ongoing at the Parcels and draft proposed plans and RODs are expected in the 2010/11 timeframe. The remediation concentration goals of the known chemicals are available in the Draft FS Report for Parcel E in Section 3 (Remedial Action Objectives), and in the Draft RI/FS Report for Parcel E-2 in Section 9 (Remedial Action Objectives) (refer to *Draft FS Report for Parcel E*, July 2009, pages 3-1 through 3-10, Tables 3-1 through 3-5; *Draft RI/FS Report for Parcel E-2*, February 2009, pages 9-1 through 9-6). After completion of cleanup activities, if these chemicals were present below the target concentrations, they would remain and naturally occurring metals present above risk levels are expected to remain under the final cover throughout the parcel. Refer to the Draft EIR pages 23 and 24 and to the CERCLA documents for additional detail on the Navy's ongoing remedial actions and the manner in which these actions attain cleanup goals. Also, see below for more discussion of the Navy's handling of the radiological contamination.

Radiological Materials Present in the Subsurface at HPS Phase II

As explained in Master Response 9 (Status of the CERCLA Process), the Navy is currently remediating all radiologically impacted structures and radiological contamination associated with the sewer and storm drain system. The Navy is disposing of off-site radiologically impacted soil and materials that it finds. The Navy is in the process of seeking an unrestricted use designation for structures and areas where it has undertaken radiological remediation associated with the sewer and storm drain system. The Agency would not accept property for transfer until the Navy has completed radiological surveys, investigations, and radiological cleanup as approved by Federal and State regulatory agencies.

Beyond the storm drain and sewer system and structures identified as radiologically impacted, there are areas containing fill that the Navy has identified as containing or potentially containing radionuclides in soil. These areas are in Parcel B in the IR 7/18 areas, in portions of Parcel E and in Parcel E-2. The Navy has not completed RODs for Parcel E or E-2, meaning that no decision has been made by the Navy and regulators as to the remedial action that is acceptable for these areas; therefore it is not known at this time to what extent radionuclides may remain after transfer. The known conditions in these areas are described below. The ROD for Parcel B identifies two areas that may be "restricted" due to potential radiological impacts: the discharge tunnel beneath historical Building 140 and the future open space area that lies within IR-7/18. IR sites 7/18 and restrictions are depicted in Figure III.K-2 (Parcel B Areas Requiring Institutional Controls).

Discharge tunnel beneath Building 140: Building 140 is a one-story brick building shaped as a rectangle with a rounded eastern end resembling an apse. The building measures about 96 by 56 feet and is located north of Drydock 3, about midway along the drydock. The HRA indicates that Building 140 is an impacted area, due to the history of Drydock 3 being used as a decontamination facility for ships that participated in atomic weapons testing and support equipment. The various decontamination methods included sandblasting of shipboard components. These sandblast wastes may have been discharged through the pumping equipment of Building 140 into the Bay (after drydock flooding and dewatering operations). An underground Suction Channel for water from Drydock 3 passes from the drydock through the pump house to the Bay via a Discharge Channel. Based on preliminary, screening-level sampling, the discharge channel may be defined as a “restricted” area due to radiation-impacted sediments that cannot be removed due to unsafe, underwater working conditions. If so, then the tunnel would be sealed off to prevent off-site migration of these sediments into the Bay. The tunnel is located 52 feet beneath the ground surface and would remain inaccessible to site visitors under any circumstances.

IR-7/18 Open Space: A review of the bayshore filling history of this area suggests that some radiologically impacted fill material may have been deposited in this area. However, no evidence of radiological impacts has been found in this area. Nevertheless, as indicated in the Draft EIR on page III.K-15 and on Figure III.K-2, this area would be considered an “area requiring institutional controls” (ARIC) for radionuclides due to the potential for the area to contain radiologically impacted fill material, such as sandblast grit used in decontaminating ships that participated in atomic weapons testing, and radioluminescent dials and gauges. The remedial design for this area includes covering the ARIC with three feet of clean fill cover, which would be separated from currently in-place soils by a physical demarcation layer. A revetment wall would be constructed along the entire shoreline, which is intended to prevent any erosion of IR-7/18 fill materials into the Bay; the revetment wall design would take into account projected sea level rise. The IR-7/18 area is designated as open space; therefore no pile-supported structures would be built within this ARIC. Prior to placement of the cover, a radiological surface scan of the top 12 inches of soil would be conducted and any radiological anomalies that are found would be removed and the area rescanned. The ARIC cover would be monitored as required by the Operation and Maintenance Plan and groundwater would be monitored to verify that radionuclides are not present.

Parcel E Shoreline: A review of the bayshore filling history of this area suggests that some radiologically impacted fill material may have been deposited in this area. No evidence of radiological impacts has been found in this area, but radiological investigation and remedial evaluation have not been completed.

Parcel E-2 Landfill: Parcel E-2 has the potential to contain radiologically impacted fill material, such as sandblast grit used in decontaminating ships that participated in atomic weapons testing, and radioluminescent dials and gauges in the landfill present on this site. The radionuclides of concern associated with Parcel E-2 include cobalt-60, cesium-137, radium-226, and strontium-90. The remedial alternatives evaluated in the Draft Final Parcel E-2 RI/FS Report, and other details about Parcel E-2 such as landfill gas and methane collection and monitoring, the brush fire, and liquefaction are discussed in Master Response 11 (Parcel E-2 Landfill).

■ Master Response 14: Unrestricted Use Alternative

Introduction

Overview

Some commenters have requested that the Draft EIR analyze an alternative where all of HPS is cleaned up to allow unrestricted, residential use.

Commenters

Commenters who addressed this issue include:

- Federal, State, Regional, Local Agencies, Boards, and Commissions
 - > Planning Commissioner Borden (SFPC-113, SFPC-114, SFPC-118)
- Organizations
 - > Breast Cancer Action (55-5)
 - > Green Action Health and Environmental Justice (58-2)
 - > POWER (People Organized to Win Employment Rights) (52-1)
- Individuals
 - > Carol Harvey (67-2, 67-4)
 - > Colleen Muhammad (72-2)
 - > Ernest Stokes (53-1)
 - > Francisco Da Costa (105-1)
 - > Juana Tello (66-7, SFRA1-57)
 - > Karissa Cole (SFRA1-52, SFPC-15)
 - > Nyese Joshua (65-1, 65-34)
 - > Perry Matlock (74-3)
 - > Sam Lao (SFPC-69)
 - > Vivien Donahue (60-3, 60-5)

Comments received on the Draft EIR related to full cleanup of the site were focused almost exclusively on issues addressed in Section III.K (Hazards and Hazardous Materials) of the Draft EIR; therefore, this master response provides further discussion to update and augment the analysis of the issues presented in Section III.K.

Comment Summary

This master response responds to all or part of the following comments: 52-1, 53-1, 55-5, 58-2, 60-3, 60-5, 65-1, 65-34, 66-7, 67-2, 67-4, 72-2, 74-3, 105-1, SFRA1-52, SFRA1-57, SFPC-15, SFPC-69, SFPC-113, SFPC-114, SFPC-118.

Summary of Issues Raised by Commenters

- The entire site should be cleaned to full, unrestricted use

Response

As indicated on page III.K-2 of the Draft EIR, the remediation program at HPS is being carried out by the Navy through a 1992 Federal Facilities Agreement between the Navy, USEPA, and state regulatory agencies. The regulatory agencies will require implementation of this remediation program regardless of whether the project or any other development approvals is proceeding. Therefore, the remediation program is not part of the Project, so the “alternative” requested by the commenters is not an alternative to the Project but rather an alternative to the Navy’s cleanup program. The law that mandates the Navy’s cleanup action does not preclude, but neither does it intend or require, cleanup to allow unrestricted, residential use in all portions of HPS. CEQA requires assessment of alternatives that would reduce or avoid impacts associated with the Project while achieving all or most of the Project objectives. The Draft EIR identifies whether the Project would result in potentially significant impacts associated with hazardous materials and identifies mitigation measures to address impacts.

An unrestricted use alternative would not provide for a greater reduction in impacts than would be achieved with the identified mitigation measures, which already would assure that all development on the property is of a type that accords with restrictions placed in deeds. While an unrestricted use designation would eliminate the need for such use restrictions in deeds, cleaning property to a residential use standard and then using the property for open space or non-industrial uses does not result in a reduction of environmental impacts. As explained on page IV-106 of the Draft EIR, the Navy’s cleanup plan is designed to remediate HPS to levels acceptable for the planned uses in the current HPS Redevelopment Plan adopted in 1997. The HPS Redevelopment Plan, which is discussed on pages I-2 and I-3 of the Draft EIR, calls for a mix of uses, including residential, mixed use, industrial, research and development, maritime industrial, cultural and educational, and open space/recreational. Likewise, the objectives of the Project, as set forth in Proposition G passed by the voters in June 2008 and described in the Draft EIR on pages II-5 through -7, can be met only through a mix of commercial, residential, and recreational uses. That is why one of the project objectives approved by the voters in Proposition G is to “transform the contaminated portions of the Shipyard property into economically productive uses, or public open space, as appropriate.”

Although the Navy’s cleanup program is oriented toward the reuses set forth in the 1997 Redevelopment Plan, its program will remediate the site to a level sufficient to allow the land uses contemplated by the Project and the variants analyzed in this EIR, with the exception of one of the variants, as discussed in Draft EIR on page IV-106. The Housing Variant (Variant 2) or the Housing/R&D Variant (Variant 2A) would place housing on Parcel G, where the Navy has planned to impose a deed restriction allowing residential use in the nonresidential areas of the 1997 Redevelopment Plan only if approved by USEPA, the Navy, and state regulatory agencies. As discussed on page III.K-33, Parcel G is presently being considered for an early transfer where the cleanup responsibility would be assumed by the Agency. If the Agency wishes to pursue the non-stadium housing alternative, it could seek approval from the regulatory agencies to implement a cleanup that would allow residential use. If Parcel G is not subject to an early transfer and the Agency wished to pursue the non-stadium housing alternative, the Agency or Project Applicant would perform the activities necessary to secure approval from USEPA, the Navy, and state regulatory agencies to allow residential use on the property, as described on page IV-106 of the Draft EIR.

■ Master Response 15: Proposition P and the Precautionary Principle

Introduction

Overview

Some commenters have asserted that the Project is inconsistent with Proposition P, a voter initiative passed in 2000 related to the cleanup of HPS. Many commenters raising this point have also asserted that the Project is inconsistent with the Precautionary Principle Policy Statement adopted by the Board of Supervisors in July 2003. The commenters' concern is that the Navy's cleanup of HPS would not allow for unrestricted, residential use of the entire Shipyard, or has the potential to result in residual contamination remaining on-site. Commenters are particularly concerned that the Parcel E-2 landfill would be capped in place rather than removed.

This response is organized by the following topics:

- Introduction
- Proposition P
- Precautionary Principle Policy Statement

Commenters

Commenters who addressed this issue include:

- Federal, State, Regional, Local Agencies, Boards, and Commissions
 - > Planning Commissioner Borden (SFPC-115, SFPC-118)
- Organizations
 - > Arc Ecology (84-9, 84-27, 84-49, 85-19)
 - > Breast Cancer Action (55-5, 55-6)
 - > Green Action Health and Environmental Justice (58-2)
 - > POWER (People Organized to Win Employment Rights) (52-1)
 - > San Francisco Green Party (36-6, 36-8)
 - > Technical Assistance For Communities (TASC) (68-2)
- Individuals
 - > Carol Harvey (67-4)
 - > Colleen Mohammad (72-2)
 - > Dan Solberg (SFRA1-38)
 - > Eric Brooks (SFPC-103)
 - > Francisco Da Costa (105-1)
 - > Juana Tello (66-7, SFRA1-57, SFRA1-60)
 - > Karissa Cole (SFRA1-52, SFPC-15)
 - > Michael E. Boyd (SFPC-39)
 - > Nyese Joshua (65-1, 65-34)
 - > Oscar James (SFPC-79)
 - > Perry Matlock (74-3)

- > Sam Lao (5-3, SFPC-69)
- > Starr Miles (SFPC-75)
- > Vivien Donahue (60-3, 60-5)

Comments received on the Draft EIR related to Proposition P and the Precautionary Principle were focused almost exclusively on issues addressed in Section III.K (Hazards and Hazardous Materials); therefore, this master response provides further discussion to update and augment the analysis of the issues presented in Section III.K.

Comment Summary

This master response responds to all or part of the following comments: 5-3, 36-6, 36-8, 52-1, 55-5, 55-6, 58-2, 60-3, 60-5, 65-1, 65-34, 66-7, 67-4, 68-2, 72-2, 74-3, 84-9, 84-27, 84-49, 85-19, 105-1, SFRA1-38, SFRA1-52, SFRA1-57, SFRA1-60, SFPC-15, SFPC-39, SFPC-69, SFPC-75, SFPC-79, SFPC-103, SFPC-115, SFPC-118.

Summary of Issues Raised by Commenters

- Proposition P requires the site to be cleaned for unrestricted use
- The City has a Precautionary Principle that should be applied to the Project

Response

Introduction

As indicated on Draft EIR page III.K-2 and in Master Response 9 (Status of the CERCLA Process), Master Response 11 (Parcel E-2 Landfill), and Master Response 14 (Unrestricted Use Alternative), the Navy is conducting the cleanup program at HPS under the supervision of USEPA and state regulatory agencies. The cleanup is required by federal law and the FFA that the Navy has entered into with USEPA, DTSC, and RWQCB. Cleanup of HPS will proceed irrespective of whether the Project development occurs. Concerns about the Navy's cleanup program, including consistency with any public policies such as Proposition P or the Precautionary Principle are appropriately addressed through the CERCLA process. Nevertheless, this Master Response 15 (Proposition P and the Precautionary Principle) provides information about Proposition P and the Precautionary Principle and discusses their relevancy to the assessment of Project impacts called for under CEQA.

Proposition P

As noted on page III.K-31 of the Draft EIR, Proposition P (approved by the voters of San Francisco on November 7, 2000) called upon the Navy to remediate HPS to the highest levels practical to ensure flexible reuse of the property. The Board of Supervisors subsequently passed Resolution 634-01, adopting Proposition P as official City policy and urging the Navy and USEPA to take actions to implement Proposition P. The Resolution (1) recognizes that the unrestricted cleanup standard called for in Proposition P identifies a cleanup level acceptable to the community; (2) urges the Navy and FFA regulatory agencies not to rely on barriers to protect future occupants and the public from exposure to pollution, unless other remedies are technically infeasible, and (3) urges the Navy to clean up the Shipyard in a manner fully consistent with the Reuse Plan and with remedies that do not make implementation of the Reuse Plan economically infeasible.

Proposition P states a desired result that the Navy and regulators achieve in carrying out the cleanup of the Shipyard. Because the Navy cleanup, and decisions made by the regulators about the cleanup, is not part of the Project, Proposition P and the subsequent Board resolution are not directly applicable to the Project. Adoption and implementation of the Project would not be inconsistent with, and would not change, the City's stated desire that the Navy clean up HPS in a manner that allows flexible reuse, does not rely on barriers to protect the public from exposure unless other remedies are technically infeasible, is consistent with the Reuse Plan and does not render the Reuse Plan economically infeasible to implement. Proposition P is a general statement of policy. Three years after the passage of Proposition P, the Redevelopment Agency Commission approved the Conveyance Agreement with the Navy (discussed on page I-2 of the Draft EIR). The Conveyance Agreement is a legally binding agreement that sets forth specific cleanup standards for each parcel, and requires the Navy to obtain concurrence from the regulators that the property is safe for its intended use, which the Agreement specifies as the uses set forth in the 1997 HPS Redevelopment Plan. As discussed in Master Response 14 (Unrestricted Use Alternative) and on pages I-2 and I-3 of the Draft EIR, the 1997 HPS Redevelopment Plan calls for a mix of uses, including residential, mixed use, industrial, research and development, maritime industrial, cultural and educational, and open space/recreational. The Conveyance Agreement was the product of substantial community input. The Conceptual Framework for the integrated planning of HPS and CP adopted by the Board of Supervisors in May 2007 (and discussed on page II-5 of the Draft EIR) reaffirmed the Conveyance Agreement cleanup standards, stating, "there is an urgent need for the Navy to fulfill *its obligations under the Conveyance Agreement to remediate and convey this land to the City as quickly as possible in a condition that is consistent with the City's reuse plan*" [emphasis added]. Eight years after the voters passed Proposition P related to the Shipyard, they passed Proposition G related to the redevelopment of the Project area, including the Shipyard. One of the stated objectives of the Project set forth in Proposition G is to "transform the contaminated portions of the Shipyard property into economically productive uses, or public open space, as appropriate" (refer to Draft EIR, pages II-5 through -7).

A commenter has suggested that if the Agency enters into an early transfer agreement with the Navy and agrees to assume responsibility for portions of the cleanup (refer to Master Response 13 [Post-Transfer Shipyard Cleanup] and Draft EIR pages III.K-31 through -34), Proposition P would apply directly to the Agency's cleanup decisions, rather than simply being a policy statement about how the Navy should make its decisions. Proposition P addresses the type of clean-up remedy that the Navy should select and the regulators should approve for HPS. The ROD for a parcel sets forth the selected remedy. See Draft EIR, page III.K-12. As explained in the Draft EIR page III.K-33, under the early transfers envisioned at the Shipyard, all radiological cleanup would be completed and RODs issued. The Navy already has issued RODs for Parcels B, D-1, UC-1, UC-2, and G. Draft EIR page III.K-12. Further, the Navy already has conducted substantial remediation. Thus, by the time the Navy offers parcels being considered for early transfer to the Agency (with concurrence of USEPA and the Governor of California) the remedy already will have been selected and significant remediation completed. In the case of the first early transfer being considered – for Parcels B and G, the Navy also will have prepared (and the regulators will have approved) the remedial design documents. If the Agency accepts the property under an early transfer, it would simply be contracting with the Navy to complete the implementation of the Navy's selected remedy, with funds provided by the Navy. Therefore, Proposition P does not apply any differently to early transfer parcels than to other parcels because in both instances the Navy is selecting and federal and state regulators are approving the remedy.

Commenters have also cited the fact that Proposition P was approved by 87 percent of the voters in reference to the provisions in CERCLA related to community acceptance as a criteria in determining which cleanup remedy to select, with some commenters mistakenly asserting that CERCLA requires the community to approve the selected remedy. Although this issue is not directly related to the Project (because it relates to the cleanup decisions being made by the Navy and the regulators independent of whether this project proceeds), it may be useful to explain how “community acceptance” is required to be factored into those decisions. The regulations that the Navy and regulators must follow in implementing CERCLA, which are collectively referred to as the National Contingency Plan (NCP), set forth nine criteria that must be considered in selecting a cleanup remedy: two “threshold criteria” (overall protection of human health and the environment, and compliance with other applicable or relevant legal requirements); five “balancing criteria” (long-term effectiveness and permanence; reduction in toxicity, mobility or volume through treatment; short-term effectiveness; implementability; and cost) and two “modifying criteria” (state acceptance and community acceptance).

Community acceptance is an important criterion considered in remedy selection, but it is only one of nine. Typically, this criterion is evaluated based on comments received from the public during the public comment period for the Proposed Plan. It would certainly be appropriate for members of the public to cite Proposition P (or Proposition G) as evidence of community sentiment in public comments submitted to the Navy and regulatory agencies on Proposed Plans during the remedy selection process. The issues required to be addressed by CEQA and those addressed by Proposition P are distinct. CEQA calls for a determination of whether the existing environment would be changed by the Project so as to result in an adverse impact to the environment. The Draft EIR examines in detail in Section III.K, how hazardous substances known to exist at the Shipyard could result in significant impacts during Project construction and operation. It identifies a series of mitigation measures to address identified potentially significant impacts. Proposition P calls for a high standard of cleanup at the Shipyard, in some cases, a higher standard than is required by the proposed development. As stated, there is nothing incompatible between Proposition P and the Project and full implementation of Proposition P by the Navy and regulators would facilitate, not conflict with the Project objective of transforming the Shipyard into new economically viable uses.

Precautionary Principle Policy Statement

The Precautionary Principle Policy Statement adopted by the Board of Supervisors in July 2003, states that “the Board of Supervisors encourages all City employees and officials to take the Precautionary Principle into consideration and evaluate alternatives when taking actions that could impact health and the environment, especially where those actions could pose threats of serious harm or irreversible damage.” (Chapter 1 of the San Francisco Environment Code, Section 104.) The policy statement sets forth the key elements of the Precautionary Principle approach to decision-making as (1) Anticipatory Action to prevent harm; (2) Right to Know of the community about “potential human health and environmental impacts associated with the selection of products, services, operations or plans”; (3) Alternative Assessment designed to select the alternative with the least potential impact on human health and the environment; (4) Full Cost Accounting to consider all the reasonably foreseeable costs, including raw materials, manufacturing, transportation, use, cleanup, eventual disposal, and health costs; and (5) Participatory Decision Process, with decisions applying the Precautionary Principle being transparent, participatory, and informed by the best available science and other relevant information (Chapter 1 of the *San Francisco Environment Code*, Section 101).

The ordinance adopting the Precautionary Principle Policy Statement expressly provides, “This ordinance does not impose specific duties upon any City employee or official to take specific actions.” (Chapter 1 of the *San Francisco Environment Code*, Section 104).

As indicated above, commenters referencing the Precautionary Principle appear to be concerned that the Navy’s cleanup decisions are not consistent with this principle. Regardless of whether this concern is valid, the Precautionary Principle of the City by its terms applies only to City employees and officials and does not apply to the Navy or federal or state regulators overseeing the cleanup of the Shipyard. Further, as previously stated, the work of the Navy and oversight of regulators in carrying out the CERCLA process and FFA requirements at the Shipyard are not part of the Project. To the extent development decisions about the Project implicate the Precautionary Principle, the CEQA process evaluating those development decisions to a substantial degree serves the same purpose as the Precautionary Principle – it requires an evaluation of the impacts on human health and the environment of the Project and alternatives, and provides substantial opportunity for public input and transparent decision-making. The “right to know” aspects of the Precautionary Principle are addressed through the notification protocols and requirements discussed in Master Response 16 (Notification Regarding Environmental Restrictions and Other Cleanup Issues).

■ Master Response 16: Notification Regarding Environmental Restrictions and Other Cleanup Issues

Introduction

Overview

Comments have been raised to the effect that the EIR should require notice to future property owners and residents, adjacent property owners and residents, and neighboring schools of the type of restrictions that would be imposed on the property; the type of contaminants remaining in the property; any releases or potential releases of contaminants; and violations of environmental regulations or mitigation measures by the Project Applicant.

There are a number of legal mechanisms in place that would provide for notification to and communication with owners and residents of the Project site, owners and residents of adjacent property, residents, and schoolchildren on neighboring properties. This master response discusses these mechanisms, and where appropriate provides clarification in the text of mitigation measures in response to these comments.

Commenters

Commenters who addressed this issue include:

- Federal, State, Regional, Local Agencies, Boards, and Commissions
 - > California State Parks (86-3)
- Organizations
 - > Arc Ecology (82-7)
 - > Breast Cancer Action (55-4, 55-5)
 - > California State Parks Foundation (47-42)
 - > POWER (People Organized to Win Employment Rights) (52-1, 52-3, 69-1)

- > San Francisco Green Party (36-6)
- > Technical Assistance For Communities (TASC) (68-1, 68-2)
- Individuals
 - > Carl Harvey (67-4)
 - > Daniel Landry (SFRA2-34)
 - > Francisco Da Costa (105-1)
 - > Juana Tello (66-8, 66-9, 66-10, 66-13)
 - > Karissa Cole (SFPC-15)
 - > Michael E. Boyd (SFPC-41)
 - > Nyese Joshua (65-1, 65-34)
 - > Perry Matlock (74-3)
 - > Sam Lao (SFPC-69)
 - > Vivien Donahue (60-2, 60-6)

Comments received on the Draft EIR related to residual contamination were focused almost exclusively on issues addressed in Section III.K (Hazards and Hazardous Materials) of the Draft EIR; therefore, this master response provides further discussion to update and augment the analysis of the issues presented in Section III.K.

Comment Summary

This master response responds to all or part of the following comments: 47-42, 52-1, 52-3, 55-4, 55-5, 60-2, 60-6, 65-1, 65-34, 66-8, 66-9, 66-10, 66-13, 67-4, 68-1, 68-2, 69-1, 74-3, 82-7, 86-3, 105-1, SFPC-15, SFPC-41, SFPC-69, SFRA2-34.

Summary of Issues Raised by Commenters

- The Project should be required to notify future property owners, residents, and adjacent schools of any restrictions on the Project site, residual contaminants, releases or potential releases of contaminants, and all violations of restrictions or mitigation measures by the Project Applicant

Response

The Navy's cleanup program under the Federal Facilities Agreement requires the Navy to prepare and implement a Community Involvement Plan. This plan requires a number of activities designed to inform neighbors and other members of the public about the status of Shipyard cleanup activities. Although the Navy's cleanup program is not part of the Project, remediation activities that may be conducted on behalf of the Agency or Project Applicant as part of an early transfer are part of the Project, as are limited remediation activities that may need to be conducted on Navy property in conjunction with construction of project improvements. In the course of implementing those project remediation activities, the Agency and Project Applicant would be required to implement similar community relations and public information activities under the Administrative Order on Consent that would be entered into between the USEPA, Agency, and the Project Applicant. Community relations and public information requirements may also be incorporated into the requirements of cleanup decision documents, leases and transfer documents imposed on the Agency, Project Applicant and other subsequent purchasers and tenants.

As described on pages III.K-32 through -34, before the Navy transfers ownership of any property at HPS, it would prepare and circulate for public comment a document called a Finding of Suitability for Transfer (FOST), or, at parcels subject to early transfer, a Finding of Suitability for Early Transfer (FOSET). These documents would include detailed information about the nature and extent of contaminants and the measures that have been taken to address them, including any restrictions that would be imposed on the use of, or activities that may be conducted at, the property, and any notices required to be provided such as notices and notice requirements regarding the existence of lead-based paint and asbestos containing materials. Such restrictions would also be set forth in both the deed and a separate land use covenant, both of which would be legally recorded, and they would also be required to be provided to tenants and any subsequent property owner. In addition, general statutory and common law requirements applicable to transfers and leases of real property provide for disclosures of hazardous conditions, including releases of hazardous substances and hazardous materials to purchasers and tenants.

Notice of new discoveries of unknown contaminants is required by MM HZ-2a.1, which requires the development of an unknown contaminant contingency plan that must include appropriate notification and site control procedures. To further address these comments, this MM HZ-2a.1 has been modified to state that the “appropriate notification” shall include appropriate notification to nearby property owners, schools, and residents.

A particular notification issue of interest to a number of commenters relates to dust and naturally occurring asbestos. In recognition of the level of community interest in this issue, the Draft EIR (in MM HZ-15, page III.K-100) requires the Dust Control Plan for the Project to include establishing a hotline for surrounding community members who may be affected by dust and requires the contact person to take corrective action within 48 hours. The hotline number is required to be provided to adjacent residents, schools and businesses. In response to these comments, an additional community notification requirement has been added to MM HZ-15 by requiring appropriate protocols for providing notification to nearby property owners, schools and residents when air monitoring results show that asbestos levels exceed standards set forth in the Asbestos Dust Control Plan.

In response to these comments, the following mitigation measures in the Section III.K (Hazards and Hazardous Materials) have been revised.

The text in Section III.K, page III.K-56, has been revised as follows (new text is shown as underlined):

MM HZ-1b Compliance with Requirements Imposed by Cleanup Decision Documents and Property Transfer Documents. *(Applies only to HPS Phase II) Prior to obtaining a grading, excavation, site, building or other permit from the City for development activity at HPS Phase II involving subsurface disturbance, the Project Applicant shall submit documentation acceptable to the San Francisco Department of Public Health that the work will be undertaken in compliance with all notices, restrictions, and requirements imposed pursuant to a CERCLA ROD, Petroleum Corrective Action Plan, FOST, FOSET or FOSL, including notices, restrictions, and requirements imposed in deeds, covenants, leases, easements, and LIFOCs, and requirements set forth in Land Use Control Remedial Design Documents, Risk Management Plans, Community Involvement Plans, and health and safety plans.*

The text in Section III.K, pages III.K-58 and -59, has been revised as follows (new text is shown as underlined):

MM HZ-2a.1 Unknown Contaminant Contingency Plan. *(Applies to Candlestick Point, HPS Phase II, and off-site improvements.)* Prior to obtaining the first site, building or other permit for development activities involving subsurface disturbance, the Project Applicant shall prepare and the San Francisco Department of Public Health shall approve a contingency plan to address unknown contaminants encountered during development activities. This plan, the conditions of which shall be incorporated into the first permit and any applicable permit thereafter, shall establish and describe procedures for implementing a contingency plan, including appropriate notification to nearby property owners, schools and residents and appropriate site control procedures, in the event unanticipated subsurface hazards or hazardous material releases are discovered during construction. Control procedures would include, but would not be limited to, further investigation and, if necessary remediation of such hazards or releases, including off-site removal and disposal, containment or treatment. In the event unanticipated subsurface hazards or hazardous material releases are discovered during construction, the requirements of this unknown contaminant contingency plan shall be followed. The contingency plan shall be amended, as necessary, in the event new information becomes available that could affect the implementation of the plan. This measure shall be implemented for HPS Phase II through a requirement in the potential additions to Article 31 imposing requirements to parcels other than Parcel A (as required in mitigation measure MM HZ-1c) or through an equivalent process established by the City or Agency.

The text in Section III.K, pages III.K-78 and -79 has been revised as follows (new text is shown as underlined):

MM HZ-9 Navy-approved workplans for construction and remediation activities on Navy-owned property. *(Applies only to the portions of HPS Phase II on Navy-owned property).* Construction activities and remediation activities conducted on behalf of the Agency or the Project Applicant, on Navy-owned property shall be conducted in compliance with all required notices, restrictions, or other requirements set forth in the applicable lease, easement, or license or other form of right of entry and in accordance with a Navy-approved workplan. This mitigation measure also requires that such activities be conducted in accordance with applicable health and safety plans, dust control plans, stormwater pollution prevention plans, community involvement plans, or any other documents or plans required under applicable law. The City/Agency will access Navy property through a lease, license, or easement. The City/Agency shall not undertake any activity or approve any Project Applicant activity on Navy-owned property until the Navy and other agencies with approval authority have approved a workplan for the activity. The requirement to comply with the approved work plans shall be incorporated into and made a condition of any City/Agency approvals related to activities on Navy property. This measure shall be implemented for HPS Phase II through a requirement in the potential additions to Article 31 imposing requirements to parcels other than Parcel A (as described in the discussion of MM HZ-1c) or through an equivalent process established by the City or Agency.

The text in Section III.K, pages III.K-87 and -88 has been revised as follows (new text is shown as underlined):

MM HZ-12 Compliance with Administrative Order on Consent at Early Transferred Parcels. *(Applies only at HPS Phase II.)* Prior to undertaking any remediation activities at HPS Phase II on property that the Navy has transferred to the Agency as part of an early-transfer, the Agency or its contractor or Project Applicant shall comply with all requirements incorporated into remedial design documents, work plans, health and safety plans, dust control plans, community involvement plans, and any other document or plan required under the Administrative Order on Consent. This includes all notices, restrictions, and requirements imposed pursuant to a CERCLA ROD, Petroleum Corrective Action Plan, FOSET, including restrictions imposed in deeds, covenants, and requirements set forth in Land Use Control Remedial Design Documents, Risk Management

Plans, community involvement plans, and health and safety plans. Prior to obtaining a grading, excavation, site, building, or other permit from the City that authorizes remedial activities, SFDPH shall confirm that the work proposed complies with the applicable plans required by the Administrative Order of Consent. This measure shall be implemented through a requirement in the potential additions to Article 31 imposing requirements to parcels other than Parcel A (as required in MM HZ-1c) or through an equivalent process established by the City or Agency.

The portion of the text describing the requirement to implement air monitoring to the extent required by the BAAQMD in Section III.K, page III.K-100 has been revised as follows (new text is shown as underlined):

MM HZ-15 Asbestos Dust Mitigation Plans and Dust Control Plans.

...

If required by the BAAQMD, air monitoring shall be implemented to monitor for off-site migration of asbestos dust during construction activities, and appropriate protocols shall be established and implemented for notification of nearby schools, property owners and residents when monitoring results indicate asbestos levels that have exceeded the standards set forth in the plan.

■ Master Response 17: Enforcement of Environmental Restrictions and Mitigation Measures

Introduction

Overview

Some commenters have asked how land use and activity restrictions and the hazardous material mitigation measures would be enforced.

Commenters

Commenters who addressed this issue include:

- Federal, State, Regional, Local Agencies, Boards, and Commissions
 - > None
- Organizations
 - > Breast Cancer Action (55-5)
 - > POWER (People Organized to Win Employment Rights) (69-4)
 - > Technical Assistance For Communities (TASC) (68-1, 68-2)
- Individuals
 - > Carol Harvey (67-4)
 - > Francisco Da Costa (105-1)
 - > Juana Tello (SFPC-95)
 - > Karissa Cole (SFPC-15)
 - > Nyese Joshua (65-1, 65-34)
 - > Sam Lao (SFPC-69)

Comments received on the Draft EIR related to hazardous materials were focused almost exclusively on issues addressed in Section III.K (Hazards and Hazardous Materials) of the Draft EIR; therefore, this

master response provides further discussion to update and augment the analysis of the issues presented in Section III.K.

Comment Summary

This master response responds to all or part of the following comments: 55-5, 65-1, 65-34, 67-4, 68-1, 68-2, 69-4, 105-1, SFPC-15, SFPC-69, SFPC-95.

Summary of Issues Raised by Commenters

- Concern expressed regarding how the mitigation measures and land use restrictions would be enforced

Response

As described on pages III.K-38 to -39, Article 31 of the *San Francisco Health Code* presently establishes an administrative process related to the HPS Phase I development requiring the San Francisco Department of Public Health to verify compliance with EIR mitigation measures and other environmental restrictions and plans prior to issuance of construction or grading permits by the DBI or DPW. After such issuance, the Department of Public Health continues to monitor and enforce compliance. The City anticipates amending Article 31 to establish a similar process at HPS Phase II for property that is subject to City permitting authority. If Article 31 is not amended, the EIR requires the Agency to administratively establish an equivalent process. Further, for property that would be under United States Navy ownership when work is done for the project, for example, the installation of a road or infrastructure to serve the Agency property, the EIR requires the Agency to administratively establish an equivalent process to the Article 31 procedures administered by the Department of Public Health. Under the Redevelopment Plan process, all work done under the Redevelopment Plan must be approved by the Agency. Consequently, the Agency would need to determine that any proposed work would be done in compliance with mitigation measures [refer to MM HZ-9]. The Agency may at its discretion, enlist the assistance of the Department of Public Health through a memorandum of understanding or similar agreement for areas either not covered by City permits or for all areas in the event the Board does not amend Article 31 to establish a process similar to the Article 31 process in place for HPS Phase I.

In addition to being enforceable by the City, the hazardous material-related restrictions, notices and other requirements imposed as institutional controls pursuant to the environmental cleanup and property transfer process (Draft EIR, pages III.K-34 through -36) would be redundantly incorporated into two separate legally enforceable documents: the recorded deeds conveying ownership of the property and recorded covenants to restrict use of property. Violations of deed restrictions by a subsequent property owner are legally enforceable by the Navy and by any other predecessor owner in the chain of title (e.g., the Agency, the Project Applicant, or parties to whom the project Applicant conveys portions of the property). Violations of the recorded covenant to restrict use of property are enforceable by USEPA and DTSC.

The MMRP outlines detailed plans for monitoring and enforcing each mitigation measure identified in the Draft EIR, including those set forth in the Section III.K (Hazards and Hazardous Materials).

■ Master Response 18: Traffic Mitigation Measures

Introduction

Overview

This master response addresses comments made requesting additional detail and clarity regarding mitigation measures MM TR-21.1, MM TR-22.1, MM TR-23.1, MM TR-24.1, and MM TR-26.1.

This response is organized by the following topics:

- Mitigation Measure MM TR-21.1
- Mitigation Measure MM TR-22.1
- Mitigation Measure MM TR-23.1
- Mitigation Measure MM TR-24.1
- Mitigation Measure MM TR-26.1
- Implementation

Commenters

Commenters who addressed this issue include:

- Federal, State, Regional, Local Agencies, Boards, and Commissions
 - > Planning Commissioner Antonini (SFPC-120, SFPC-138)
 - > Redevelopment Agency Commissioner Breed (SFRA2-38)
- Organizations
 - > Green Action Health and Environmental Justice, Cecille Caterson (SFRA1-82)
 - > Neighborhood Parks Council (44-2)
 - > Parkmerced Resident's Organization (22-2)
 - > POWER (People Organized to Win Employment Rights) (50-28, 52-6)
- Individuals
 - > Ahimsa Porter Sumchai (SFRA1-19)
 - > Barbara Cavella (15-1)
 - > Esselene Stancil (54-1)
 - > Joshua Nyese (65-6, 65-11)
 - > Kristine Enea (21-1)
 - > Richard McRee (SFRA2-22)
 - > Simon Jefferson (59-1, 59-3)

Comment Summary

This master response responds to all or part of the following comments: 15-1, 21-1, 22-2, 44-2, 50-28, 52-6, 54-1, 59-1, 59-3, 65-6, 65-11, SFRA1-19, SFRA1-82, SFRA2-22, SFRA2-38, SFPC-120, SFPC-138.

Comments received on the Draft EIR related to the subject mitigation measures were focused almost exclusively on issues addressed in Section III.D (Transportation and Circulation) of the Draft EIR; therefore, this master response provides further discussion to update and augment the analysis of the issues

presented in Section III.D. Following publication of the Draft EIR, mitigation options were further developed in consultation with SFMTA and the Planning Department to define options and determine preliminary feasibility of the options for each mitigation measure.

Summary of Issues Raised by Commenters

- Timing of implementation of transit mitigation measures is unclear from the study
- Additional detail should be provided regarding scope of mitigation measures, feasibility of implementation, and extent of benefits offered

Response

Introduction

As described in the Draft EIR, traffic-related congestion associated with the Project and other long-term cumulative growth in the region would cause delays to transit vehicles serving the Project area. In a number of cases, this congestion would be severe enough to prevent SFMTA from maintaining proposed frequencies without either reducing the delays or acquiring additional vehicles. Mitigation measures MM TR-21.1, MM TR-22.1, MM TR-23.1, MM TR-24.1, and MM TR-26.1 each describe specific physical changes to the roadway network designed to reduce delays to transit such that proposed headways can be maintained. Each of these measures has a second part, which stipulates that if the Mitigation Measures are not adequate at reducing delays to the point that additional vehicles are no longer required, or if they are deemed infeasible, additional vehicles must be purchased. However, purchasing additional vehicles is a less desirable option because, although frequencies would be maintained, the overall travel times would be longer, and transit would be less desirable.

Some of the mitigation measures described in the Draft EIR recommended several optional treatments that should be considered for reducing transit impacts. These mitigation measures have been refined since publication of the Draft EIR based on further feasibility analysis and discussions with SFMTA. This master response provides additional detail and supporting graphics to illustrate the specific proposals for MM TR-21.1, MM TR-22.1, MM TR-23.1, MM TR-24.1, and MM TR-26.1, and the extent to which they would reduce the Project's transit impacts to less than significant levels. In some cases, more specific proposals than what has been identified in the Draft EIR are not available.

Mitigation Measure MM TR-21.1: Maintain the Proposed Headways of the 9-San Bruno

Mitigation measure MM TR-21.1 would generally provide so-called “queue-jump” lanes (i.e., short transit-only lanes near intersections to allow buses to bypass queues stopped at intersections), traffic signal priority treatments, and short segments of transit-only lanes to provide improved transit travel times on San Bruno Avenue, between Mansell Street and Silver Avenue. These measures would benefit the 9-San Bruno, 9X-San Bruno Express, and 9AX-San Bruno “A” Express routes, and a short portion of the 29-Sunset. Although these treatments were not assumed in the impact analysis, SFMTA has indicated that a number of similar investments are currently planned for the San Bruno Corridor, although the specific plan is currently under development. Project-specific mitigation measures would be implemented in addition to what is ultimately constructed by SFMTA, and may include implementation of corridor-wide transit signal priority treatments. The precise measures to be implemented, if feasible, would be designed to compliment recommendations currently under development by SFMTA. However, because of uncertainty regarding

feasible improvements, and their ability to mitigate Project impacts to less than significant levels, as noted in the Draft EIR, Impact TR-21 would remain significant and unavoidable.

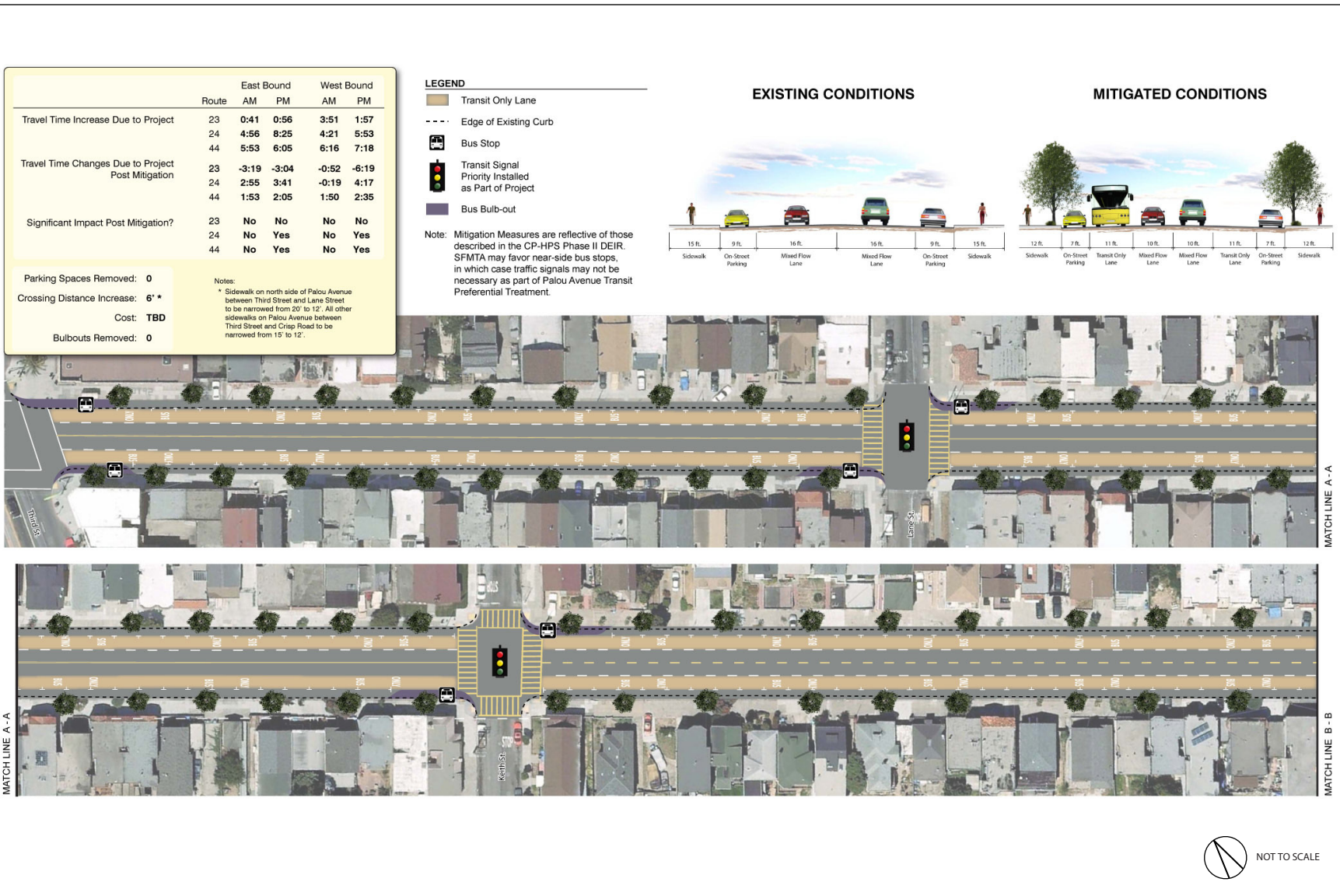
Mitigation Measure MM TR-22.1: Maintain the Proposed Headways of the 23-Monterey, 24-Divisadero, and the 44-O'Shaughnessy

Mitigation measure MM TR-22.1 included a number of optional improvements to the Palou Avenue corridor aimed at reducing Project-generated transit delays. Subsequent to publication of the Draft EIR, the Project Applicant and SFMTA conducted a feasibility study. The fifth bulleted item in MM TR-22.1 was determined to be the most desirable of the optional measures because it would provide continuous transit-only lanes along the entire length of Palou Avenue between Crisp Avenue and Third Street, the transit-only lanes could be in operation at all times, and this option would retain on-street parking along the primarily residential corridor.

Specifically, as currently envisioned, mitigation measure MM TR-22.1 would add a transit-only travel lane in each direction on Palou Avenue between Crisp Avenue and Third Street. To accomplish this without removing existing on-street parking along Palou Avenue, existing sidewalks would be narrowed from 15 to 12 feet, allowing a 7-foot on-street parking lane, an 11-foot transit-only lane, and a 10-foot auto travel lane in each direction. The resulting 12-foot sidewalk widths would remain consistent with the City's Draft Better Streets Plan. Further, so-called "bus bulbs" could be provided at corners with bus stops, to provide additional passenger waiting areas and amenities, reduce pedestrian crossing distances, and eliminate the need for buses to pull over to the curb at stops. There would be no additional loss of on-street parking associated with this mitigation measure.⁷⁴ Because Palou Avenue between Keith Street and Third Street already has two westbound lanes, mitigation measure MM TR-22.1 would convert one of the two auto travel lanes to transit-only. Levels of service for westbound traffic on Palou Avenue between Keith Street and Third Street may deteriorate due to the reduced auto capacity. Otherwise, intersections along Palou Avenue would not experience an associated degradation in auto level of service.

Mitigation measure MM TR-22.1 would benefit the 23-Monterey, the 24-Divisadero, and the 44-O'Shaughnessy. Figure C&R-3a (Mitigation Measure MM TR-22: Palou Avenue from Third Street to Crisp Road) and Figure C&R-3b (Mitigation Measure MM TR-22: Palou Avenue from Third Street to Crisp Road) illustrate the proposed mitigation measure, as well as the anticipated benefits to transit travel times on each of the impacted transit routes. The figures indicate the increases to transit travel times associated with project-generated contributions to traffic congestion for each affected route along the subject corridors (as presented in Table 76 in the *Transportation Study*). Because the mitigation measures do not fully mitigate the Project's increases to transit travel times in all cases, the figures also indicate how much the Project (with implementation of the mitigation measures) would increase transit travel times and whether the remaining increases would remain significant impacts or whether they would be reduced to less-than-significant levels. Finally, the figures also provide some description of other effects of the mitigation measures, including increases to pedestrian crossing distances, parking, and traffic congestion.

⁷⁴ Although some parking on Palou Avenue would be displaced as part of the Project via the implementation of curbside bus stop areas or bus bulbs, no additional parking loss would occur due to the mitigation measure.

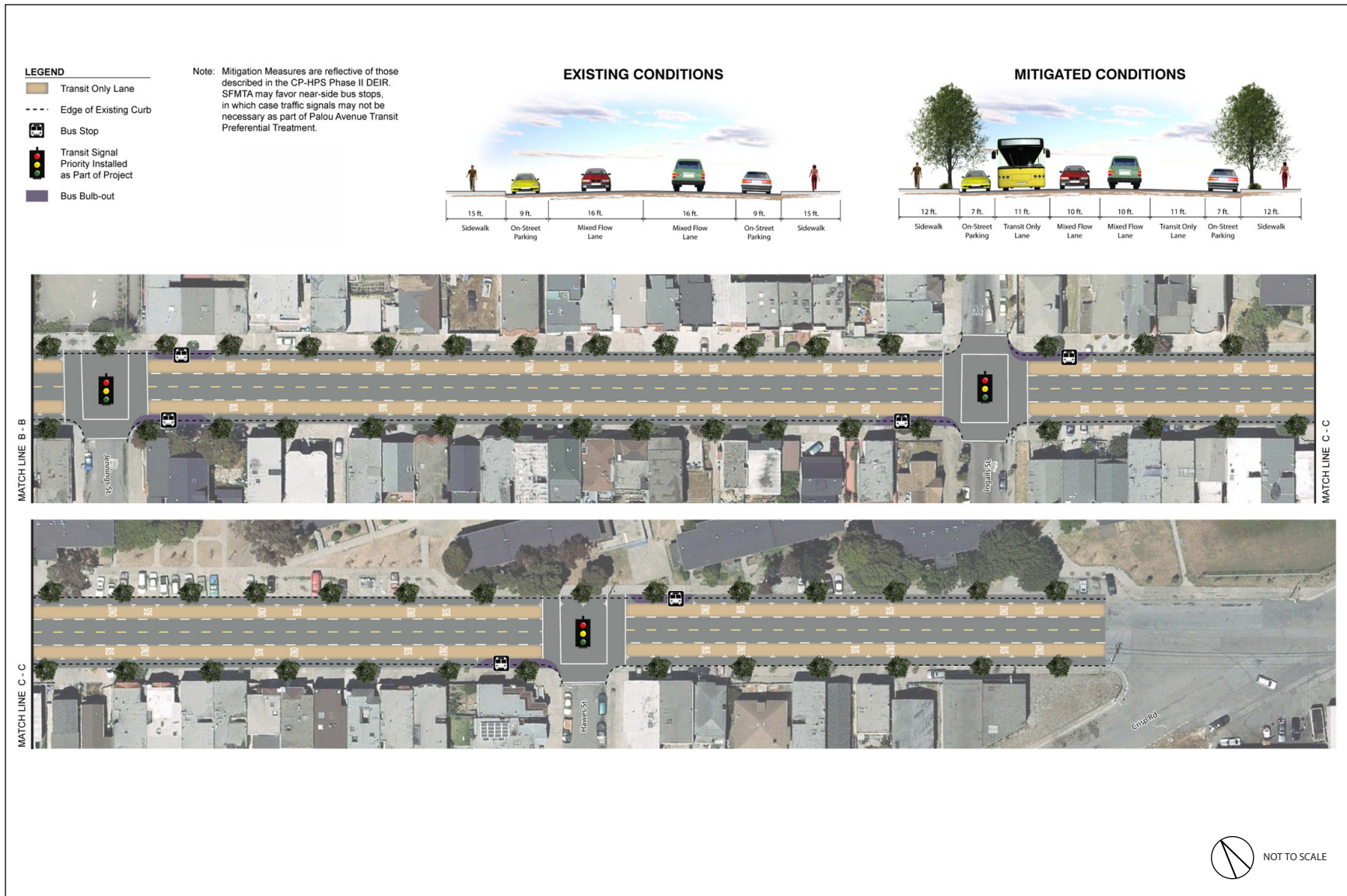


SOURCE: Fehr & Peers, 2010.

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FIGURE C&R-3a

Candlestick Point — Hunters Point Shipyard Phase II EIR
MITIGATION MEASURE MM TR-22: PALOU AVENUE
FROM THIRD STREET TO CRISP ROAD



SOURCE: Fehr & Peers, 2010.

PBS&J 04.09.10 02056 | JCS | 10

FIGURE C&R-3b



Candlestick Point — Hunters Point Shipyard Phase II EIR
**MITIGATION MEASURE MM TR-22: PALOU AVENUE
 FROM THIRD STREET TO CRISP ROAD**

Although reducing sidewalk widths is generally considered undesirable based on the City's Transit First policy, in this case, the resulting sidewalks would still meet minimum dimensional requirements specified in the Draft Better Streets Plan, and transit circulation would be substantially improved. Based on the additional review of this mitigation measure, it appears technically feasible.

Although SFMTA has generally indicated support for this measure, as noted in the Draft EIR, implementation of this mitigation measure requires additional evaluation by the City and the impacts to transit remain significant and unavoidable.

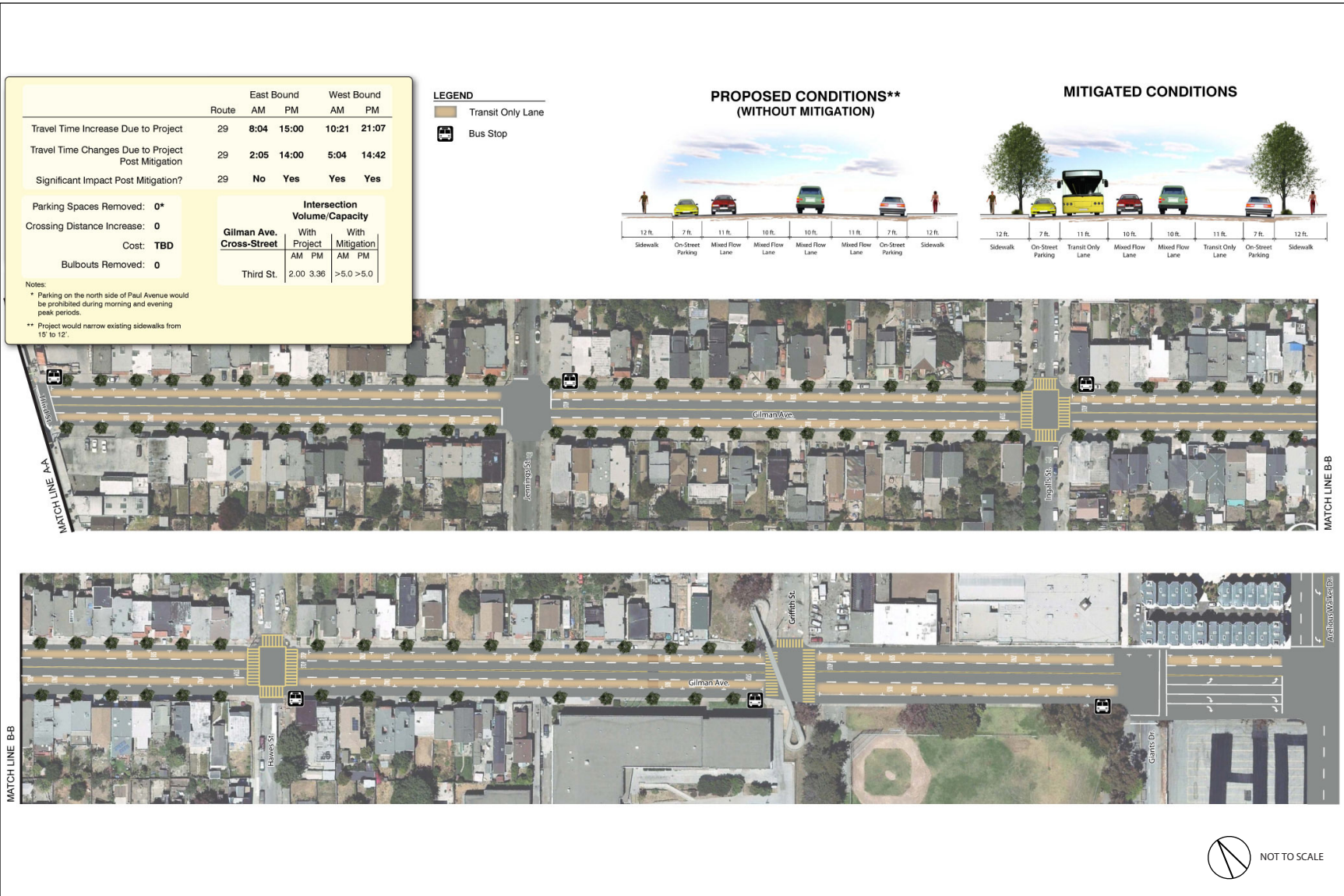
Mitigation Measure MM TR-23.1: Maintain the proposed headways of the 29-Sunset

Mitigation measure MM TR-23.1 included a number of optional improvements to the Gilman Avenue corridor aimed at reducing Project-generated transit delays. Subsequent to publication of the Draft EIR, the Project Applicant and SFMTA conducted a feasibility study. The third bulleted item in MM TR-23.1 was determined to be more desirable than the first two bulleted optional measures because it would provide continuous transit-only lanes along the entire length of Gilman Avenue between Arelious Walker Drive and Third Street, the transit-only lanes could be in operation at all times, and this option would retain on-street parking along Gilman Avenue at all times.

A portion of the third bullet in the Draft EIR included widening the Gilman Avenue roadway and narrowing the sidewalks from 15 feet to 12 feet to accommodate a second travel lane in each direction, similar to the recommendations for Palou Avenue in mitigation measure MM TR-22.1. However, the dimensional changes to Gilman Avenue are proposed as part of the Project; therefore, accommodating a transit-only lane in each direction while maintaining on-street parking does not require roadway widening as originally proposed in MM TR-23.1. Language to this effect has been removed from MM TR-23.1.

Specifically, as currently envisioned, MM TR-23.1 would convert one of the two automobile travel lanes in each direction into a transit-only travel lane on Gilman Avenue between Arelious Walker Drive and Third Street. Additionally, westbound Paul Avenue, between Third Street and Bayshore Boulevard, provides one westbound travel lane and on-street parking. The on-street parking along this route is currently converted to a second westbound travel lane following San Francisco 49ers games at Candlestick Park. Mitigation measure MM TR-23.1 also calls for converting this on-street parking/travel lane to a transit-only lane during weekday morning and evening peak periods. This would temporarily reduce the on-street parking supply on the north side of Paul Avenue during peak periods only. As noted in the Draft EIR, implementation of this mitigation measure would exacerbate levels of service (LOS) F conditions for autos along the corridor; however, the effective prioritization of transit circulation over automobile circulation would be consistent with the City's "Transit First" policy. Based on the additional review of this mitigation measure, it appears technically feasible.

Mitigation measure MM TR-23.1 would benefit the 29-Sunset. Figure C&R-4a (Mitigation Measure MM TR-23: Gilman Avenue and Paul Avenue from Arelious Walker Drive to Bayshore Boulevard) and Figure C&R-4b (Mitigation Measure MM TR-23: Gilman Avenue and Paul Avenue from Arelious Walker Drive to Bayshore Boulevard) illustrate the proposed mitigation measure, as well as the anticipated benefits to transit travel times on the impacted transit routes. Although SFMTA has generally indicated support for this measure, as noted in the Draft EIR, implementation of this mitigation measure requires additional evaluation by the City and the impacts to transit remain significant and unavoidable.



SOURCE: Fehr & Peers, 2010.

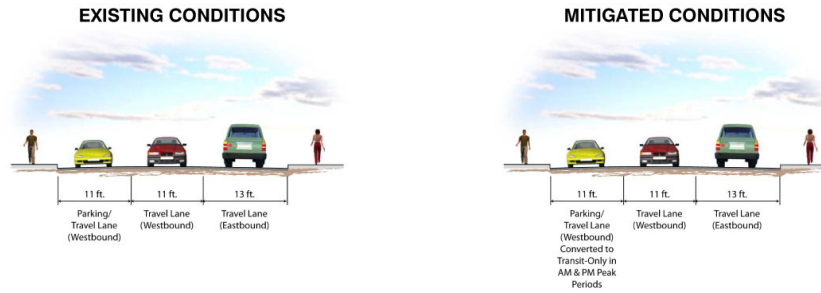
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FIGURE C&R-4a



Candlestick Point — Hunters Point Shipyard Phase II EIR
MITIGATION MEASURE MM TR-23: GILMAN AVENUE AND PAUL AVENUE FROM ARELIOS WALKER DRIVE TO BAYSHORE BOULEVARD

- LEGEND**
- Transit Only Lane
 - Parking Prohibited During Peak Periods Only
 - 8 Number of Parking Spaces Prohibited During Peak Periods



NOT TO SCALE

SOURCE: Fehr & Peers, 2010.

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FIGURE C&R-4b



Candlestick Point — Hunters Point Shipyard Phase II EIR
**MITIGATION MEASURE MM TR-23: GILMAN AVENUE AND PAUL AVENUE
 FROM ARELIUS WALKER DRIVE TO BAYSHORE BOULEVARD**

Mitigation Measure MM TR-24.1: Maintain the Proposed Headways of the 48-Quintara-24th Street

Mitigation measure MM TR-24.1 would convert one of the two automobile travel lanes in each direction into a transit-only travel lane on Evans Avenue between Napoleon Street and Jennings Street. There may be a small loss of on-street parking as a result of implementing this mitigation measure if curbside bus zones or bus bulbs are implemented as part of the measure.⁷⁵ As noted in the Draft EIR, implementation of this mitigation measure would exacerbate LOS F conditions for autos along Evans Avenue; however, the effective prioritization of transit circulation over automobile circulation would be consistent with the City's "Transit First" policy.

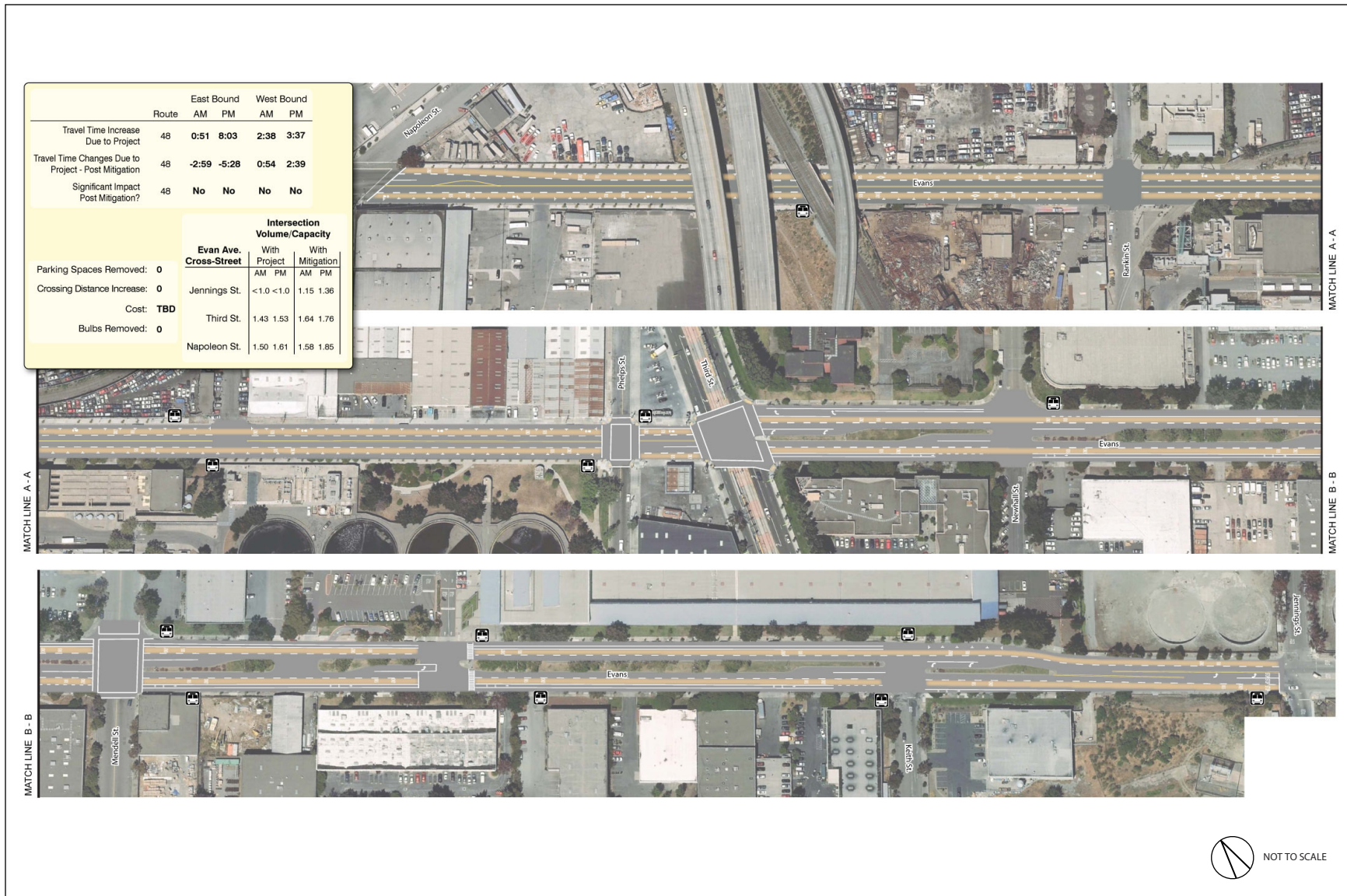
Mitigation measure MM TR-23.1 would benefit the 48-Quintara-24th Street. Figure C&R-5 (Mitigation Measure MM TR-24: Evans Avenue from Jennings Street to Napoleon Street) illustrates the proposed mitigation measure, as well as the anticipated benefits to transit travel times on the impacted transit routes. Although SFMTA has generally indicated support for this measure, as noted in the Draft EIR, implementation of this mitigation measure requires additional evaluation by the City and the impacts to transit remain significant and unavoidable.

Mitigation Measure MM TR-26.1: Maintain the Proposed Headways of the T-Third

Mitigation measure MM TR-26.1 would provide exclusive right-of-way for the T-Third Street light rail on Third Street for the nine-block segment between Thomas Avenue and Kirkwood Avenue where it currently operates in mixed-flow travel lanes. The result would be that the T-Third Street light-rail line would operate in exclusive right-of-way for its entire route, since this nine-block segment is the only area where the T-Third Street shares the right-of-way with autos. To accomplish this, the City would either prohibit autos from using the lane that the T-Third Street travels in and maintain existing on-street parking (resulting in a single travel lane for autos in each direction for the nine-block segment), or to eliminate on-street parking along the segment to maintain two travel lanes in each segment. In either case, left turns on Third Street would likely need to be prohibited.

Mitigation measure MM TR-26.1 would benefit the T-Third Street. However, because of the more severe effects associated with either removing on-street parking or eliminating one travel lane in each direction along Third Street compared to other mitigation measures aimed at improving transit travel times described in the Draft EIR, various City agencies, including SFMTA, have expressed concern regarding the feasibility of implementing this measure. Because of this, and the need for additional study, the impacts to transit remain significant and unavoidable.

⁷⁵ This design detail would be determined at the time of implementation.



SOURCE: Fehr & Peers, 2010.

NOT TO SCALE

PBS&J 04.16.10 02056 | JCS | 10

FIGURE C&R-5



**Candlestick Point — Hunters Point Shipyard Phase II EIR
MITIGATION MEASURE MM TR-24: EVANS AVENUE
FROM JENNINGS STREET TO NAPOLEON STREET**

Implementation

As noted throughout this master response and in the Draft EIR, each of the mitigation measures described herein presents a series of trade-offs, where transit circulation is prioritized over other modes of travel. The analysis conducted in the Draft EIR that identified the need for these mitigation measures was based on an appropriately conservative set of traffic forecasts that identifies a reasonable worst-case scenario for potential long-term traffic congestion in the area. However, because of inherent uncertainty in traffic forecasts, particularly in areas such as southeastern San Francisco, which are expected to undergo substantial change over the forecasting horizon period, it is possible that the significant impacts to transit identified in the Draft EIR may not materialize to the extent forecasted. To avoid unnecessarily implementing mitigation measures that carry some negative effects to other modes of travel (e.g., narrower sidewalks or reduced auto capacity), monitoring of transit travel times and traffic conditions would be conducted on a regular basis to determine whether the combination of Project traffic and background traffic growth has indeed resulted in significant transit impacts. If not, the mitigation measures (and their associated effects to other modes) would not be implemented. If so, those mitigation measures described above that are ultimately determined to be feasible would be implemented.

■ Master Response 19: Proposed BAAQMD Guidelines

Introduction

Overview

As reported under the “Regional” discussion in Section III.H.3 (Regulatory Framework) of the Draft EIR, as of the date of the Draft EIR (November 12, 2009), the Bay Area Air Quality Management District (BAAQMD) was in the process of revising their CEQA guidelines, which recommend air quality significance thresholds, analytical methodologies, and mitigation measures for local agencies to use when preparing air quality impact analyses under CEQA. The BAAQMD released draft guidelines and significance thresholds in September 2009,⁷⁶ October 7, 2009⁷⁷ (thresholds only), and November 2, 2009.⁷⁸ The BAAQMD also released accompanying documents that support the basis for the significance thresholds presented in the guidelines in October 2009 and November 2, 2009. In October⁷⁹ and November 2009,⁸⁰ the BAAQMD released draft tables of Staff Recommended CEQA Thresholds of Significance, upon which the Draft EIR’s analysis was based.

After the Draft EIR was released for public comment in November 2009, the BAAQMD released its December 2009 proposed CEQA Air Quality Guidelines⁸¹ (proposed BAAQMD guidelines) and its December 7, 2009, CEQA Guidelines Update: Proposed Thresholds of Significance (proposed thresholds document).⁸² These documents include a number of changes, including changes to certain thresholds of significance compared with the earlier versions of these documents that were available when the Draft EIR

⁷⁶ BAAQMD. 2009. *California Environmental Quality Act Draft Air Quality Guidelines*. September.

⁷⁷ BAAQMD. 2009. *Staff Recommended CEQA Thresholds of Significance*. October 7.

⁷⁸ BAAQMD. 2009. *California Environmental Quality Act Draft Air Quality Guidelines*. November.

⁷⁹ BAAQMD. 2009. *Staff Recommended CEQA Thresholds of Significance*. October 7.

⁸⁰ BAAQMD. 2009. *California Environmental Quality Act Draft Air Quality Guidelines*. November.

⁸¹ BAAQMD. 2009. *California Environmental Quality Act, Air Quality Guidelines*. December.

⁸² BAAQMD. 2009. *California Environmental Quality Act Guidelines Update: Proposed Thresholds of Significance*. December 7.

was prepared. Since the release of these updated documents, the BAAQMD has held workshops and taken comments on its proposals, and issued updated advice regarding the revised methodologies for performing the analyses required by its proposed guidelines. This master response presents additional analyses of the Project's emissions under these updated documents and more recent guidance.

As of the date of this Final EIR, the BAAQMD continues in their process of revising their CEQA guidelines and is currently planning for their Board of Directors to consider the proposed BAAQMD guidelines in June 2010. Given that the proposed BAAQMD guidelines have not been adopted by the BAAQMD's Board of Directors, and would only constitute recommendations to lead agencies other than BAAQMD even if adopted, the Project is not subject to these draft requirements. Nonetheless, the San Francisco Planning Department generally looks to the BAAQMD CEQA guidelines in determining the significance of air quality impacts in its CEQA evaluations. Therefore, a brief analysis of the Project's emissions relative to these proposed guidelines, which are difference from the current, approved requirements, is included in this master response.

For the purpose of this analysis, the December 2009 proposed guidelines and proposed thresholds document are used to make significance determinations, along with materials released during public workshops in April 2010.⁸³ In some cases, the currently proposed significance thresholds are different from those in the previously proposed guidelines on which the Draft EIR relied.

In addition to addressing air quality impacts consistent with the currently proposed BAAQMD guidelines, this master response reports the results of further analysis of cumulative conditions requested by the San Francisco the Planning Department to assess how the Project might also affect off-site residential receptors. Because the BAAQMD estimates that average background risk levels in the San Francisco Bay Area Air Basin (SFBAAB) may exceed the 100-in-a-million level, the Planning Department requested this additional analysis to assess how the Project might also affect off-site residential receptors. For this analysis, cumulative risks (cancer risks, acute and chronic non-cancer hazard indices, and PM_{2.5}⁸⁴ concentrations) for off-site residential receptors within the 1,000-foot radius of the project area were calculated assuming a 70-year exposure beginning in 2030. The methodology used for this evaluation was the same as that used to evaluate the on-site residential receptors.

This response is organized by the following topics:

- Analysis under the Proposed BAAQMD Guidelines
 - > Construction
 - > Operational
 - > Cumulative
- Cancer Risks and Non-cancer Hazards to Off-site Receptors Estimated for Stationary and Vehicular Sources of Toxic Air Contaminants (TACs)⁸⁵ and PM_{2.5}

⁸³ Bay Area Air Quality Management District, CEQA Guidelines Update, Oakland Public Workshop Slides, April 26, 2010.

⁸⁴ PM_{2.5} are air pollutants with a diameter of 2.5 micrometers or less, small enough to invade airways. These particles generally come from activities that burn fossil fuels, such as traffic, smelting, and metal processing.

⁸⁵ TACs are a regulatory designation that includes a diverse group of air pollutants that can adversely affect human health.

Commenters

Commenters who addressed this issue include:

- Federal, State, Regional, Local Agencies, Boards, and Commissions
 - > California State Parks (86-1, 86-11)
- Organizations
 - > Arc Ecology (83-3, 84-47, 84-48)
 - > California State Parks Foundation (47-42, 47-43)
- Individuals
 - > Jesse Tello (70-2)

Comment Summary

This master response responds to all or part of the following comments: 47-42, 47-43, 70-2, 83-3, 84-47, 84-48, 86-1, 86-11.

Comments received on the Draft EIR related to the potential application of BAAQMD's proposed (but not yet adopted) air quality guidelines and proposed thresholds of significance; therefore, this master response provides further discussion to update and augment the analysis presented in Section III.H (Air Quality).

Summary of Issues Raised by Commenters

- As previously noted, comments received on the Draft EIR related to the potential application of BAAQMD's proposed (but not yet adopted) air quality guidelines and proposed thresholds of significance, but particularly as they relate to fugitive dust emissions during construction activities, mass criteria pollutant emissions, and toxic air contaminants.

Response

Analysis under the Proposed BAAQMD Guidelines

The BAAQMD's December 2009 draft table of Staff-Recommended CEQA Thresholds of Significance includes a number of modifications to existing guidelines, including changes to the maximum daily emissions thresholds for criteria pollutants emissions from operational sources as well as requirements for the quantification of criteria pollutant and TAC and PM_{2.5} emissions from construction activities and comparison to mass emission or risk thresholds, respectively. In developing these thresholds, the BAAQMD considered relevant federal, state, and local air quality standards as documented in the staff report accompanying its proposed guidelines, which provides the substantial evidence in support of its proposed thresholds of significance.⁸⁶

Among other changes, BAAQMD is recommending assessment of community-scale impacts of TACs and PM_{2.5}. The proposal to address community-scale impacts is an outgrowth of BAAQMD's Community Air Risk Evaluation (CARE) Program. Through the CARE Program, BAAQMD has identified communities that are disproportionately impacted from high concentrations of TACs, which the proposed BAAQMD

⁸⁶ BAAQMD. 2009. *California Environmental Quality Act Guidelines Update: Proposed Thresholds of Significance*. December 7.

guidelines and the proposed Thresholds document refer to as “impacted communities.” BAAQMD has identified eastern San Francisco, including the Project site, as such an impacted community.

According to the BAAQMD, “compelling evidence suggests that PM_{2.5} is by far the most harmful air pollutant in the SFBAAB in terms of the associated impact on public health.”⁸⁷ As discussed in Section III.H.3 of the Draft EIR, although PM_{2.5} is a criteria pollutant, its human health impacts are also of concern as these particles can deposit deep in the lungs and can contain substances that are particularly harmful to human health. Extended exposure to particulate matter can reduce lung function, aggravate respiratory and cardiovascular disease, increase mortality rate and reduce lung function growth in children. Motor vehicles are currently responsible for about half of the particulates in the SFBAAB and wood burning in fireplaces and stoves is another large source.⁸⁸ Many scientific studies link fine particulate matter and traffic-related air pollution to respiratory illness. California ARB has established that PM_{2.5} is associated with dose-dependent adverse health effects below existing federal and state air quality standards and in a 2008 study that a 10 percent increase in PM_{2.5} concentrations increased the non-injury mortality by 10 percent.⁸⁹

Construction

Modifications from Existing Requirements

The proposed guidelines differ from the existing guidelines in two main areas:

1. Mass emission limits for reactive organic gases (ROG), nitrogen oxides (NO_x), respirable particulate matter (PM₁₀—exhaust), and fine particulate matter (PM_{2.5}—exhaust) are proposed
2. A cancer risk of 10 in one million, non-cancer Health Index (HI) of 1.0, and a PM_{2.5} concentration threshold of 0.3 µg/m³ have been proposed

Impact Conclusion Based on Draft Guidelines

As stated in Section III.H (Air Quality) of the Draft EIR, the Project’s construction-related emissions would be less than significant with mitigation in accordance with the current BAAQMD CEQA Guidelines in effect at the time the Draft EIR was released, which do not require quantification of construction-related emissions. However, in anticipation of the future implementation of proposed new BAAQMD CEQA quantitative thresholds of significance for construction-related emissions, a quantitative analysis of the Project’s construction emissions is presented to determine whether they would exceed the proposed thresholds. Worst-case, construction related emissions of criteria air pollutants and precursors were modeled in accordance with BAAQMD-recommended methodologies. Emissions of criteria air pollutants and precursors were modeled based on Project specifications (e.g., amount and type of equipment) described previously and default and BAAQMD-recommended settings and parameters attributable to the activity period and site location.

Draft EIR Table III.H-7 (Construction Criteria Pollutant Emissions) summarizes the modeled Project-generated, construction-related emissions of each criteria air pollutant and precursor. As shown in the table, construction-related emissions of ROG and NO_x would have potentially significant and unavoidable impacts on air quality in accordance with the proposed BAAQMD thresholds of significance.

⁸⁷ BAAQMD. 2009. *California Environmental Quality Act, Air Quality Guidelines*. December.

⁸⁸ BAAQMD. 2009. *California Environmental Quality Act, Air Quality Guidelines*. December.

⁸⁹ BAAQMD. 2009. *California Environmental Quality Act Guidelines Update: Proposed Thresholds of Significance*. December 7.

Table III.H-7 Construction Criteria Pollutant Emissions				
<i>Emission Source</i>	<i>ROG (lbs/day)</i>	<i>NO_x (lbs/day)</i>	<i>Exhaust PM₁₀ (lbs/day)</i>	<i>Exhaust PM_{2.5} (lbs/day)**</i>
Candlestick Point*	527 (2019)	453 (2106)	2.8 (2016)	2.6 (2016)
HPS Phase II*	639 (2016)	1,036 (2016)	8.5 (2016)	7.8 (2016)
Project*	724 (2016)	1,490 (2016)	11.2 (2016)	10.3 (2016)
Proposed BAAQMD Significance Threshold*	54	54	82	54
Project Exceeds Proposed BAAQMD Threshold?	Yes	Yes	No	No

SOURCE: ENVIRON, 2009. Based on URBEMIS 2007 Version 9.2.4.

* Values in parentheses represent year of construction when maximum daily emissions occur.

** Per URBEMIS 2007, exhaust PM_{2.5} is calculated as 92% of exhaust PM₁₀.

The analysis for cancer risk and non-cancer HIs associated with construction activities considers both exhaust diesel particulate matter (DPM) and soil dust. As discussed in Impact AQ-2 (exhaust DPM) and Impact AQ-3 (soil dust) in the Draft EIR, the estimated cancer risk and non-cancer HIs associated with Project-related construction activities are below the current significance thresholds and would similarly fall below the proposed significance thresholds.

BAAQMD does not currently have a threshold of significance for PM_{2.5} associated with fugitive dust from construction activities and it is not clear in the proposed guidelines whether the evaluation of PM_{2.5} should only look at exhaust PM_{2.5} (as is specified for the mass threshold evaluation discussed in Table III-H.7, above) or whether PM_{2.5} from fugitive dust should also be included. As a conservative measure, PM_{2.5} from both exhaust and fugitive dust is included in this analysis. Exhaust PM₁₀ from construction activities is equivalent to DPM, which was evaluated in the risk assessment conducted as part of the Impact AQ-2 analysis in the Draft EIR. Based on the literature, PM_{2.5} represents approximately 92 to 97 percent of DPM.⁹⁰ As shown in the Draft EIR's analysis of DPM under Impact AQ-2, Table 4-4 and Table 4-5 of Appendix H3, Attachment 1 show the highest annual DPM concentration of 0.083 µg/m³, which, conservatively assuming 97 percent of DPM is PM_{2.5}, would result in a PM_{2.5} concentration of 0.080 µg/m³. Fugitive soil dust was evaluated as part of the Impact AQ-3 analysis in the Draft EIR. Based on the literature, PM_{2.5} represents approximately 10 percent of soil dust.⁹¹ Therefore, the analysis of soil dust under Impact AQ-3 includes impacts associated with PM_{2.5}. As shown in the analysis of soil dust under Impact AQ-3, Table 4-5 of Appendix H3, Attachment 2 show the highest annual PM₁₀ concentration of 0.68 µg/m³, which assuming 10 percent of soil dust PM₁₀ is PM_{2.5}, would result in a PM_{2.5} concentration of 0.068 µg/m³. Adding the DPM

⁹⁰ URBEMIS 2007 assumes 92% of DPM is PM_{2.5}, as explained in SCAQMD 2009. USEPA NONROAD 2004 assumes 97% of diesel exhaust is PM_{2.5}:

- South Coast Air Quality Management District (SCAQMD). 2009. Review of the Draft Environmental Impact Report (Draft EIR) for the Villages of Lakeview Specific Plan No. 342, Change of Zone No. 07055, General Plan Amendment No. 720 & 721. April.
- United States Environmental Protection Agency (USEPA). 2004. Exhaust and Crankcase Emission Factors for Nonroad Engine Modeling – Compression-Ignition (Report No. NR-009c). April 28.

⁹¹ USEPA AP-42 (2006) recommends using 10% based on MRI (2006) study:

- Midwestern Research Institute (MRI), 2006. Background Document for Revisions to Fine Fraction Ratios Used for AP-42 Fugitive Emission Factors. Prepared for the WRAP by Midwest Research Institute, Project No. 110397, November 1.
- USEPA, 2006. AP-42, Fifth Edition, Volume I, Chapter 13: Miscellaneous Sources.

and soil dust contributions to PM_{2.5} together (which is extremely conservative, as these maxima occur at different locations) yields a composite concentration of 0.15 µg/m³, which is well below the proposed threshold of 0.3 µg/m³. Therefore, potential impacts from construction activities associated with the Project would be less than significant when judged against the proposed standard.

Operational

Modifications from Existing Requirements

The proposed guidelines differ from the existing guidelines in two main areas:

1. Mass emission limits for ROG, NO_x, PM₁₀ (exhaust) are changed and a mass emission rate is proposed for PM_{2.5} (exhaust)⁹²
2. A community-scale analysis of risks and hazards (TACs and PM_{2.5}) for siting a new source or receptor is proposed

Impact Conclusion Based on Draft Guidelines

Mass Emission Limits

The proposed mass emission limits for ROG, NO_x, PM₁₀ (exhaust), and PM_{2.5} (exhaust) are shown in parentheses next to the existing mass emission limits and in Draft EIR Table III.H-8 (Operational Criteria Pollutant Emissions [Year 2030]). As shown in the table, the criteria pollutant emissions from mobile and area sources would continue to be above the proposed significance thresholds and would remain significant and unavoidable, as they are under the existing guidelines.

Community-Scale TAC and PM_{2.5} Analyses

These analyses address the community-scale impacts of TACs and PM_{2.5}. In the December 2009 proposed BAAQMD guidance⁹³ and accompanying proposed Threshold basis document,⁹⁴ the BAAQMD proposed a single-source cancer risk, non-cancer hazard, and PM_{2.5} thresholds, considering both whether new single-source emissions associated with the Project would expose sensitive receptors to excessive TAC and PM_{2.5} concentrations, and whether new sensitive receptors would be exposed to excessive TAC and PM_{2.5} concentrations exceeding thresholds from any single source within 1,000 feet.

The thresholds are:

- An excess cancer risk level of more than 10 in one million, or a chronic or acute HI greater than 1.0 for TACs
- An incremental increase of greater than 0.3 µg/m³ annual average PM_{2.5}

Siting a New Source. The single-source cancer risk and non-cancer hazards associated with the Project's new sources are discussed in the Draft EIR in Impact AQ-6, and found to be less than significant.

⁹² Fugitive dust analysis was removed from the proposed Guidelines.

⁹³ BAAQMD. 2009. *California Environmental Quality Act, Air Quality Guidelines*. December.

⁹⁴ BAAQMD. 2009. *California Environmental Quality Act Guidelines Update: Proposed Thresholds of Significance*. December 7.

Table III.H-8 Operational Criteria Pollutant Emissions (Year 2030)

Scenario/Emission Source	ROG (lbs/day)	NO _x (lbs/day)	CO (lbs/day)	PM ₁₀ (lbs/day)	PM _{2.5} (lbs/day)
Candlestick Point					
Area*	449	70	53	4	4
Motor Vehicles (External)	217	195	2,224	1,026	193
Subtotal	666	265	2,276	1,029	197
HPS Phase II					
Area*	166	38	30	1	1
Motor Vehicles (External)	88	80	916	423	80
Subtotal	255	119	947	424	81
Project					
Area*	616	108	83	5	5
Motor Vehicles (External)	305	275	3,140	1,449	273
Motor Vehicles (Internal)	24	11	184	36	7
All Sources (Project)	945	394	3,406	1,490	285
Proposed BAAQMD Significance Threshold**	54	54	None	82	54
Project Exceeds Proposed BAAQMD Threshold?	Yes	Yes	—	Yes	Yes

SOURCE: PBS&J, 2009. Based on URBEMIS 2007 Version 9.2.4.

Daily emissions of ROG and NO_x were calculated under summer conditions when ambient ozone concentrations are highest. Daily emissions of CO, PM₁₀, and PM_{2.5} were calculated under winter conditions when associated ambient concentrations are highest. <http://www.baaqmd.gov/Divisions/Communications-and-Outreach/Air-Quality-in-the-Bay-Area/Air-Pollutants.aspx>

* Area emissions are from sources located on the Project site, such as natural gas combustion for heating/cooling, maintenance equipment, consumer product use, etc.

** Represent mass daily emissions thresholds reflected in draft Staff-Recommended CEQA Thresholds of Significance table released by the BAAQMD on December 7, 2009.

— BAAQMD significance threshold for CO is based on air concentration and not mass emission rates.

The new single source PM_{2.5} emissions from the Project have been analyzed for the R&D areas (e.g., diesel-fueled emergency generators for backup power at biotech facilities).⁹⁵ The PM_{2.5} concentrations associated with the R&D areas can be derived from the analysis conducted for Impact AQ-6 in the Draft EIR. That analysis indicates that, with the implementation of mitigation measures MM AQ-6.1 and MM AQ-6.2, cancer risk and non-cancer HIs would not exceed thresholds at any sensitive-receptor locations. Conservatively assuming the total cancer risk is attributable to DPM from diesel generators (which means there would be no other sources of TACs in the R&D area), the annual DPM concentration corresponding to a lifetime cancer risk of 10 in a million is approximately 0.03 µg/m³. Conservatively assuming that 100 percent of the DPM is PM_{2.5}, the maximum PM_{2.5} concentration would not exceed the proposed standard of 0.3 µg/m³ at any sensitive-receptor location.⁹⁶

⁹⁵ BAAQMD. 2009. *California Environmental Quality Act, Air Quality Guidelines*. Section 5.2. December.

⁹⁶ The draft BAAQMD guidelines indicate that for certain types of sources, non-permitted sources of PM_{2.5} emissions should also be considered, such as projects that would “attract high numbers of diesel-powered on-road trucks or use off-road diesel equipment on site, such as a distribution center, a quarry, or a manufacturing facility.” As the Redevelopment Plan prohibits these types of uses in the R&D areas, non-permitted sources of PM_{2.5} are not expected to contribute significantly overall and would not cause the single-source PM_{2.5} impacts to exceed the proposed standard.

Siting a New Receptor. When siting a new receptor, the proposed BAAQMD guidance recommends the Lead Agency examine existing or future proposed sources of TAC and/or PM_{2.5} emissions that would adversely affect new receptors. These impacts include impacts from existing individual stationary sources and impacts from individual freeways or major roadways. The BAAQMD has provided more recent guidance regarding how to conduct these single-sources analyses.

According to the BAAQMD database, there are a total of three listed sources of TAC and PM_{2.5} emissions within 1,000 feet of the Project boundary, all of which are diesel-fueled generators. These sources include the Griffith pump station, UCSF/Hunters Point facility, and Bayview Greenwaste facility. ENVIRON requested and received from the BAAQMD the daily emissions estimates and source parameters for use in modeling of these three sources. For these stationary sources (diesel generators), ENVIRON conservatively assumed that PM_{2.5} emissions can be represented by DPM emissions. Table C&R-8 (New Receptor Exposures: Screening Level Single-Source Cancer Risk, Non-cancer HI and PM_{2.5} Concentration from Off-Site Sources within 1,000 Feet of Project-Sensitive Receptors) reports the results of this analysis (refer to Appendix H4).

Table C&R-8 New Receptor Exposures: Screening Level Single-Source Cancer Risk, Non-cancer HI and PM_{2.5} Concentration from Off-Site Sources within 1,000 Feet of Project-Sensitive Receptors						
Source	High-End Cancer Risk (in a million)	Single-Source Cancer Risk Threshold (in a million)^a	Chronic Non-Cancer HI (-)	Single-Source Chronic Non-Cancer HI (-)^a	Annual Average PM_{2.5} Concentration (µg/m³)	Single-Source PM_{2.5} Threshold (µg/m³)^a
Griffith Pump Station	0.003		2.2*10 ⁻⁶		1.1*10 ⁻⁵	
UCSF/Hunters Point	0.02		1.5*10 ⁻⁵		7.6*10 ⁻⁵	
Bayview Greenwaste—Current	135	10	8.5*10 ⁻²	1.0	0.42	0.3
Bayview Greenwaste—ATCM Compliant	1.2		7.7*10 ⁻⁴		3.8*10 ⁻³	

SOURCE: a. ENVIRON, Community Hazards and San Francisco Health Code Article 38 Analyses, May 2010. Sources exceeding the indicated thresholds are highlighted in **bold**.

As the table demonstrates, only the Bayview Greenwaste facility’s emissions currently exceed the cancer risk and PM_{2.5} thresholds. It is reasonable to expect, however, that by the time new sensitive receptors will be located next to the facility (by 2013, at the earliest), this facility will be operating in compliance with ARB’s Airborne Toxic Control Measure (ATCM) for Stationary Compression-Ignition Engines Rule.⁹⁷ As the table indicates, with compliance with the ATCM, the estimated cancer risks, non-cancer hazards, and annual average PM_{2.5} concentration from this facility would be below these indicated thresholds.

In their proposed guidelines and as discussed in public workshops, the BAAQMD recommends the evaluation of all roadways with daily traffic greater than 10,000 vehicles within 1,000 feet of the Project

⁹⁷ BAAQMD’s reported emissions are consistent with a source operating as a prime engine. The ARB’s ATCM Rule requires prime engines to come into compliance by 2012.

boundary as single sources of PM_{2.5}.⁹⁸ The roadways evaluated for the single-source on-site residential receptor analysis are portions of Carroll Avenue; Innes Avenue; Arelious Walker Avenue; Gilman Avenue; Jamestown Avenue; and Harney Way. The Project boundary is shown on Figure II-4 (Proposed Land Use Plan). The results of this analysis are presented in Table C&R-9 (New Receptor Exposures: Screening Level Single-Source PM_{2.5} Concentration from Roadways with Traffic >10,000 Vehicles per Day within 1,000 Feet of Project-Sensitive Receptors) (refer to Appendix H4). As the table demonstrates, concentrations of PM_{2.5} at the minimum screening distance (100 feet) from these roadways would be below the indicated thresholds. It is recognized that Project receptors could be located less than 100 feet from roadways, which is not addressed by the BAAQMD screening tables. However, compliance with Article 38 will ensure no cumulative exposures above 0.2 µg/m³ would be experienced by new receptors in the Project site (refer to Appendix H4) and, therefore, that the BAAQMD threshold is not exceeded.

Table C&R-9 New Receptor Exposures: Screening Level Single-Source PM_{2.5} Concentration from Roadways with Traffic >10,000 Vehicles per Day within 1,000 Feet of Project-Sensitive Receptors					
Roadway	Future Cumulative Traffic Volume (vehicles per day)^a	Location of Roadway Relative to On-site Sensitive Receptor	Minimum Distance to Sensitive Receptor (feet)^c	BAAQMD Screening PM_{2.5} Concentration (µg/m³)^c	Single-Source PM_{2.5} Threshold (µg/m³)^c
Harney Way	36,400	West	100	0.26	0.3
Arelious Walker	25,300	West	100	0.21	
Jamestown	15,000	North	100	0.16	
Gilman	25,000	North	100	0.25	
Carroll	10,300	South	100	0.16	
Innes	24,000	West	100	0.21	

SOURCE: a. CHS Consulting Group et al., 2009
b. ENVIRON, Community Hazards and San Francisco Health Code Article 38 Analyses, May 2010
c. BAAQMD, CEQA Guidelines Update, Public Workshop Slides, Oakland, CA, April 26, 2010

With the exception of Harney and Arelious Walker, all streets run in a northwest/southeast configuration. As a conservative measure, it was assumed that the roadways were east-west directional, which correspond to the maximum impacts in the BAAQMD screening tables.

Cumulative

Modifications from Existing Requirements

The proposed BAAQMD guidelines differ from the existing guidelines in proposing to add a zone of influence analysis for any operational or construction source of TACs or PM_{2.5} within 1,000-foot radius of the Project fenceline. A project would have a cumulative significant impact if the aggregate total of all past, present, and foreseeable future sources within a 1,000-foot radius from the fenceline of a source, or from the location of a receptor, plus the contribution of the Project, exceeds any of the following:

- An excess cancer risk level of more than 100 in one million, or a chronic or acute HI greater than 1.0 for TACs
- 0.8 µg/m³ annual average PM_{2.5}

⁹⁸ To date, the BAAQMD has only provided screening level guidance for PM_{2.5} in their CEQA Guidelines Update, Public Workshop Slides, Oakland, CA, April 26, 2010.

The BAAQMD's existing approach to analyzing the cumulative impacts of criteria air pollutants and precursors would be unchanged under the proposed BAAQMD guidelines.

Impact Conclusion Based on Draft Guidelines

Mass Emission Limits

As discussed earlier, Project operational emissions of the ozone precursors, ROG and NO_x, and of criteria pollutants PM₁₀ and PM_{2.5} would exceed the BAAQMD project-specific significance thresholds. Therefore, these emissions would be considered to have a significant and unavoidable cumulative impact. However, these emissions are typically addressed through the BAAQMD Clean Air Plan so that Project emissions, in combination with all adjacent projects, will be addressed at a regional level.

Community-Scale TAC and PM_{2.5} Analyses

This analysis evaluates the cumulative sources within 1,000 feet of the Project with the proposed cumulative PM_{2.5} standard of 0.8 µg/m³ in accordance with direction from BAAQMD.⁹⁹ According to BAAQMD, "emissions from a new source or emissions affecting a new receptor would be considered significant where ground-level concentrations of PM_{2.5} from any source would result in an average annual increase greater than 0.8 µg/m³."¹⁰⁰

In December 2009, BAAQMD Staff provided guidance to the City of San Francisco Planning Department with respect to the sources to consider in a cumulative analysis, including a list of facilities in southeastern San Francisco with currently permitted sources of TAC emissions, and additional guidance on how to conduct the cumulative analysis envisioned by the BAAQMD in its proposed guidelines. As a result, the Planning Department requested ENVIRON to undertake an additional cumulative impact analysis under the proposed BAAQMD guidelines identified above.

As explained above, according to the BAAQMD database, there are a total of three listed sources of TAC and PM_{2.5} emissions within 1,000 feet of the Project boundary, all of which are diesel-fueled generators. ENVIRON requested and received from the BAAQMD the daily emissions estimates and source parameters for use in modeling of these three sources. For these stationary sources (diesel generators), ENVIRON conservatively assumed that PM_{2.5} emissions can be represented by DPM emissions. In their proposed guidelines, the BAAQMD recommends the evaluation of all roadways with daily traffic greater than 10,000 vehicles within 1,000 feet of the Project boundary as sources of TACs and PM_{2.5}. The roadways evaluated for the cumulative on-site residential receptor analysis include portions of Egbert, Carroll, Thomas, Revere, Palou, and Innes Avenues east of 3rd Street; Arelious Walker Avenue between Harney Way and Van Dyke Avenue; Ingalls Avenue between Palou and Egbert Avenues; Gilman, Jamestown and Ingerson Avenues; and Harney Way. The Project boundary is shown on Figure II-4 (Proposed Land Use Plan).

⁹⁹ During a meeting attended by ENVIRON, the City of San Francisco Planning Department, and BAAQMD on January 13, 2010, the District stated that the cumulative impacts analysis described in the proposed BAAQMD guidelines consist of an evaluation of cancer risk, non-cancer hazard, and PM_{2.5} associated with off-site sources within 1,000-foot radius of the Project and potential impacts of those sources on on-site residents only, assuming 70 years of exposure.

¹⁰⁰ BAAQMD. 2009. *California Environmental Quality Act Guidelines Update: Proposed Thresholds of Significance*. December 7. page 45.

The analysis assumed a 70-year lifetime exposure, beginning in 2030 with full project build-out. The analysis assumed also that the Bay-View Greenwaste facility would operate its existing diesel generator located near the intersection of Carroll Avenue and Hawes Street, on the property line on the side closest to the Project's residential area. Under these assumptions, the maximally exposed individual receptor (MEIR) would be a resident living in the Project area near the corner of Carroll Avenue and Hawes Street. With these assumptions, the estimated cancer risks to the residential development on the northwest corner of Carroll Avenue and Hawes Street would be 148 in a million. Approximately 97 percent of the cancer risk, or 143 in a million, can be attributed to the existing diesel generator located at the Bay-View Greenwaste facility. The chronic (0.1) and acute (0.23) non-cancer hazard indices and PM_{2.5} concentration (0.5 µg/m³) at the MEIR attributable to stationary and vehicular sources would not exceed the proposed thresholds of significance in the proposed BAAQMD guidelines. However, under this assumed scenario, the cumulative excess cancer risk estimated at some on-site locations on the northwest corner of the residential development would be above the BAAQMD's proposed thresholds of significance.

However, as previously explained, it is reasonable to expect that Bayview Greenwaste facility will come into compliance with the ATCM requirements by 2013. Under the scenario in which the Bayview Greenwaste facility operates in compliance with the ARB's ATCM, the estimated cancer risk for the on-site MEIR (which is at Gilman Avenue and Arelious Walker Drive, a different location than under the existing operating scenario) would be 43 in a million and would occur primarily from vehicle emissions. This cumulative excess cancer risk would not exceed the proposed thresholds of significance in the proposed BAAQMD guidelines. The chronic (0.06) and acute (0.23) non-cancer hazard indices and PM_{2.5} concentration (0.4 µg/m³) at the on-site MEIR attributable to stationary and vehicular sources also would not exceed the proposed thresholds of significance in the proposed BAAQMD guidelines.¹⁰¹ Therefore, the impacts would be less than significant under these proposed guidelines.

As discussed earlier, the BAAQMD estimates the average background risk in the SFBAAB to be approximately 500 to 700 in one million. In December 2009, the BAAQMD released a technical memorandum with results of refined modeling where cancer risks were predicted to be between 600 and 1,000 in one million in southeastern San Francisco,¹⁰² the area of the Project. These estimates reflect all regional sources of TACs (e.g., freeways, ports, general combustion sources such as boilers) and not individual sources in the immediate vicinity of the Project. As this background risk exceeds 100 in a million (as the background risk does virtually everywhere in the Bay Area), any contribution to these existing levels could be considered significant and unavoidable. Various emissions reductions measures currently in process will reduce this regional risk over time, though regional risks will likely always exceed 100 in a million in most urban areas.

¹⁰¹ As discussed previous under Impact AQ-7 (Traffic PM_{2.5}), there are proposed residential areas of the Project where cumulative traffic PM_{2.5} concentrations could exceed the *San Francisco Health Code* Article 38 threshold of 0.2 µg/m³. However, Article 38 requires implementation of fresh air filtration or the siting of residential buildings outside areas which exceed the Article 38 threshold and these requirements would assure residents are not exposed to PM_{2.5} levels in excess of the Article 38 threshold.

¹⁰² Bay Area Air Quality Management District. 2009. *Technical Memorandum: Applied Method for Developing Polygon Boundaries for CARE Impacted Communities*. December.

Cancer Risks and Non-cancer Hazards to Off-site Receptors Estimated for Stationary and Vehicular Sources of TACs and PM_{2.5}

The Project-specific analysis explained above indicates that cumulative conditions in the area of future Project residents would not be expected to exceed the BAAQMD cumulative excess cancer risk of 100 in a million, non-cancer HIs of 1.0, or PM_{2.5} threshold of 0.8 µg/m³. However, because the BAAQMD estimates that average background risk levels in the SFBAAB may exceed the 100-in-a-million level, the Planning Department requested an additional analysis of cumulative conditions to assess how the Project might also affect off-site residential receptors.

For this analysis, cumulative risks (cancer risks, acute and chronic non-cancer hazard indices, and PM_{2.5} concentrations) for off-site residential receptors within the 1,000-foot radius of the project area were calculated assuming a 70-year exposure beginning in 2030. The methodology used for this evaluation was the same as that used to evaluate the on-site residential receptors. The roadways evaluated for the cumulative off-site residential receptor analysis include portions of Egbert, Carroll, Thomas, Revere, Palou, and Innes Avenues east of 3rd Street; Arelious Walker Avenue between Harney Way and Van Dyke Avenue; Ingalls Avenue between Palou and Egbert Avenues; Gilman, Jamestown, and Ingerson Avenues; and Harney Way.

Under this off-site receptor analysis, the estimated cancer risk associated with all stationary and traffic/vehicular sources for the maximally exposed individual receptor (MEIR) under the scenario in which the Bay-View Greenwaste Management facility operates as it does today would be 88 in a million. Assuming the Bay-View Greenwaste Manufacturing facility replaces the existing generator with one that complies with the ARB ATCM rule, the estimated cancer risk for the MEIR would be 80 in a million. In either case, the risk level would not exceed the BAAQMD's proposed 100-in-a-million risk level. The estimated chronic and acute non-cancer HIs for all off-site residents would be 0.11 and 0.31 under the existing scenario with the current diesel generator operating at the Bay-View Greenwaste facility; these levels would be reduced slightly if the diesel generator were replaced with a generator that complies with the ARB ATCM rule. In both cases, the exposures would be less than the BAAQMD's proposed threshold levels. Under the scenario with the existing diesel generator, the concentration of cumulative PM_{2.5} at the off-site MEIR would be 0.74 µg/m³, which would be below the BAAQMD proposed PM_{2.5} cumulative threshold of 0.8 µg/m³.

Although the analysis explained above indicates that the identifiable sources of emissions within the Project area and within 1,000 feet of the Project area, when combined with Project emissions, would not be expected to exceed the BAAQMD cumulative risk levels for TACs, the Project would contribute to regional sources of TACs and PM_{2.5}. As indicated, because average SFBAAB emissions exceed the proposed BAAQMD thresholds, it is possible that the Project would contribute considerably to a cumulative impact from such sources and, therefore, may result in a significant cumulative air quality impact to sources of TAC emissions. If such an impact were to exist, this impact would be considered significant and unavoidable at this time, given the inability to determine the nature of such an impact accurately and, therefore, to determine whether any mitigation measures would be effective to reduce the impact to a less-than-significant level.

E.2 Individual Responses

The following section contains the written comments received on the Draft EIR or the oral comments received during the public hearings on the Draft EIR followed by the responses to those comments. They are presented in the order they were received by the City and/or the Agency, and they are presented with consecutive numbering (e.g., Letter 1, Letter 2, Letter 3, etc.).

Consistent with Sections 15088(a) and 15088(b) of the CEQA Guidelines, comments that raise significant environmental issues are provided with responses. Comments that are outside the scope of CEQA review will be forwarded for consideration to the decision-makers as part of the Project approval process. All comments will be considered by the Lead Agencies when making a decision on the Project.

■ Responses to Written Comments

The following are written comment letters received, followed by their responses.

■ Letter 1: Sierra Club (11/25/09)

1 of 1



San Francisco Group 85 Second Street San Francisco, CA 94102
Group Hotline: 415-977-5578 Fax: 415-977-5799

Letter 1
RECEIVED
DEC 01 2009
CITY & COUNTY OF S.F.
PLANNING DEPARTMENT
M.E.A.

November 25, 2009

Bill Wycko,
Environmental Review Officer,
San Francisco Planning Department,
1650 Mission Street, Suite 400,
San Francisco, CA 94103.
Fax: 558-6409

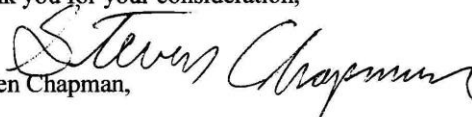
RE: Extension of public comment period request for HP-Candlestick Draft EIR.

Dear Mr. Wycko,

Regarding the recently released Draft EIR for the combined HP-Candlestick Point Phase II Project Draft EIR (Case # 2007. 0946E) the Sierra Club respectfully requests an extension of the public comment period for at least 60 days beyond the current Dec. 28th deadline. Reasons for this request include the extreme complexity of the document, the fact that this is being rushed through during the holiday season, the number of environmental issues and mitigations studied, the number of alternatives studied, and the fact that the direction of the current project will have substantial long-term consequences in determining the future of the Southeast Shoreline for many years to come. In view of the above, and in order to maximize community input for this important planning process, we believe a minimum 60-day extension to be warranted.

1-1

Thank you for your consideration,


Steven Chapman,

For the San Francisco Group of the Sierra Club

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■ Letter 1: Sierra Club (11/25/09)

Response to Comment 1-1

The comment period was extended by the Agency and the Planning Commission of the City and County of San Francisco from 45 days to 60 days, which extended the end of the public review period from December 28, 2009, to January 12, 2010. The public review period began on November 12, 2009, and ended on January 12, 2010, beginning approximately two weeks before Thanksgiving, and ending approximately two weeks after New Year's Day. While both agencies considered a longer review period, they ultimately decided that a 60-day review period would be adequate, which is two weeks longer than required by CEQA or customarily provided by the City and/or the Agency.

In terms of opportunity for public input, formal public hearings were held on December 15 (Redevelopment Agency), December 17 (Planning Commission), and January 5 (Redevelopment Agency), which provided more opportunities for the public to present oral comments than required under CEQA, which, in fact, does not require a formal hearing. Section 15202(a) of the CEQA Guidelines states that:

CEQA does not require formal hearings at any stage of the environmental review process. Public comments may be restricted to written communications.

Irrespective of the requirements of CEQA, as required by Section 31.14(d)(3) of Chapter 31 of the *San Francisco Administrative Code*, the City requires that a public hearing shall be held to receive comments on the Draft EIR and the Agency requires the same by virtue of their standard practice. Even still, more public hearings were provided than required by either the City or the Agency.

Further, refer to the responses to Letter 75, which is the comment letter from the Sierra Club dated January 12, 2010.

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■ Letter 2: POWER (People Organized to Win Employment Rights) (12/14/09)

1 of 1

SUE C. HESTOR

Attorney at Law

870 Market Street, Suite 1128 • San Francisco, CA 94102
(415) 362-2778 • FAX (415) 362-8048

Letter 2

December 14, 2009

Rick Swig, Acting President
San Francisco Redevelopment Agency
1 South Van Ness Ave 5th fl
San Francisco CA 94103



RE: **Candlestick Point-Hunters Point Shipyard Phase II Development Plan DEIR**
December 15, 2009, Item f Public Hearing

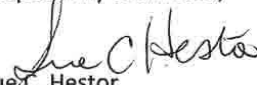
Dear Commissioner Swig:

Attached is a copy of my request that the Planning Commission extend to 90 days the review period for written comments on the Candlestick Point/Hunters Point DEIR. I submitted that request on behalf of People Organized to Win Employment Rights (POWER).

POWER reiterates their request for a 90-day review and comment period to the Redevelopment Agency. This is a massive EIR for a complex project. The staff's proposed extension to January 11 is insufficient, given that the review period straddles three major holidays.

The public deserves an adequate time to review this massive document and prepare their comments.

Respectfully submitted,


Sue C. Hestor
Attorney for POWER

cc: Fred Blackwell, Executive Director
Gina Solis, Commission Secretary
Thor Kaslofsky, Project Manager
Jaron Browne, POWER

2-1

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■ Letter 2: POWER (People Organized to Win Employment Rights) (12/14/09)

Response to Comment 2-1

Refer to Response to Comment 1-1 and Response to Comment 85-5 for a discussion of the adequacy of the public comment period, including the many opportunities for providing comments on the Draft EIR.

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■ Letter 3: Hunters Point Shipyard Citizen's Advisory Committee and Southeast Campus of City College of SF (12/16/09)

1 of 1

Letter 3

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SFRA
DEC 16 2009
1-4322-000
RECORDS DEPT.

Suggested Talking Points:

*Please enter these comments into my public record. Thank you
Dr. Hunnicutt*

- Hello, my name is Dr. Veronica Hunnicutt, and I am both the Chair of the Hunters Point Shipyard Citizens Advisory Committee and the Dean of the South East Campus of City College.
- As chair of the CAC, I understand first hand the immense challenges that the Bayview Hunters Point community currently faces including; unemployment, disparities in educational attainment and job skills, lack of access to adequate open space and recreation facilities, poor access to public transportation, affordable housing and economic opportunities.
- This project proposes to invest hundreds of millions of dollars in the Bayview Hunters Point community
- The community, the PAC, the CAC and the City have been working together for nearly a decade to plan the revitalization and redevelopment of the Hunters Point Shipyard and ensure that the development delivers much needed affordable housing, parks and open space and economic opportunities to the existing residents as soon as possible.
- The City has hosted nearly 200 workshops/meetings, discussed and presented a number of components of this project to both the PAC and the CAC over the past 2 years including; the urban design plan, transportation plan, sustainability and infrastructure plan, workforce development strategy and affordable housing plan.
- The PAC, CAC and the community have had extensive input on these critical components of the project.
- Last night the CAC heard an informational presentation from Agency on the Draft Environmental Impact Report, although the CAC did not take any formal action on the document, their was a range of opinions presented by the members present, including some who advocated for an extension of the public comment period.
- However, in my personal opinion as a community leader, educator and someone who has been working on this project for a number of years, it is of the utmost importance that this project move forward and that the public comment period not be extended.
- I have already assembled a special working group of the CAC to review the Draft Environmental Impact Report and provide comments to the city by the close of the public comment period on December 28th.
- The components of this project that we care most about, the affordable housing, workforce development opportunities, open space and transportation will continue to be presented and discussed over the coming months.
- **I strongly support this project and am asking you to please support our**

3-1

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■ **Letter 3: Hunters Point Shipyard Citizen's Advisory Committee and Southeast Campus of City College of SF (12/16/09)**

Response to Comment 3-1

Comment noted. No response is required.

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■ Letter 4: Neighborhood Parks Council (12/17/09)

1 of 2

Letter 4

SAN FRANCISCO PLANNING COMMISSION
SPEAKER CARD

To aid in the preparation of minutes, you are requested, but not required, to provide this information:

Please PRINT then give to Commission Secretary

ITEM NO: 20 or Project Address: _____
Name: Matthew Silva Hearing Date: 12/17/09
Organization (if any): Neighborhood Parks Council
Address: 451 Hayes St. Floor 2 San Francisco, CA 94102
Speaking: In Favor of Project _____; Opposed to Project X; Neutral _____
Regarding Discretionary Reviews (DR):
Speaking: In Favor of DR _____; Opposed to DR _____; Neutral _____
Comments on back →

2 of 2

The Neighborhood Parks Council is in favor of extending the EIR review period for 90 days to allow community members time to digest this large and important document. Understanding the implications of this more than 4,000 page report is essential, and especially during this period of holidays, extra time is needed.

4-1

■ Letter 4: Neighborhood Parks Council (12/17/09)

Response to Comment 4-1

Refer to Response to Comment 1-1 and Response to Comment 85-5 for a discussion of the adequacy of the public comment period, including the many opportunities for providing comments on the Draft EIR.

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■ Letter 5: Loa, Sam (12/17/09)

1 of 2

Letter 5

SAN FRANCISCO PLANNING COMMISSION
SPEAKER CARD

To aid in the preparation of minutes, you are requested, but not required, to provide this information:

Please **PRINT** then give to Commission Secretary

ITEM NO: 20 or Project Address: Hunters Point Shipyard

Name: Sam Loa Hearing Date: 12-17-09

Organization (if any): _____

Address: 47 Middle Point Rd SF Ca 94124

Speaking: In Favor of Project _____; Opposed to Project _____; Neutral _____

Regarding Discretionary Reviews (DR):

Speaking: In Favor of DR _____; Opposed to DR _____; Neutral _____

2 of 2

This is one of the largest & most Controver
EIR's to Come before this Commission. 5-1

This EIR is inadequate for numerous reasons
~~and the first~~ First ~~the~~ image
VARIOUS Figure III. B-1 is incorrectly
labeled, 5-2

In ²⁰⁰⁰ Prop P, 87% of voters which called for the S.Y
was passed in To be cleared to unrestricted use
Pacific Ave was granted full 90 day
anything ~~all~~ less would not be suff. 5-3

■ Letter 5: Loa, Sam (12/17/09)

Response to Comment 5-1

This comment contains introductory or general background information and is not a direct comment on environmental issues or the content or adequacy of the Draft EIR. No response is required.

Response to Comment 5-2

In response to the comment, Figure III.B-1 (Existing Land Use), Draft EIR page III.B-3, has been revised to switch the label colors between Residential and Commercial/Industrial. The text in this section is correct regarding these land uses.

Response to Comment 5-3

Refer to Master Response 15 (Proposition P and the Precautionary Principle) regarding cleanup of HPS.



SOURCE: San Francisco Planning Department; PBS&J, 2010.

PBS&J 04.19.10 02056 | JCS | 10

Candlestick Point — Hunters Point Shipyard Phase II EIR
EXISTING LAND USE

FIGURE III.B-1

■ Letter 6: Jackson, Espanola (12/17/09)

1 of 1

Letter 6

**DRAFT, ENVIRONMENTAL IMPACT
REPORT
PHASE II – SHIPYARD AND CANDLESTICK
POINT**

My name is Espanola Jackson and I have lived in San Francisco for over 66 years. This draft, EIR covers a huge area over 1200 acres and is the last frontier of San Francisco. I have seen too many changes and this one bothers me a lot.

This is not the time to fast track any EIR as was done with Phase I and Parcel A at the Shipyard. The consequences of this action haunt us every day.

You Planning Commissioners have to ponder about the thousands of lives that will be lost if you do not do the right thing. If every aspect is evaluated again, perhaps, we can come to some agreement but this takes time – and time will lead to qualified progress. Quality of Life issues are critical to our future and that of our children.

Important aspects such as flooding, liquefaction, the impending Big One have not been taken into full consideration - in this hastily prepared Draft, EIR. After all, the entire site is too close to a fault that will trigger an Earthquake – very soon.

Over 25,000 extra people will make their homes in this area and there has been no mention of this factor in the Transportation Document. In short, send this Draft, EIR back for further review and qualified action. Do this so that lives may be saved, as it stands now too many will die – be it slowly, from the most polluted elements and most of it radiological now – and in greater numbers when the Big One strikes.

6-1

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■ Letter 6: Jackson, Espanola (12/17/09)

Response to Comment 6-1

As stated in Response to Comment 85-5, in terms of the planning process for the Project, Section I.B (History of the Planning Process), which is presented on pages I-1 through I-6 of the Draft EIR, describes a planning process that has occurred over three decades and has included hundreds of community meetings and other forms of public outreach.

As stated in Response to Comment 96-1, the EIR process officially began on August 31, 2007, with issuance of a Notice of Preparation indicating that an EIR would be prepared. The Draft EIR public review period ended on January 12, 2010, and the Project is not expected to go before the decision-making bodies until April 2010, almost three years after beginning the process. Section 15108 of the CEQA Guidelines requires a much shorter process, stating:

With a private project, the lead agency shall complete and certify the final EIR as provided in Section 15090 within one year after the date when the lead agency accepted the application as complete. Lead agency procedures may provide that the one-year time limit may be extended once for a period of not more than 90 days upon consent of the lead agency and the applicant.

Therefore, the EIR process for this Project has not been fast-tracked.

Impacts related to flooding are fully addressed in Section III.M (Hydrology and Water Quality) of the Draft EIR, and impacts related to liquefaction and seismic-related events are fully addressed in Section III.L (Geology and Soils) of the Draft EIR. Further, the first page of the Executive Summary, page ES-1, as well as page II-7 of Chapter II (Project Description), states that “Specifically, the Project proposes development of 10,500 residential units with an associated population of 24,465 residents.” The population associated with the Project is also fully disclosed and analyzed in Section III.C (Population, Employment, and Housing) of the Draft EIR. Refer also to Master Response 6 (Seismic Hazards), Master Response 7 (Liquefaction), and Master Response 8 (Sea Level Rise).

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Letter 7: City of Brisbane (12/18/09)

1 of 3



CITY OF BRISBANE

50 Park Place
Brisbane, California 94005-1310
(415) 508-2100
Fax (415) 467-4989

Letter 7

December 18, 2009

Stanley Muraoka
Environmental Review Officer
San Francisco Redevelopment Agency
One South Van Ness Avenue, 5th Floor
San Francisco, CA 94103

Re: Draft EIR-Candlestick Point-Hunters Point Shipyard Phase II (Cases ER06.05.07 and 2007.0946E)

Dear Mr. Muraoka:

Thank you for the opportunity to review the above-referenced Draft EIR. The City of Brisbane offers the following comments:

Figure II-12

-The alignment shown for the proposed City of Brisbane street-Geneva Avenue has not been approved by the City of Brisbane.

7-1

-The note adjacent to the new US101 interchange should be modified to clarify there are two separate proposed projects; Candlestick Point Interchange Improvements, US101 Auxiliary Lanes.

Figure II-13 See Figure II-12 comment above pertaining to Geneva Avenue.

7-2

Page III.B-2, last para. The "Bayshore Sanitary District" operates a sanitary district and sewer pump station, not a water pump station, in the Brisbane Baylands.

7-3

Page III.D-4, Bayshore Boulevard" para. A significant portion of the southern reach of Bayshore Boulevard has TWO travel lanes in each direction, not three.

7-4

Page III.D-8 "Tunnel Avenue" para. South of Sierra Point Lumber, Tunnel Avenue is signed No Parking, not "unrestricted on-street parking".

7-5

Figure III-D.4 SF designated bicycle routes 905 and 805 traverse City of Brisbane streets – if SF wishes to retain these routes they should coordinate this desire with the City of Brisbane's Department of Public Works.

7-6

Page III.D-36 2nd bulleted para. The PSR is expected to be completed in 2010, but due to ongoing delays, *early* 2010 is not likely.

7-7

Providing Quality Services

2 of 3

Page III.D-36 3rd bulleted para. The first sentence would be more accurate if re-written as, “. . . Harney Way interchange **is proposed to be redesigned as a typical diamond-type interchange, subject to review and approval by Caltrans.** In the second paragraph, the current configuration proposed for the US101 crossing in the PSR is six lanes eastbound (three left-turns and three through lanes) and **five** lanes westbound (three left-turn lanes and **two** through lanes) for a total of **eleven** lanes. Note for clarification; one of the three Harney Way westbound lanes ends in a “trap” left turn lane within the intersections.

7-8

Figure III.D-8 The number of lanes shown on the drawing for Harney Way is not consistent with the number of lanes assumed for Harney Way in the Candlestick Interchange PSR. The PSR consultant reviewed the number of lanes proposed on this drawing with city staff and consultants working on the Executive Park EIR. It was eventually determined that this reduced number of lanes would not have a negative impact on the functioning of the proposed new US101 interchange provided that appropriate external and internal access controls were provided at Thomas Mellon Circle and Executive Park Boulevard. Based on this EIR’s assumed inability to ensure onsite work at Executive Park, the provision of additional right-of-way for a potential third eastbound lane should be required as mitigation if this third lane is required along Harney Way east of the new interchange.

7-9

Page III.D-84, Impact TR-6 Concur that the traffic impacts at Geneva/US101 southbound are significant and unavoidable.

7-10

Pages III.D-84 & 86 MMs TR-6 and TR-8 The City supports the concept of fair share funding for regional improvements and the use of the Bi-County Study as a means to precisely identify mitigations and apportion fair share funding obligations. However, there should be another way to determine fair share funding obligations in the event the Bi-County study is not completed or otherwise does not complete this task. It is recommended that Mitigation Measures TR-6 and TR-8 both be modified to include a provision that if the Bi-County Transportation Study is, for any reason, discontinued or otherwise does not identify required mitigations and fair share funding obligations, the agencies responsible for contributions toward the required improvements shall meet and confer to establish an alternative method for determination of their respective fair shares of the project cost.

7-11

Page III.D-85, Impact TR-8 Same comment as above. Concur that the traffic impacts at Bayshore/Geneva are significant and unavoidable.

7-12

Page III.D-86, Impact TR-9 The comment section opines that poor operating conditions at Bayshore Boulevard/Old County Road and Sierra Point/Lagoon Way would be due to traffic volume increases from other developments. However, as correctly noted in the DEIR, the City of Brisbane has established a LOS C for the Bayshore/Old County intersection and LOS D elsewhere in the city. Table III.D-10 lists the respective current LOS for these intersections as C and B. Based on the City of Brisbane’s General Plan requirements for LOS at these intersections, it is unreasonable to assume that any project within Brisbane’s jurisdiction would be allowed to cause intersection LOS degradation beyond C and D. Therefore, the 2030 “Project” LOS degradations to D and F are attributable only to the Project and require mitigation to be identified. Furthermore, it is unclear what metric was used to determine that a project’s

7-13

3 of 3

contributions were less than significant to the intersections referenced under impact TR-9. Please clarify.

↑ 7-13
cont d.

Page III.D-97, Impact TR-15 The DEIR does not address the feasibility of mitigation measures for US101 southbound off-ramp to Sierra Point/Lagoon diverge queue storage impacts.

7-14

Page III.D-115, Impact TR-27 Concur that the traffic impacts for the 28L-19th Avenue/Geneva Limited are significant and unavoidable because the project does not control the TPS treatment proposed on or parallel to a Geneva Avenue extension in MM TR-27.1. It would be appropriate that a requirement be established for the project applicant and/or lead agency to meet and confer with the affected outside jurisdictions to determine the opportunities for fair share participation in mitigation.

7-15

Page III.D-116, Impact TR-30 Concur that the traffic impacts on regional transit (esp. SamTrans on Bayshore Boulevard) are significant and unavoidable. It would be appropriate that a requirement be established for the project applicant and/or lead agency to meet and confer with the affected outside jurisdictions to determine the opportunities for fair share participation in mitigation.

7-16

Figure III.D-13 The map shows a transit-only lane disconnected from Geneva Avenue extension in a stand-alone location that is subject to the approval of the City of Brisbane.

7-17

Figure III.D-14 This map adds a second western “muni service” in an area where no roadway is currently planned or approved by the City of Brisbane.

7-18

Thank you for your consideration, and we look forward to reviewing the responses to these comments when available. Should you have any questions regarding this letter, please contact me at 415.508.2120.

Sincerely,



John A. Swiecki, AICP
Principal Planner

c: Randy Breault, City Engineer

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■ Letter 7: City of Brisbane (12/18/09)

Response to Comment 7-1

The comment is acknowledged. Figure II-12 (Proposed Roadway Improvements) has been revised to clarify the two separate proposed projects at the new US-101 interchange. In response to the comment, the labels in Figure II-12, page II-37, and Figure II-13 (Proposed Transit Improvements), page II-40, have been revised: “US-101/Harney Way Interchange Improvements” has been changed to “Candlestick Point Interchange Improvements/US-101 Auxiliary Lanes” on Figure II-12, and “Geneva Avenue Extension” has been changed to “proposed Geneva Avenue Extension (pending City of Brisbane approval)” on both Figure II-12 and Figure II-13.

Response to Comment 7-2

Refer to Response to Comment 7-1.

Response to Comment 7-3

In response to the comment, text in Section III.B (Land Use and Plans) on page III.B-2, last paragraph, fourth sentence, has been changed as follows:

Other uses in the Baylands include building supply businesses, lumberyards, the Kinder Morgan Energy tank farm, and the Bayshore Sanitary ~~water~~ Sewer pump station.

Response to Comment 7-4

Text in Section III.D (Transportation and Circulation), text on page III.D-4, last paragraph, first sentence, was revised as follows:

Bayshore Boulevard is a north/south arterial that generally parallels US-101. Bayshore Boulevard has two to three travel lanes in each direction, separated by a median.

Response to Comment 7-5

Text in Section III.D (Transportation and Circulation), Draft EIR page III.D-8, seventh paragraph, was revised as follows:

Tunnel Avenue is a two-way north/south roadway that extends south of Bayshore Boulevard and merges into Bayshore Boulevard at Old County Road. The roadway has one lane in each direction with sidewalks and unrestricted on-street parking on both sides of the street north of Sierra Point Lumber. On-street parking is prohibited on Tunnel Avenue south of Sierra Point Lumber. Tunnel Avenue provides access to Bayshore Caltrain Station and to the US-101 ramps at Alana/Beatty. Tunnel Avenue is part of Bicycle Route #905.

Response to Comment 7-6

This comment on the existing SF bicycle route system will be forwarded to Damon Curtis, the SFMTA Program Manager of the Bicycle Program.



SOURCE: Fehr & Peers; AECOM, 2010.

PBS&J 04.20.10 02056 | JCS | 10

FIGURE II-12

Candlestick Point — Hunters Point Shipyard Phase II EIR
PROPOSED ROADWAY IMPROVEMENTS



SOURCE: Fehr & Peers; AECOM, 2010.

PB58J 04.09.10 02056 | JCS | 10

Candlestick Point — Hunters Point Shipyard Phase II EIR
PROPOSED TRANSIT IMPROVEMENTS

FIGURE II-13

Response to Comment 7-7

Text in Section III.D (Transportation and Circulation), page III.D-36, second bullet, last sentence, was revised as follows:

- **Geneva Avenue/Harney Way Extension**— ... The lead agency for this Project is the City of Brisbane, with the Caltrans Project Study Report (PSR) expected to be completed in ~~early~~ 2010.

Response to Comment 7-8

Text in Section III.D (Transportation and Circulation), page III.D-36, third bullet, first paragraph, and second paragraph, first sentence, was revised as follows:

- **New US-101 Interchange at Geneva/Harney**—In conjunction with the extension of Geneva Avenue east, the existing Harney Way interchange ~~would~~ is proposed to be redesigned as a typical diamond interchange, subject to review and approval by Caltrans. ... ~~The~~ At the time the analysis was completed, Geneva Avenue/Harney Way crossing of US-101 ~~would~~ was proposed to have six lanes eastbound (three left-turn lanes and three through lanes) and six lanes westbound (three left-turn lanes and three through lanes), for a total of twelve lanes (refer to Appendix L of the Transportation Study). ...

Response to Comment 7-9

Mitigation measure MM TR-16 requires construction of Harney Way to its ultimate configuration (either five or six through travel lanes) prior to degradation in intersection levels of service past mid-LOS D (45 seconds of delay per vehicle). The most recent analysis conducted of Harney Way indicates that to maintain acceptable operations, the roadway should ultimately be constructed as follows:

- Three lanes each direction west of Thomas Mellon Circle, with one eastbound lane becoming an eastbound left turn lane onto Thomas Mellon Circle
- Three westbound and two eastbound lanes plus a center turn lane between Thomas Mellon Circle and Arelious Walker Drive

This long-term configuration would ensure acceptable operations along this section of Harney Way during the weekday and weekend peak hours.

Response to Comment 7-10

The comment is acknowledged. No response is required.

Response to Comment 7-11

In response to the comment, the text in Section III.D (Transportation and Circulation), page III.D-84 (and Table ES-2, page ES-15) was revised as follows:

- MM TR-6* Mitigations and associated fair-share funding measures for cumulative regional roadway system impacts. *The City of Brisbane and Caltrans, as part of the Harney Interchange Project, shall account for existing traffic, background traffic growth, and the most recent forecasts of traffic expected to be associated with each of several adjacent development projects, including the Project. The San Francisco County Transportation Authority (SFCTA) shall coordinate with the*

City of Brisbane and Caltrans to ensure Project-generated vehicle trips are accounted for in the Harney Interchange analyses and design.

Mitigations and associated fair-share funding measures for cumulative regional roadway system impacts, including freeway segment impacts, shall be formulated through the current interjurisdictional Bi-County Transportation Study effort being led by the SFCTA or its equivalent. The Project Applicant shall contribute its fair share to the Harney Interchange Project.

In response to the comment, the text in Section III.D (Transportation and Circulation), page III.D-86 (and Table ES-2, page ES-16), second paragraph of MM TR-8, was revised as follows:

MM TR-8 ...

Mitigations and associated fair-share funding measures for cumulative regional roadway system impacts, including freeway segment impacts, shall be formulated through the current interjurisdictional Bi-County Transportation Study effort being led by the SFCTA or its equivalent. The Project Applicant shall contribute its fair share to the Geneva Avenue Extension Project.

Response to Comment 7-12

The comment is acknowledged. No response is required.

Response to Comment 7-13

The analysis considered the travel demand generated by the Project and other planned or proposed development in the area, including the proposed Brisbane Baylands project. As indicated by the commenter, the City of Brisbane would likely require mitigations for development within the City of Brisbane that would maintain intersection LOS C for the intersection of Bayshore/Old County and LOS D elsewhere in the City. It would be reasonable to assume that development of the Brisbane Baylands would include improvements to these intersections to accommodate the vehicle trips associated with that development. However, since those potential improvements are not known, no changes to Bayshore Boulevard/Old County Road and Sierra Point/Lagoon Way were assumed for the future year analysis.

The commenter also requests clarification regarding the determination of significant contributions to intersections operating at unacceptable levels of service in year 2030. The year 2030 analysis considers traffic from many sources, not just the project. At the intersection of Bayshore/Old County, Project contributions to the growth between existing conditions and 2030 Cumulative traffic volumes would be 3.4 percent during the AM peak hour, and 8.0 percent during the PM peak hour. At the intersection of Sierra Point/Lagoon Way, Project contributions to the growth between existing conditions and 2030 Cumulative traffic volumes would be less than one percent during both the AM and PM peak hours.

The metric and calculations for determination of the cumulative contributions is provided in the transportation study. At intersections that would operate at LOS E or LOS F under 2030 No Project conditions, and would continue to operate at LOS E or LOS F under Project conditions, the increase in Project vehicle trips were reviewed to determine whether the increase would contribute considerably (i.e., 5 percent or more) to critical movements operating at LOS E or LOS F. Appendix E of the Transportation Study, in Draft EIR Appendix D, provides the cumulative contribution calculations.

Response to Comment 7-14

As noted above, the traffic forecasts include traffic associated with the Project and other planned or proposed development in the area, including the Brisbane Baylands project; however, the analysis does not include the roadway improvements that would likely be required of said development. Although the project's contribution to this impact would be cumulatively considerable, the proposed Brisbane Baylands project would also be a substantial contributor.

The Draft EIR does not identify specific improvements for this facility because they are currently being developed as part of the Bi-County Study. The Project would contribute a fair share contribution to these improvements as determined as part of the Bi-County study.

Response to Comment 7-15

Mitigation measure MM TR-8 establishes the requirement that the Project Applicant contribute its fair share toward construction of the Geneva Avenue Extension Project. Mitigation measure MM TR-27 would require the design of the Geneva Avenue Extension Project to include transit preferential treatments. Therefore, the requirement suggested by the commenter is accounted for in mitigation measure MM TR-8. Refer to Response to Comment 7-11 for changes to mitigation measure MM TR-8.

It should be noted that the San Francisco portion of the Transit Preferential Streets (TPS) treatments for the Geneva Corridor are already recommended and estimated in SFMTA's Capital Improvement Program and related studies.

Response to Comment 7-16

Comment noted. Due to physical constraints on Bayshore Boulevard within San Francisco City limits, there are limited opportunities to implement transit priority treatments. To the extent that opportunities for reducing cumulative impacts on regional transit are identified by San Mateo County Transit Districts (SamTrans) or San Francisco, San Francisco will coordinate with SamTrans.

Response to Comment 7-17

The disconnected transit-only lane was an error on the figure and has been revised. Refer to revised Figure III.D-13 (Stadium Game Day Traffic Control Plan), Draft EIR page III.D-128.

Response to Comment 7-18

The second western "Muni service" was an error in the figure and was revised. Refer to revised Figure III.D-14 (Stadium Game Day Ingress Routes), Draft EIR page III.D-129.



SOURCE: Fehr & Peers, 2010.

PB5&J 04.09.10 02056 | JCS | 10

FIGURE III.D-13



Candlestick Point — Hunters Point Shipyard Phase II EIR
STADIUM GAME DAY TRAFFIC CONTROL PLAN



FIGURE III.D-14



Candlestick Point — Hunters Point Shipyard Phase II EIR
STADIUM GAME DAY INGRESS ROUTES

■ **Letter 8: Indian Canyon Nation/Costanoan Indian Research Inc.
(1/12/10)**

1 of 11

Letter 8

**Indian Canyon Nation/Costanoan Indian Research, Inc.
P.O. Box 28 Hollister, CA 95024-0028**

S.F. Mayor's Office
City Hall, Room 200
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Board of Supervisors
1 Dr. Carlton B. Goodlett Place - Room 244
San Francisco, CA 94102-4689

Office of the City Attorney
City Hall, Room 23
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

January 12, 2010

Dear Mayor Gavin Newsom, San Francisco Supervisors, and SF City Attorney Dennis Herrera,

On behalf of the Ohlone people, we are requesting that you grant an immediate extension of the public comment period for the Draft Environmental Impact Report, *Candlestick Point/Hunters Point Shipyard Phase II*.

California Senate Bill 18 requires that representatives of Native Peoples listed with the Native American Heritage Commission be notified of projects such as this that might impact our patrimony and archeological sites. Nevertheless, the San Francisco Planning Department failed to contact our people or provide any notice with regard to the release of the Draft Environmental Impact Report, or the commencement of the public comment period. The bill also requires that they be given 45 days to prepare comments after notification. We believe this failure requires the City to now extend public comment by 45 days from January 12, 2010.

We don't know why we have been overlooked. Normally, we would have been notified in the summer of 2008 when the plans were initiated and we would have been included in the planning process over the last 18 months. Several Ohlone leaders and organizations are concerned about the 16 archeological sites in the project area. We are concerned that the Planning Department has made a decision to deliberately exclude us and disenfranchise our people.

The draft EIR states that the Ohlone sites are likely to be older, more significant, and more unique than previously assumed. More sites are expected to be discovered during the construction. The lack of notification by the Planning Department prevented us from undertaking a timely review of the DEIR, arrange for technical support in evaluating its details, and consult with our people to determine their view of the project and its impacts on our interests. Were it not for the intervention of community organizations over the last few weeks, we would have not been aware of this process at all. Nevertheless by the time we were notified (received January 9, 2010) we have no time to acquire the

8-1

2 of 11

resources to appropriately evaluate the project's impact on our heritage and patrimony. *The likelihood of disturbing many Native American burial sites is very high. Without consultation and mitigation, this is a continuation of cultural genocide.*

The 700 acre size and the natural shoreline this development impacts, and the Ohlone heritage within the project site combine to make this an excellent opportunity for San Francisco to acknowledge the difficulty of our shared history. Our people would welcome an opportunity to work together with the City in a process that honors its original people and acknowledges our continuing presence.

Please do the right thing, extend the comment period and include the Ohlone in the planning.

All Our Relations,

Ohlone representatives: Ann Marie Sayers, Corrina Gould, Charlene Sul, Rosemary Cambra
Ohlone Profiles Project, American Indian Movement West, International Indian Treaty Council,
United Native Americans



8-1
cont'd.

3 of 11

Comments on Draft EIR Candlestick Point/Hunters Point Shoreline Plan, Phase II
by Ann Marie Sayers, Tribal Chairperson Indian Canyon Nation

January 12, 2010

Bill Wycko
Environmental Review Officer
Planning Department
1650 Mission Street Ste 400
San Francisco CA 94102

This DEIR including the mitigation process it proposes was developed without Ohlone consultation or input. The plan dramatically breaks with professional standards, common practices and normal expectations I have developed over the last three decades in my professional work with EIR mitigation. Even more seriously, the plan breaks California state law. The plan consolidates unprecedented power in the Environmental Resource Officer, a veritable czar over Ohlone concerns. Key decisions about Ohlone patrimony are left in this individual's hands. Professional standards, common practice and state law require inclusion of Ohlone Most Likely Descendants about what happens to our ancestral burials, cultural artifacts and sacred sites.

8-1
cont'd.

On page III J-30 of the Draft Environmental Impact Report, it states that the Bayview Hunter's Point Area Plan amended the SF General Plan in 2006. Therefore, Senate Bill 18 applies to this project.

Senate Bill 18 requires:

#65092: Public notice to California Native American Indian Tribes on the Native American heritage Commission list.

#65351 requires that local planning agencies provide **opportunities for involvement** for California Native American Tribes on the contact list of the Native American Heritage Commission in the preparation or amendment of the General Plan.

#65560 and #65562.5 require local governments to **conduct meaningful consultation** with California Native Tribes on the contact list maintained by the Native American Heritage Commission.

As an Ohlone on the Native American Heritage Commission list, I was not consulted. So far as I know, there was no consultation with any Ohlone Most Likely Descendants (MLD).

As the tribal chairperson of Indian Canyon, Mutsun Band of Costanoan/Ohlone people, my main concerns are:

1. The mitigation plan that the EIR proposes has not included Ohlone in its development and also does not specifically include Ohlone oversight during the mitigation, as SB 18 requires.
2. The plan does not require a Memorandum of Understanding with Ohlone descendants.
3. The plan does not address what will happen when burials are disturbed. Where and how will the burials be re-interred ceremonially? THIS IS, WITHOUT QUESTION, A TRIBAL DECISION!
4. With cultural materials, when they are found, will there be a center to display the items and educate the public about the original people of the project area? An answer to this question, with consent from the Ohlone people, is required before the DEIR can be accepted.

The DEIR reads as if none of these issues are of concern or interest to San Franciscans or the Planning

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Department. The behavior of the Planning Department has been to act as if there were no Ohlone descendants. This disenfranchises my people. It constitutes a continuation of the cultural genocide of the Ohlone descendants.

We would love to share more of the history and significance of Ohlone tribal renewal if you want to go forward by including us in the planning process. That will require more time to respond to the DEIR.

Noso-n (in breath so it is in spirit.)
Ann Marie Sayers

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8-1
cont'd.

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STATE OF CALIFORNIA

Tribal Consultation Guidelines

SUPPLEMENT TO GENERAL PLAN GUIDELINES

April 15, 2005

GOVERNOR'S OFFICE OF PLANNING AND RESEARCH

III. Basic Requirements of SB 18

This section provides a brief summary of the statutory requirements of SB 18. Later sections of the Supplement provide additional detail regarding these requirements and offer advice to local governments on how to fulfill the notification and consultation requirements of SB 18. (Please refer to Section IV and Section V of these guidelines for additional information regarding the responsibilities outlined below.)

Responsibilities of OPR

Government Code §65040.2(g) requires the Governor's Office of Planning and Research (OPR) to amend the *General Plan Guidelines* to contain advice to local governments on the following:

Consulting with tribes on the preservation of, or the mitigation of impacts to, cultural places.

Procedures for identifying through the Native American Heritage Commission (NAHC) the appropriate California Native American tribes with whom to consult.

Procedures for continuing to protect the confidentiality of information concerning the specific identity, location, character, and use of cultural places.

Procedures to facilitate voluntary landowner participation to preserve and protect the specific identity, location, character, and use of cultural places.

Responsibilities of Local Governments

SB 18 established responsibilities for local governments to contact, provide notice to, refer plans to, and consult with tribes. The provisions of SB 18 apply only to city and county governments and not to other public agencies. The following list briefly identifies the contact and notification responsibilities of local governments, in sequential order of their occurrence.

Prior to the adoption or any amendment of a general plan or specific plan, a local government must notify the appropriate tribes (on the contact list maintained by the NAHC) of the opportunity to conduct consultations for the purpose of preserving, or mitigating impacts to, cultural places located on land within the local government's jurisdiction that is affected by the proposed plan adoption or amendment. Tribes have 90 days from the date on which they receive notification to request consultation, unless a shorter timeframe has been agreed to by the tribe (Government Code §65352.3).⁶

Prior to the adoption or substantial amendment of a general plan or specific plan, a local government must refer the proposed action to those tribes that are on the NAHC contact list and have traditional lands located within the city or county's jurisdiction. The referral must allow a 45 day comment period (Government Code §65352). Notice must be sent

⁶ SB 18 added this new provision to state planning law. It applies to any amendment or adoption of a general plan or specific plan, regardless of the type or nature of the amendment. Adoption or amendment of a local coastal program by a city or county constitutes a general plan amendment.

• 2005 Supplement to *General Plan Guidelines*

regardless of whether prior consultation has taken place. Such notice does not initiate a new consultation process.⁷

Local governments must send notice of a public hearing, at least 10 days prior to the hearing, to tribes who have filed a written request for such notice (Government Code §65092).⁸

Under SB 18, local governments must consult with tribes under two circumstances:

On or after March 1, 2005, local governments must consult with tribes that have requested consultation in accordance with Government Code §65352.3. The purpose of this consultation is to preserve, or mitigate impacts to, cultural places that may be affected by a general plan or specific plan amendment or adoption.

On or after March 1, 2005, local governments must consult with tribes before designating open space, if the affected land contains a cultural place and if the affected tribe has requested public notice under Government Code §65092. The purpose of this consultation is to protect the identity of the cultural place and to develop treatment with appropriate dignity of the cultural place in any corresponding management plan (Government Code §65562.5).

Responsibilities of NAHC

The NAHC is charged with the responsibility to maintain a list of California Native American tribes with whom local governments must consult or provide notices (as required in Government Code §65352.3, §65352, and §65092). The criteria for defining “tribe” for the purpose of inclusion on this list are the responsibility of the NAHC. The list of tribes, for the purposes of notice and consultation, is distinct from the Most Likely Descendent (MLD) list that the NAHC maintains.

Upon request, the NAHC will provide local governments with a written contact list of tribes with traditional lands or cultural places located within a city’s or county’s jurisdiction. These are the tribes that a local government must contact, for purposes of consultation, prior to adoption or amendment of a general plan or specific plan. The NAHC will identify the tribes that must be contacted, based on NAHC’s understanding of where traditional lands are located within the State.

For more information on the NAHC’s roles and responsibilities, contact the NAHC. (See also Part F: Additional Resources)

⁷ Government Code §65352 was amended by SB 18 to include tribes among the entities to whom the proposed action must be referred. The term “substantial amendment” has been in the statute for many years and was not modified by SB 18.

⁸ Government Code §65092 was modified by SB 18 to include certain tribes as “persons” that are eligible to request and receive notices of public hearing. “Person” now includes a California Native American tribe that is on the contact list maintained by the NAHC.

Other Elements of SB 18

In addition to the notice and consultation requirements outlined above, SB 18 amended Government Code §65560 to allow the protection of cultural places in the open space element of the general plan. (*See Section X.*) Open space is land designated in the city or county open space element of the general plan for one or more of a variety of potential purposes, including protection of cultural places.

SB 18 also amended Civil Code §815.3 and adds California Native American tribes to the list of entities that can acquire and hold conservation easements. Tribes on the contact list maintained by the NAHC now have the ability to acquire, on terms mutually satisfactory to the tribe and the landowner, conservation easements for the purpose of protecting their cultural places. (*See Section IX.*)

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For Immediate Release
Jan. 12, 2010

Contact: Mishwa Lee
cell: (415) 606-9541

Ohlone people ask SF Planning Department to follow the law and protect ancient village sites at Candlestick Point/Hunters Point Shipyard.

Ohlone representatives are calling for an extension in the Draft EIR Comment Period and inclusion in the Planning Process.

Who: Ohlone representatives: Ann Marie Sayers, Carmen Sandoval, Anthony Sul, Francisco Da Costa, Rosemary Cambra, and Espinola Jackson; International Indian Treaty Council, American Indian Movement West, United Native Americans, Ohlone Profiles Project, Indian People Organized for Change, POWER (People Organized to Win Employment Rights), GreenAction for Health and the Environment.

Where: San Francisco City Hall, Polk St. steps, between McAllister and Grove

What: Welcome & blessing by Ohlone, Press Conference, delivery of letters to Planning Dept. on last day of public comment period on Candlestick Point/Hunters Point Shipyard

When: Tuesday Jan. 12, 2010 at 12 noon

SAN FRANCISCO, CA— In 2006, San Francisco Board of Supervisors amended the General Plan to allow for development of the Hunters Point Shipyard. According to California Senate Bill 18 - Tribal Consultation Guidelines, signed in law on September 29, 2004, local Ohlone tribal members whose names are listed with the Native American Heritage Commission are to be included in the planning process of any such development. It now appears that none of the Ohlone representatives were contacted so that they could be involved in the planning process.

'We are wondering why no contact was made with Ohlone people.' said Neil MacLean. *'We want the SF Planning Dept. to follow Senate Bill 18 which requires them to include Ohlone people in the planning process.'*

Tuesday January 12th is the deadline for public comment on the draft EIR for the Phase II of the Candlestick Point/Hunters Point Shipyard. Ohlone and their supporters will be turning in their comments and asking for an extension to allow them to meet with the planning department and provide input into the planning for the development of the 700 acres, the largest undeveloped area of San Francisco in recent years.

'This is an important opportunity to work together to protect these ancient historical sites, honor our ancestors and insure that development pressures do not further damage critical Ohlone Indigenous sites,' said Ohlone representative Corrina Gould.

10 of 11

'The sites affected by the development are extremely significant and are believed to be burial or ceremonial sites.' said Ohlone Chairperson AnnMarie Sayers ***'In addition to protecting these sites, we also want to work with the local community to protect their health, the land and the fragile Bay marine environment.'***

At the Press Conference, Ohlone representatives, along with the American Indian Movement and the International Indian Treaty Council will deliver letters to the Mayor, the Board of Supervisors and the City Attorney, asking them for the extension for public response to the draft EIR to allow for Ohlone input.

The draft EIR states that there are at least 4 and probably 5 Ohlone village sites within the development boundaries and another 16 that are within one-quarter mile of the project. According to Ohlone representatives this is an important opportunity to work with the city to create an Ohlone Cultural Center and protect their historic sites, which may be 6,000 years old.

Ohlone organizers of the Press Conference would also like to work with the Bayview Hunters Point community to protect the unique characteristics of the neighborhood and allow for the protection and restoration of the important environmental resources. The economic vitality of the neighborhood also depends on the health of the people in the neighborhood.

'The area, including the Shipyard, must be cleaned up so that it can support healthy living and working conditions,' said Mishwa Lee, a Bayview resident and Ohlone supporter. ***'We want this land to be a healthy place for the future generations, just as the Ohlone ancestors lived to protect their lands and waters for our generation.'***

Media Contacts:

- Mishwa Lee, Bayview/Hunters Point resident and Ohlone supporter (415) 606-9541
- Neil MacClean, Ohlone Profiles Project (415) 515-8430
- Ann Marie Sayers, Ohlone Chairperson (831)-637-4238
- Jaron Browne, POWER (415) 377-2822

#30#

11 of 11

Ohlone Press Conference

January 12, 2010

12noon – 12:30

- I. Mary Jean Robertson – KPOO Radio (MC)
- II. Ann Marie Sayers – Ohlone Chairwoman
- III. Rosemary Cambra – Mawakma Ohlone
- IV. *Corrina Gould – Ohlone representative (if present)*
- V. *Catherine Herrera – Ohlone representative (if present)*
- VI. Morning Star Gali – International Indian Treaty Council
- VII. Anthony Sul – song
- VIII. Quana Brightman – United Native Americans
- IX. Marcus - American Indian Movement West
- X. Representative from the Human Rights Commission
- XI. Francisco Da Costa and or Espinola Jackson
- XII. Mishwa Lee – POWER
- XIII. Marie Harrison – GreenAction for Health and the Environment
- XIV. Vallery Tulier
- XV. Ann Marie Sayers – closing

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■ **Letter 8: Indian Canyon Nation/Costanoan Indian Research Inc.
(1/12/10)**

Response to Comment 8-1

Refer to Master Response 1 (SB 18) for a discussion of consultation with the Native American community under SB 18 and to Master Response 2 (Potential Native American Burial Sites) regarding the Project's potential impacts on Burial Sites.

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Letter 9: POWER (People Organized to Win Employment Rights) (12/21/09)

1 of 1

Letter 9

RECEIVED
DEC 21 2009
CITY & COUNTY OF S.F.
PLANNING DEPARTMENT
M.E.A.

COMMENT ON
2007.0946E CANDLESTICK POINT - HUNTERS POINT SHIPYARD PHASE II DEIR

SF BUSINESS TIMES | DECEMBER 18-24, 2009

sanfranciscobusiness.com

Business leaders can save the Niners

The 49ers are deeply and historically identified with San Francisco. San Franciscans Vic and Tony Morabito founded the team in 1946, many years before the Giants moved from New York and the Warriors from Philadelphia.

Hence business, civic, labor and government leaders are joining forces to assist in needed repairs and improvements to Candlestick Park and to expedite development of the Candlestick Point Hunters Point Shipyard, a project that features a "state-of-the-art," 69,000-seat football stadium. Leaders from the Committee on Jobs, the San Francisco Chamber of Commerce, Recreation and Park and others are asking businesses and individuals to help with funding of improvements at Candlestick in return for advertising. These improvements could translate into increased revenue for the contributor, the city and the team.



GUEST
OPINION
*Michael J.
Antonini*

Replacement of aging seats and a highly visible new luxury section are two concepts being studied.

Naming rights to Candlestick Park is an attractive opportunity for a company or an entity to gain nationwide exposure and local acclaim — and, perhaps, position itself to be a key contributor when a new stadium is built at Hunters Point. No new stadium can be built anywhere without significant private investment, in addition to \$100 million assured from Lennar Corp. as a precondition of development rights and the amount which the 49ers ownership would invest.

On Thursday, Dec. 17, the San Francisco Planning Commission

was to hear comment on the Draft Environmental Impact Report for the Candlestick Point Hunters Point Shipyard Plan. Because this plan features many diverse uses, particularly huge amounts of housing, funding is being rapidly obtained for greatly improved transit and traffic access.

San Francisco must avoid the errors of the past, when we failed to build an arena for indoor sporting, major conventions and entertainment events. Such a facility could have brought huge amounts of revenue to San Francisco businesses.

Leaders have twice stepped up to save the San Francisco Giants. One would expect no less from our leaders when dealing with our home grown, five-time Super Bowl champion San Francisco 49ers!

Michael J. Antonini is a planning commissioner for the City and County of San Francisco ■

9-1

SUBMITTED BY SUE HESTON
ON BEHALF OF PEOPLE ORGANIZED TO WIN EMPLOYMENT RIGHTS
(POWER)

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■ **Letter 9: POWER (People Organized to Win Employment Rights)
(12/21/09)**

Response to Comment 9-1

Refer to Master Response 1 (SB 18) for a discussion of consultation with the Native American community under SB 18.

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Letter 10: San Francisco Bay Trail (12/18/09)

1 of 1

Letter 10



RECEIVED
DEC 21 2009
CITY & COUNTY OF S.F.
PLANNING DEPARTMENT
M.E.A.

December 18, 2009

Stanley Muraoka
San Francisco Redevelopment Authority
One South Van Ness, Fifth Floor
San Francisco, CA 94103

Mr. Bill Wycko
Acting Environmental Review Officer
San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco, CA 94103-2479

Subject: Candlestick Point—Hunters Point Shipyard Phase II Development Plan DEIR:
Request for Comment Deadline Extension

Dear Mr. Muraoka and Mr. Wycko:

The Bay Trail Project is a nonprofit organization administered by the Association of Bay Area Governments (ABAG) that plans, promotes and advocates for the implementation of a continuous 500-mile bicycling and hiking path around San Francisco Bay. When complete, the trail will pass through 47 cities, all nine Bay Area counties, and cross seven toll bridges. To date, slightly more than half the length of the Bay Trail alignment has been developed.

The Bay Trail Project has a keen interest in the above-referenced project and is in the process of preparing comments. Given the size, scope and scale of the project, we would like to request an extension of the comment period for an additional 45 days.

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Maureen Gaffney".

Maureen Gaffney
Bay Trail Planner

Administered by the Association of Bay Area Governments
P.O. Box 2050 • Oakland California 94604-2050
Joseph P. Boni MetroCenter • 101 Eighth Street • Oakland California 94607-4756
Phone: 510-464-7935
Fax: 510-464-7970

10-1

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■ Letter 10: San Francisco Bay Trail (12/18/09)

Response to Comment 10-1

Refer to Response to Comment 1-1 and Response to Comment 85-5 for a discussion of the adequacy of the public comment period, including the many opportunities for providing comments on the Draft EIR.

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■ Letter 11: Alice Griffith Public Housing Tenant Association (11/3/09)

1 of 2

Letter 11



Alice Griffith Public Housing Tenant Association

2 Cameron Way San Francisco Ca, 94124

November 3, 2009

Rick Swig, Vice President
1 Van Ness 5th Fl.
San Francisco, 94102

Dear Mr. Swig and all Redevelopment Commissioners:

As the President of the Alice Griffith Tenant Association representing 1,112 public housing residents, we formally and wholeheartedly support Candlestick Redevelopment Project and are requesting absolutely no delays of the comment period of the EIR. In November of 2008 the citizens of San Francisco stood with us in support of Proposition G. Within the Alice Griffith Housing Development this proposition was overwhelmingly approved by more than 77% of the current residents. The primary reason for this support is simple. Currently, our residents live in unacceptable conditions drastically impacting our quality of life and limiting the ability of our children to experience a decent, healthy living environment. We cannot bear to live in these conditions even one day longer than is absolutely necessary.

The temporary housing built by the Navy in 1962 is now 32 years beyond its intended useable period. Poorly constructed originally, residents contend daily with a wide range of health and safety issues. These issues include: massive indoor and outdoor sewage backups as a result of faulty plumbing systems underneath all units, rampant mold and mildew problems triggering chronic asthma and other health issues for our children and seniors, rodent and insects are a constant concern and the general development layout isolates us from the rest of the Bayview community.

For the past year, The Redevelopment Agency, Housing Authority and Mayor's Office has held over dozens resident meetings to explain the project in great detail and gather community input by those of us who will be impacted the most. We clearly understand the opportunity and challenges of project impact as it relates to traffic public housing, affordable housing, jobs, education, parks and the environment. Furthermore, we acknowledge, accept and agree with the plan presented by the City

11-1

2 of 2

team to ensure access to opportunity and address all the challenges. This is a sincere request from those who have the least. Don't delay this long awaited progress. We have finally restored trust in government and expect you to honor your commitment to improve our community immediately.

The San Francisco Housing Authority has invested millions in temporary solutions that can only reduce the frequency of these problems. As San Francisco residents who happen to live in public housing, we deserve access to the same quality of life that the majority of citizens enjoy and take for granted.

We urge you to support this effort as the opportunity is here and now, our families cannot wait another 40 years.



Sincerely,
Lavell Shaw,
President

↑
11-1
cont'd.

■ Letter 11: Alice Griffith Public Housing Tenant Association (11/3/09)

Response to Comment 11-1

Refer to Response to Comment 1-1 and Response to Comment 85-5 for a discussion of the adequacy of the public comment period, including the many opportunities for providing comments on the Draft EIR.

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■ Letter 12: Asian Pacific Democratic Club (12/17/09)

1 of 1

DEC 17 2009 9:49AM

NO. 1573 P.

Letter 12

ASIAN PACIFIC DEMOCRATIC CLUB

December 17, 2009

San Francisco Planning Commission
1650 Mission Street, Suite 400
San Francisco, CA 94103

Re: Hunters Point Shipyard Phase 2-Candlestick Point Draft Environmental Impact Report
(Support)

Dear Commissioners:

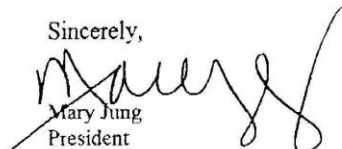
We respectfully request your favorable consideration for Shipyard Phase 2-Candlestick Point Project's Draft Environmental Impact Report and request that the public comment period for the document not be extended. The City's plan to revitalize the former Hunters Point Naval Shipyard and Candlestick Point is one of the most important development projects in the city's modern history because of both its scale and the scope of public benefits that it will deliver to a grossly underserved community.

The City's development plans call for building 10,500 new residential homes, more than 32% of which will be offered at below market rates, and millions of square feet of desperately needed job-generating commercial and retail space, including what will be the State of California's largest center for green technology companies. The project will create more than 10,000 permanent jobs as well as thousands of ongoing construction jobs over the life of the project, and the City is developing a strategy to ensure that as many of those jobs as possible are directed to the residents of the surrounding Bayview Hunters Point community. The project will also fund one of the largest and most significant park construction projects in San Francisco since Golden Gate Park, all at no cost to the City's General Fund or the State.

APDC, along with an overwhelming majority of voters, voted in favor of Proposition G in 2008 to support this much-needed revitalization of the Bayview Hunters Point community. We have strongly supported this project because San Francisco needs more parks, open space, housing and transit oriented development – and most importantly, in these dire economic times, this project will give our city and the Bayview Hunters Point community the vital economic boost it so desperately needs.

This project is the result of more than a decade of community based planning and it is time for the city to move this project forward through environmental review and entitlements so that we can finally begin to receive the community and economic benefits that this project stands to deliver. **Therefore, we ask that you not extend the public comment period for the Hunters Point Shipyard Phase 2-Candlestick Point Draft Environmental Impact Report.**

Sincerely,



Mary Jung
President

Asian Pacific Democratic Club PAC, 320 San Leandro Way, San Francisco, CA 94127
apdcsf@gmail.com

12-1

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■ Letter 12: Asian Pacific Democratic Club (12/17/09)

Response to Comment 12-1

Refer to Response to Comment 1-1 and Response to Comment 85-5 for a discussion of the adequacy of the public comment period, including the many opportunities for providing comments on the Draft EIR.

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■ Letter 13: Toxic Chem Handout—PC Hearing (12/17/09)

1 of 9

Letter 13

The Affects of Toxic Chemicals in the Hunters Point Shipyard on Human Health

Source: ATSDR Information Center / ATSDRIC@cdc.gov / 1-888-422-8737

Volatile Organic Compounds (VOCs)

Even at low levels, these chemicals can cause a number of symptoms. But they sound like symptoms of lots of things, so it can be hard for a doctor to narrow it down to VOCs. Common symptoms include fatigue, headaches, skin and eye irritation, tingling or numbness in the extremities, drowsiness and dizziness.

Total Petroleum Hydrocarbons (TPH)

Total Petroleum Hydrocarbons (TPH) is a term used to describe a broad family of several hundred chemical compounds that originally come from crude oil. In this sense, TPH is really a mixture of chemicals. TPH can enter and leave your body when you breathe it in air; swallow it in water, food, or soil; or touch it. Most components of TPH will enter your bloodstream rapidly when you breathe them as a vapor or mist or when you swallow them. Some of the TPH compounds, particularly the smaller compounds such as benzene, toluene, and xylene (which are present in gasoline), can affect the human central nervous system. If exposures are high enough, death can occur. The International Agency for Research on Cancer (IARC) has determined that one TPH compound (benzene) is carcinogenic to humans. IARC has determined that other TPH compounds (benzo[a]pyrene and gasoline) are probably and possibly carcinogenic to humans. Most of the other TPH compounds are considered not to be classifiable by IARC.

Beryllium

Beryllium is an element that occurs naturally. It is present in a variety of materials, such as rocks, coal and oil, soil, and volcanic dust. Beryllium can enter your body if you breathe air, eat food, or drink water containing it. Beryllium enters the air, water, and soil as a result of natural and human activities. When you breathe it in, beryllium can damage your lungs. The lung damage resembles pneumonia with reddening and swelling of the lungs. This condition is called chronic beryllium disease (CBD). Beryllium is a metal that can be harmful when you breathe it. Both the short-term, pneumonia-like disease and the chronic beryllium disease can be fatal. EPA has determined that beryllium is a probable human carcinogen.

Vinyl Chloride

Vinyl Chloride is known also as chloroethene, chloroethylene, ethylene monochloride, or monochloroethylene. At room temperature, it is a colorless gas, it burns easily, and it is not stable at high temperatures. Vinyl chloride exists in liquid form if kept under high pressure or at low temperatures. If vinyl chloride gas contacts your skin, tiny amounts may pass through the skin and enter your body. Vinyl chloride is more likely to enter your body when you breathe air or drink water containing it. Because vinyl chloride usually exists in a gaseous state, you are most likely to be exposed to it by breathing it. Vinyl chloride is not normally found in urban, suburban, or rural air in amounts that are detectable by the usual methods of analysis. However, vinyl chloride has been found in the air near vinyl chloride manufacturing and processing plants, hazardous waste sites, and landfills. Some people who have breathed vinyl chloride for several years have changes in the

13-1

2 of 9

structure of their livers. People are more likely to develop these changes if they breathe high levels of vinyl chloride. Some people who have worked with vinyl chloride have nerve damage, and others develop an immune reaction. The lowest levels that produce liver changes, nerve damage, and immune reaction in people are not known. The U.S. Department of Health and Human Services has determined that vinyl chloride is a known carcinogen. Studies in workers who have breathed vinyl chloride over many years showed an increased risk of liver, brain, lung cancer, and some cancers of the blood have also been observed in workers.

Arsenic

Arsenic is a naturally occurring element that is widely distributed in the Earth's crust. Arsenic is classified chemically as a metalloid, having both properties of a metal and a nonmetal; however, it is frequently referred to as a metal. Arsenic occurs naturally in soil and minerals and it therefore may enter the air, water, and land from wind-blown dust and may get into water from runoff and leaching. Since arsenic is found naturally in the environment, you will be exposed to some arsenic by eating food, drinking water, or breathing air. Children may also be exposed to arsenic by eating soil. Inorganic arsenic has been recognized as a human poison since ancient times, and large oral doses (above 60,000 ppb in water which is 10,000 times higher than 80% of U.S. drinking water arsenic levels) can result in death. If you swallow lower levels of inorganic arsenic (ranging from about 300 to 30,000 ppb in water; 100-10,000 times higher than most U.S. drinking water levels), you may experience irritation of your stomach and intestines, with symptoms such as stomachache, nausea, vomiting, and diarrhea. Other effects you might experience from swallowing inorganic arsenic include decreased production of red and white blood cells, which may cause fatigue, abnormal heart rhythm, blood-vessel damage resulting in bruising, and impaired nerve function causing a "pins and needles" sensation in your hands and feet. Perhaps the single-most characteristic effect of long-term oral exposure to inorganic arsenic is a pattern of skin changes. These include patches of darkened skin and the appearance of small "corns" or "warts" on the palms, soles, and torso, and are often associated with changes in the blood vessels of the skin. Skin cancer may also develop. Swallowing arsenic has also been reported to increase the risk of cancer in the liver, bladder, and lungs.

Polychlorinated biphenyls (PCBs)

Polychlorinated biphenyls (PCBs) are a group of synthetic organic chemicals that can cause a number of different harmful effects. There are no known natural sources of PCBs in the environment. PCBs are either oily liquids or solids and are colorless to light yellow. Concentrations of PCBs in subsurface soil at a Superfund site have been as high as 750ppm. People who live near hazardous waste sites may be exposed to PCBs by consuming PCB-contaminated sportfish and game animals, by breathing PCBs in air, or by drinking PCB-contaminated well water. If you breathe air that contains PCBs, they can enter your body through your lungs and pass into the bloodstream. Skin conditions, such as acne and rashes, may occur in people exposed to high levels of PCBs. Studies of workers provide evidence that PCBs were associated with certain types of cancer in humans, such as cancer of the liver and biliary tract.

Cesium

Cesium is a naturally-occurring element found in rocks, soil, and dust at low concentrations. Radioactive forms of cesium are produced by the fission of uranium in fuel elements (fuel rods) during the normal operation of nuclear power plants, or when nuclear weapons are exploded. You can be exposed to stable or radioactive cesium by breathing air, drinking water, or eating food



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containing cesium. If you were to breathe, eat, drink, touch, or come close to large amounts of radioactive cesium, cells in your body could become damaged from the radiation that might penetrate your entire body, much like x-rays, even if you did not touch the radioactive cesium. Because radioactive cesium emits ionizing radiation, carcinogenic effects similar to those observed in Japanese survivors of the atomic bombing incidents might be expected among individuals acutely exposed to very high levels of radiation from a radioactive cesium source. Rats exposed to high doses of radiation from ¹³⁷Cs had increased risk of mammary tumors. Older rats seemed more resistant than younger ones.

Chromium

Chromium is a naturally-occurring element found in rocks, animals, plants, and soil. You can be exposed to chromium by breathing air containing it or drinking water containing chromium. Chromium(VI) compounds are more toxic than chromium(III) compounds. The most common health problem in workers exposed to chromium involves the respiratory tract. These health effects include irritation of the lining of the nose, runny nose, and breathing problems (asthma, cough, shortness of breath, wheezing). The Department of Health and Human Services (DHHS), the International Agency for Research on Cancer (IARC), and the EPA have determined that chromium(VI) compounds are known human carcinogens. In workers, inhalation of chromium(VI) has been shown to cause lung cancer. Chromium(VI) also causes lung cancer in animals. An increase in stomach tumors was observed in humans and animals exposed to chromium(VI) in drinking water.

Carbon Tetrachloride

Carbon Tetrachloride is a clear liquid that evaporates very easily. Most carbon tetrachloride that escapes to the environment is therefore found as a gas. Because carbon tetrachloride evaporates easily, most of the compound released to the environment during its production and use reaches the air, where it is found mainly as a gas. It can remain in air for several years before it is broken down to other chemicals. Carbon tetrachloride can enter your body through your lungs if you breathe air containing carbon tetrachloride, or through your stomach and intestines if you swallow food or water containing carbon tetrachloride. Carbon tetrachloride can also pass through the skin into the body. The liver is especially sensitive to carbon tetrachloride since it contains a large amount of the enzymes that change the form of the chemical. Some of the breakdown products may attack cell proteins, interfering with the functions of the liver cells. In mild cases, the liver becomes swollen and tender, and fat builds up inside the organ. In severe cases, liver cells may be damaged or destroyed, leading to a decrease in liver function. The Department of Health and Human Services has determined that carbon tetrachloride may reasonably be anticipated to be a carcinogen. Animals that ingested carbon tetrachloride over a long time developed liver cancer. We do not know if breathing carbon tetrachloride causes cancer in animals. We also do not know if breathing or ingesting it will cause cancer in people.

Chloroform

Chloroform is also known as trichloromethane or methyltrichloride. It is a colorless liquid with a pleasant, nonirritating odor and a slightly sweet taste. Chloroform can enter your body if you breathe air, eat food, or drink water that contains chloroform. Chloroform easily enters your body through the skin. Therefore, chloroform may also enter your body if you take a bath or shower in water containing chloroform. In humans, chloroform affects the central nervous system (brain), liver, and kidneys after a person breathes air or drinks liquids that contain large amounts of chloroform.



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Large amounts of chloroform can cause sores when the chloroform touches your skin. The Department of Health and Human Services (DHHS) has determined that chloroform may reasonably be anticipated to be a carcinogen. Rats and mice that ate food or drank water with chloroform developed cancer of the liver and kidneys.

Naphthalene

Naphthalene is a white solid that evaporates easily. It is also called mothballs, moth flakes, white tar, and tar camphor. When mixed with air, naphthalene vapors easily burn. Naphthalene, 1-methylnaphthalene, or 2-methylnaphthalene can enter your body if you breathe air that contains these chemicals, if you drink water that contains these chemicals, or if they touch your skin. Exposure to a large amount of naphthalene may damage or destroy some of your red blood cells. This could cause you to have too few red blood cells until your body replaces the destroyed cells. This problem is called hemolytic anemia. If your ancestors were from Africa or Mediterranean countries, naphthalene may be more dangerous to you than to people of other origins. Some of the symptoms that occur with hemolytic anemia are fatigue, lack of appetite, restlessness, and a pale appearance to your skin. Exposure to a large amount of naphthalene may cause nausea, vomiting, diarrhea, blood in the urine, and a yellow color to the skin. There is no direct evidence in humans that naphthalene, 1-methylnaphthalene, or 2-methylnaphthalene cause cancer. However, cancer from naphthalene exposure has been seen in animal studies. Some female mice that breathed naphthalene vapors daily for a lifetime developed lung tumors. Some male and female rats exposed to naphthalene in a similar manner also developed nose tumors. Based on the results from animal studies, the Department of Health and Human Services (DHHS) concluded that naphthalene is reasonably anticipated to be a human carcinogen. The International Agency for Research on Cancer (IARC) concluded that naphthalene is possibly carcinogenic to humans. The EPA determined that naphthalene is a possible human carcinogen (Group C) and that the data are inadequate to assess the human carcinogenic potential of 2-methylnaphthalene.

Tetrachloroethane

Tetrachloroethane is a synthetic, colorless, dense liquid that does not burn easily. It has a penetrating, sweet odor similar to chloroform. Individuals located near hazardous waste sites and facilities where this substance is used may be exposed to 1,1,2,2-tetrachloroethane in contaminated air, water, or soil. 1,1,2,2-Tetrachloroethane can enter your body through the lungs. Most of the 1,1,2,2-tetrachloroethane in food or water will rapidly enter the body through the digestive tract. Tetrachloroethane can also enter your body through the skin. Breathing concentrated fumes of 1,1,2,2 tetrachloroethane (enough so that you notice its sickeningly sweet smell) can rapidly cause drowsiness, dizziness, nausea, and vomiting. Most people recover from these effects once they are in fresh air. Breathing high levels of 1,1,2,2 tetrachloroethane for a long time can cause liver damage. The EPA has determined that Tetrachloroethane is a possible human carcinogen.

Xylene

Xylene is primarily a synthetic chemical. Chemical industries produce xylene from petroleum. Xylene also occurs naturally in petroleum and coal tar and is formed during forest fires, to a small extent. It is a colorless, flammable liquid with a sweet odor. You are most likely to be exposed to xylene by breathing it in contaminated air. Xylene is sometimes released into water and soil as a result of the



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use, storage, and transport of petroleum products. Short-term exposure of people to high levels of xylene can cause irritation of the skin, eyes, nose, and throat; difficulty in breathing; impaired function of the lungs; delayed response to a visual stimulus; impaired memory; stomach discomfort; and possible changes in the liver and kidneys. Both short- and long-term exposure to high concentrations of xylene can also cause a number of effects on the nervous system, such as headaches, lack of muscle coordination, dizziness, confusion, and changes in one's sense of balance.

Methylene Chloride

Methylene Chloride, also known as dichloromethane, is a colorless liquid that has a mild sweet odor, evaporates easily, and does not easily burn. You may be exposed to methylene chloride in air, water, food, or from consumer products. Because methylene chloride evaporates easily, the greatest potential for exposure is when you breathe vapors of contaminated air. If you breathe methylene chloride (300 ppm) or greater for short periods of time (e.g., 3-4 hours), you may not be able to hear faint sounds and your vision may be slightly impaired. If you breathe large amounts (800 ppm) you may not be able to react fast, remain steady, or perform tasks requiring precise hand movements. You may experience dizziness, nausea, tingling or numbness of the fingers and toes, and drunkenness if you breathe methylene chloride for a longer time. The World Health Organization (WHO) has determined that methylene chloride may cause cancer in humans. The Department of Health and Human Services (DHHS) has determined that methylene chloride can be reasonably anticipated to be a cancer-causing chemical. The EPA has determined that **methylene chloride is a probable cancer-causing agent in humans.**

Benzene

Benzene, also known as benzol, is a colorless liquid with a sweet odor. Benzene evaporates into air very quickly and dissolves slightly in water. Benzene is highly flammable. Benzene can enter your body through your lungs, gastrointestinal tract, and across your skin. When you are exposed to high levels of benzene in air, about half of the benzene you breathe in passes through the lining of your lungs and enters your bloodstream. Brief exposure (5-10 minutes) to very high levels of benzene in air (10,000-20,000 ppm) can result in death. Lower levels (700-3,000 ppm) can cause drowsiness, dizziness, rapid heart rate, headaches, tremors, confusion, and unconsciousness. Benzene causes problems in the blood. People who breathe benzene for long periods may experience harmful effects in the tissues that form blood cells, especially the bone marrow. These effects can disrupt normal blood production and cause a decrease in important blood components. Long-term exposure to high levels of benzene in the air can cause leukemia, particularly acute myelogenous leukemia, often referred to as AML. This is a cancer of the bloodforming organs. The Department of Health and Human Services (DHHS) has determined that benzene is a known carcinogen. The International Agency for Research on Cancer (IARC) and the EPA have determined that **benzene is carcinogenic to humans.**

Cobalt

Cobalt is a naturally-occurring element that has properties similar to those of iron and nickel. Cobalt cannot be destroyed in the environment. It can only change its form or become attached or separated from particles. Cobalt can enter your body when you breathe in air containing cobalt dust, when you drink water that contains cobalt, when you eat food that contains cobalt, or when your skin touches materials that contain cobalt. Serious effects on the lungs, including asthma, pneumonia, and wheezing, have been found in people exposed to 0.005 mg cobalt/m³ while working with hard

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metal, a cobalt-tungsten carbide alloy. People exposed to 0.007 mg cobalt/m³ at work have also developed allergies to cobalt that resulted in asthma and skin rashes. Being exposed to radioactive cobalt may be very dangerous to your health. If you come near radioactive cobalt, cells in your body can become damaged from gamma rays that can penetrate your entire body, even if you do not touch the radioactive cobalt. Radiation from radioactive cobalt can also damage cells in your body if you eat, drink, breathe, or touch anything that contains radioactive cobalt. The International Agency for Research on Cancer has determined that cobalt is a possible carcinogen to humans.

Radium

Radium is a naturally-occurring silvery white radioactive metal that can exist in several forms called isotopes. It is formed when uranium and thorium (two other natural radioactive substances) decay (break down) in the environment. Radium can enter the body when it is breathed in or swallowed. If you breathe radium into your lungs, some may remain there for months; but it will gradually enter the blood stream and be carried to all parts of the body, especially the bones. Exposure to higher levels of radium over a long period of time may result in harmful effects including anemia, cataracts, fractured teeth, cancer (especially bone cancer), and death. Some of these effects may take years to develop and are mostly due to gamma radiation. Radium gives off gamma radiation, which can travel fairly long distances through air. Therefore, just being near radium at the high levels that may be found at some hazardous waste sites may be dangerous to your health. Exposure to high levels of radium results in an increased incidence of bone, liver, and breast cancer. The EPA and the National Academy of Sciences, Committee on Biological Effects of Ionizing Radiation, has stated that radium is a known human carcinogen.



13-1
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Parcel by Parcel Toxins Present in the Hunters Point Shipyard

*From the Candlestick Point-Hunters Point Shipyard Phase II Draft Environmental EIR
Section III.K Hazards and Hazardous Materials Page III.K-14 – III.K-27*

Hunters Point Shipyard Parcel Designation Proposed HPS Phase II Districts

- Parcels A and B HPS Village Center
- Parcel C and UC-2 HPS Village Center and R&D
- Parcels A and D (includes D-1, D-2, and UC-1) Stadium and R&D/Parking
- Parcel E Sports Fields/Parking
- Parcel E-2 Open Space
- Parcel F (off-shore) Marina
- Parcel G (a portion of Parcel D) 49ers Stadium (or No Stadium option)

SOURCE: Lennar Urban, 2009; Navy documents

Toxins in Parcel B

The EIR States that the primary chemicals in Parcel B soils at concentrations above cleanup goals are:

1. Volatile Organic Compounds (VOCs), semi-volatile organic compound (SVOCs), 283 Polychlorinated biphenyl (PCBs), and metals.
2. VOCs, chromium VI (hexavalent chromium), and mercury are the primary chemicals that have been detected in groundwater.
3. Petroleum hydrocarbons have also been detected in Parcel B soil and groundwater.
4. A survey in IR Sites 7/18 found methane present at concentrations that could potentially be explosive if vapors were to accumulate above levels of concern in a structure. (footnote number 284)
5. Potential risks from groundwater are based primarily on breathing VOC vapors in indoor air that have migrated from groundwater in the A-aquifer. The results of a screening-level ecological risk assessment (SLERA) identified potential unacceptable risk to benthic invertebrates, birds, and mammals from exposure to several metals (chromium VI, copper, lead, and mercury), **pesticides, and PCBs in sediment along the shoreline.** (footnote number 285)

Toxins in Parcel C

The EIR States that the primary chemicals in Parcel C soil and groundwater include:

1. The primary chemical contaminants detected in Parcel C soil and groundwater include VOCs, SVOC PCBs, petroleum hydrocarbons (gasoline and diesel), and metals.
2. Identified sources of these chemicals included leaking sumps containing VOCs and SVOCs, leaking fuel (gasoline and diesel) lines and USTs, sandblast material containing lead and other metals, and leaking PCB-containing transformers.
3. Petroleum hydrocarbon and VOC plumes in groundwater occur in the eastern half and west-central portions of Parcel C. Petroleum hydrocarbons in soil and groundwater pose a risk to aquatic receptors in the Bay.294
4. The current magnitude and extent of these chemicals in groundwater at Parcel C are generally consistent with previous quarters, with the exception of an increase recently of vinyl chloride levels in one monitoring well.

13-1
cont'd.

Toxins present in Parcel D (Including all subparcels D-1, D-2, Parcel G, and UC-1)

The primary chemical contaminants detected in Parcel D soil include:

1. PCBs and petroleum hydrocarbons (diesel and motor oil), and metals.
2. Diesel and motor oil were also detected in groundwater.
3. Elevated concentrations of lead in soil were detected in several areas.
4. Arsenic and beryllium were detected in both soil and groundwater.
5. Other metals found in serpentinite-derived fill materials, such as arsenic, chromium, nickel, and manganese, were also detected throughout the parcel in soil and/or groundwater.
6. Chromium VI (hexavalent chromium) was detected within groundwater below IR-09.
7. Cesium-137 and associated elements strontium and europium were detected on asphalt adjacent to the secondary containment vault behind Buildings 364 and 365.
8. Metals (arsenic, lead, manganese) and a few VOCs are the primary contaminants in soil requiring the need for remediation. The following chemical contaminants in groundwater are associated with potential exposure to A-aquifer groundwater via vapor intrusion: benzene, carbon tetrachloride, chloroform, naphthalene, tetrachlorethene, trichloroethene, xylene, and methylene chloride.

Toxins present in Parcels E and E2

1. The chemicals of concern at Parcel E include metals and organic chemicals such as VOCs, PAHs, PCBs, and pesticides.
2. The chemicals of concern at Parcel E-2 include metals, PCBs, SVOCs, pesticides, and petroleum hydrocarbons.
3. The radionuclides of concern associated with Parcel E-2 include cobalt-60, cesium-137, radium-226, and strontium-90.
4. The HHRA results for groundwater indicated that the risk from potential exposure to VOCs (such as chlorinated solvents and benzene) in the A-aquifer via vapor intrusion exceeded action levels at certain locations.
5. Potential human health risk from exposure to chemicals present in sediment was also evaluated for the shoreline at HPS. Based on this evaluation, hexavalent chromium (chromium VI), total chromium, and PCBs appear to be the primary chemicals of concern for the evaluation of human health in sediment along the Parcel E shoreline.
6. The SLERA found potential risk to benthic invertebrates, birds, and mammals from exposure to metals and total PCBs in surface and subsurface sediments along the shoreline

➤ **From August 2000 – April 2001 there was a landfill fire in Parcel E of the Shipyard that burned underground for 9 months**, and the Navy was unable or unwilling to put out the fire. The U.S. Navy did not alert anyone about the fire for 3 weeks. In June 2000, the US Environmental Protection Agency issued a fine against the Navy for their actions with respect to the fire.

Toxins present in Parcel F

1. In Subarea III, copper and mercury were identified as the primary risk drivers; PCBs were of greatest concern in Subareas IX and X. These chemicals also exceeded concentrations considered safe for benthic invertebrates directly exposed to sediment.
2. PCBs also were shown to cause potential risk to humans if they were to consume shellfish collected at HPS.



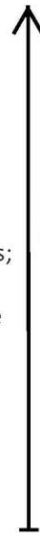
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Base-wide Contamination

The primary purpose of the Historical Radiological Assessment (HRA) was to designate sites as —impacted or —non-impacted. As identified in the HRA, an impacted site was one that had the potential for radioactive contamination based on historical information, or was known to contain or have contained radioactive contamination.

1. According to the Historical Radiological Survey, 91 of the 882 Hunters Point Shipyard historical and current sites were identified as “impacted”. The impacted sites included: buildings; drydocks; former building sites; outdoor areas; IR sites, ships’ berths; the Gun Mole Pier (re-gunning pier); and septic, sanitary, and storm drain systems. As identified in the HRA, an impacted site was one that had the potential for radioactive contamination based on historical information, or was known to contain or have contained radioactive contamination.
2. Of the 91 sites, 29 were recommended for review of the Final Status Survey The Historical Radiological Assessment identified the following potentially contaminated media: surface soils, subsurface soil and media, structures and drainage systems.



13-1
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■ Letter 13: Toxic Chem Handout—PC Hearing (12/17/09)

Response to Comment 13-1

The article on toxic chemicals does not directly comment upon the adequacy of the Draft EIR or the information contained therein. The information provided will be forwarded to the decision-makers.

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■ Letter 14: Positive Directions Equals Change (12/17/09)

1 of 1



Letter 14

POSITIVE DIRECTIONS EQUALS CHANGE INC.

- Our Mission -

To inspire personal and social responsibility to the African American community through advocacy, education and results-oriented service.

For more Information:

Administrative Office

*Phone (415) 401-0199
Fax (415) 401-0175*

Outpatient Services:

Phone (415) 740-5587

December 17th, 2009

A letter came out this week, authored by Arc Ecology Executive Director Saul Bloom, formally requesting that the Mayor extend the public input time for the Environmental Impact Review (EIR) of the Lennar Hunters Point Shipyard Development Project from 45 days to 90 days. Among the signatories to the letter was an organization calling itself "Positive Directions".

Positive Directions Equals Change, Inc. is unaware of any organization in the community that goes by this name and is struck by its similarity to Positive Directions. **Positive Directions Equals Change, Inc.** is not and never has been a signatory to this letter. We are deeply disappointed in Mr. Bloom for misrepresenting our organization's views, be it intentional or otherwise.

We ask that Mr. Bloom remove the "Positive Directions" name immediately from his letter and clarify the organization from which he claims to have the endorsement.

Cedric G. Akbar
Positive Directions Equals Change, Inc.
4716 Third Street
San Francisco, CA 94124
415.401.0199
415.401.0175 (fax)

14-1

4716 3rd street San Francisco CA 94124

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■ Letter 14: Positive Directions Equals Change (12/17/09)

Response to Comment 14-1

The comment is acknowledged. No response is required.

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■ Letter 15: Cavella, Barbara (12/12/09)

1 of 1

Letter 15

Barbara I. Cavella
2550 Round Hill Dr.
Alamo, CA. 94507



Saturday, December 12, 2009

SAN FRANCISCO REDEVELOPMENT AGENCY
SAN FRANCISCO PLANNING DEPARTMENT
Stanley Muraoka
Environmental Review Officer
One South Van Ness Ave., Fifth Floor
San Francisco, CA. 94103

Re: S.F. Redevelopment Agency File No. ER06-05.07

Please be advised that I am a property owner of 1650 and 1690 Evans Ave., San Francisco. 94124.

I would like to know the street developments for Evans Avenue leading to Hunters Point.

15-1

Thanking you in advance to my request.

Yours truly,

Barbara Cavella
Barbara Cavella

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■ Letter 15: Cavella, Barbara (12/12/09)

Response to Comment 15-1

The Project does not propose changes to the segment of Evans Avenue adjacent to the 1650 and 1690 Evans Avenue properties (located between Phelps Street and Quint Street). Further, the Project does not propose changes to Evans Avenue, between Third Street and Jennings Street. The project does propose to re-stripe Hunters Point Boulevard and Innes Avenue from the Project boundary up to Evans Avenue to accommodate two travel lanes in each direction, a Class II bicycle lane in each direction, and on-street parking on the north side of the street. A 10-foot-wide sidewalk would be provided on the north side of the street and an 8-foot-wide sidewalk on the south side.

However, mitigation measure MM TR-24 would convert one travel lane in each direction on Evans Avenue, from Jennings Street to Napoleon Street, to transit-only, leaving one mixed-flow lane in each direction. This mitigation measure would affect the number of available mixed-flow travel lanes on the segment adjacent to 1650 and 1690 Evans Avenue. Refer to Master Response 18 (Transit Mitigation Measures) for clarity on the proposed physical changes to the roadway network.

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■ Letter 16: Birkelund, James (12/19/09)

1 of 2

Letter 16

Law Offices of James Birkelund

840 California St., Suite 45
San Francisco, CA 94108
Tel: (415) 602-6223
Email: james@birkelundlaw.com

RECEIVED
DEC 23 2009
CITY & COUNTY OF S.F.
PLANNING DEPARTMENT
M.E.A.

Via Email and U.S. Mail

December 19, 2009

Joy Navarrete
Senior Environmental Planner
San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco, California 94103
Email: Joy.Navarrete@sfgov.org

**Re: Public Records Act Request – Draft Environmental Impact Report
("DEIR") for the Candlestick Point-Hunters Point Shipyard Phase
II Development Plan Project (the "Project")**

Dear Joy:

On behalf of the California State Parks Foundation ("CSPF"), I write to request **immediate access** to specific documents from the San Francisco Planning Department ("Planning Department") that are referenced in and relied upon in the above-referenced DEIR for the Project. The requested information is critical to our review of the Project. Please treat this letter as a formal request for information under the California Public Records Act, Gov't Code section 6250 *et seq.* ("PRA").

This December 19, 2009 PRA request is in addition to, and not intended to replace or put limitations on, my December 11, 2009 PRA request.

This request includes the following documents referenced in Appendix D of the DEIR as part of the *CHS Consulting, Fehr & Peers, LCW Consulting Candlestick Point-Hunters Point Shipyard Phase II Development Plan Transportation Study, November 4, 2009* (the "Transportation Study"):

- (1) Appendix D of the Transportation Study (Roadway Characteristics and Future Baseline Improvements);
- (2) Appendix H of the Transportation Study (Transit Calculations);
- (3) Appendix J of the Transportation Study (Travel Demand Calculations);
and

16-1

2 of 2

PRA Request
December 19, 2009
Page 2

- (4) Appendix K of the Transportation Study (Supporting Technical Memoranda).

CSPF requests the above documents pursuant to § 6253 of the Public Records Act and § 21092(b)(1) of the California Environmental Quality Act ("CEQA"). This request is also made pursuant to Article I, section 3(b) of the California Constitution, which provides a Constitutional right of access to information concerning the conduct of government. Article I, section 3(b) provides that any statutory right to information shall be broadly construed to provide the greatest access to government information and further requires that any statute that limits the right of access to information shall be narrowly construed.

Per our telephone conversation earlier today, my understanding is you are willing to accept this PRA request on behalf of the Planning Department.

Please contact us as soon as possible so we can arrange to have someone view these documents. We request a written response to this request within ten (10) days and access to the requested documents immediately. Gov't Code § 6253(c); CEQA § 21092(b)(1).

Should CSPF desire copies of these materials after viewing, we also apply for a waiver of duplication and other fees under the PRA because CSPF is a nonprofit, public interest organizations and the requested information is for the public benefit. See North County Parents Organization v. Dept. of Education, 23 Cal. App. 4th 144, 148 (1994) (public agencies have the power to waive fees related to record requests by nonprofit organizations pursuant to Cal. Gov't Code section 6253.1).

Thank you for your cooperation with this request.

Very truly yours,



James M. Birkelund
Law Offices of James Birkelund
840 California St., Suite 45
San Francisco, CA 94108



16-1
cont'd.

■ Letter 16: Birkelund, James (12/19/09)

Response to Comment 16-1

The comment is acknowledged. Background documents were made available at the Agency and the San Francisco Planning Department. All documents requested under Section 6253 of the Public Records Act were provided to the commenter.

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■ Letter 17: Dale-LeWinter, Marcia (1/4/10)

1 of 7

Letter 17



EIR Comments

Marcia Dale-LeWinter to: Stanley Muraoka
Cc: Tiffany Bohee, Wells Lawson

01/04/2010 09:20 AM

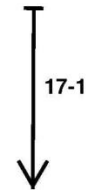
From: Marcia Dale-LeWinter <marcia.dale.lewinter@mac.com>
To: Stanley Muraoka <Stanley.Muraoka@sfgov.org>
Cc: Tiffany Bohee <tiffany.bohee@sfgov.org>, Wells Lawson <Wells.Lawson@sfgov.org>

Stanley:

Attached are my comments on the EIR. Please confirm receipt.

Thank you,

Marcia



The Need for High-Quality Access to Hunters Point Shipyard On Good Intentions — Is There a Way to Avoid Disappointment?

Commentary on Candlestick Point–Hunters Point Shipyard Phase II Development Plan EIR

This commentary is directed toward what is not in this EIR rather than what is in it.

San Francisco is a world-class city, a global city if you will. It routinely ranks at or near the top of destination cities worldwide. It has a highly educated workforce employed in a diverse array of 21st century occupations: digital entertainment and education, genetic medicine, medical research, biotechnology, and banking and investment. The tourism industry and its component businesses — hotels, restaurants, theaters, and the arts — is also a major part of the City's economic wellbeing. However, the prosperity generated by these sectors of the economy has not extended to all parts of the City and its residents. When the Hunters Point Shipyard shut down the economic engine for the Southeast sector of the City disappeared. The intervening years have been hard times for many of the residents of this part of the City.

Phase II of the proposed and long-awaited Shipyard redevelopment as now included in the new-town-in-town project for Candlestick Point–Hunters Point Shipyard [the Project]. It is the City's selected means of redressing the post-World War II loss of employment, with its social consequences, that the Shipyard once represented. The Project is designed to extend the City's prosperity to the residents of this sector of the City. During the twenty years (plus or minus) of citizens working to this end that it has taken to arrive at this point in the approval process the community's constant mantra concerning its priorities has been:

- ❖ **Jobs** – and economic development,
- ❖ **Education** – to meet the requirements of these jobs, and
- ❖ **The Arts** – as critical components of healthy and productive lives.

From the EIS:

Specifically, the Project proposes development of 10,500 residential units with an associated population of 24,465 residents; 885,000 gross square feet (gsf) of retail; 150,000 gsf of office; 2.5 million gsf of Research & Development (R&D) uses; a 220-room, 150,000 gsf hotel; 255,000 gsf of artist live/work space; 100,000 gsf of community services; 251.3 acres of new parks, sports fields, and waterfront recreation areas, as well as 84 acres of new and improved State parkland; a 69,000-seat 49ers stadium; and a 75,000 gsf performance arena. The permanent employee population associated with the Project would be 10,730.

In addition, a 300-slip marina would be provided. Shoreline improvements would also be provided to stabilize the shoreline. The Project would include structured and on-street parking and various infrastructure improvements to support the development.

The Project also includes a 7-lane bridge over the Yosemite Slough designed to provide bus rapid transit service, event-day auto access, pedestrian/bicycle access and recreation opportunities.

The Project meets one gold standard set for greenfield new towns of the 1960s and '70s — specifically that approximately fifty percent of total land area be dedicated to parks and open space. At 336.4 acres, the Project's dedicated open space and recreation is 48 percent of the land total. It greatly exceeds the 10 acres per 1,000 residents guidelines developed by the National Recreation and Park Association (NRPA) for an urban area — 240 acres would be required. It also significantly exceeds the 174 acres the existing City ratio of 7.1 acres per 1,000 residents would require. Since the residents of the Project will be assessed to maintain the parks and open space included, this amounts to a substantial gift to the City.

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By any standard the Project is a recreation and open space bonanza for the citizens of San Francisco. In addition to this significant increase of parks and recreation land, the Project also includes the latest in environmental design techniques and technologies — with particular emphasis on sustainability. On the whole the Project is a major addition to the City. And voters in all parts of the City decisively endorsed the Project proposition in the June 2008 election.

The Project is of course the preferred “alternative.” Since it is City policy to retain the 49ers in San Francisco if at all possible, it therefore includes elements to meet the team’s requirements for an attractive site and first-rate game-day access. The primary alternative to this Project, given the 49ers consistently stated intentions to move to Santa Clara, is a project without the 49ers stadium. To date this alternative has consisted largely of replacing the stadium area with additional green technology R&D and related businesses. Given the amount of land involved and the state of the economy, this alternative is currently deemed to require finding an “anchor tenant,” a company with the desire to create a campus setting for new facilities, for this part of the Shipyard commercial/light industrial redevelopment to be successful.

However, the most recently described non-stadium alternative to the Project, as presented by Lennar at the December Policy Committee meeting of the San Francisco Chamber of Commerce, might instead include the placement of 4,000 units of housing in the stadium area of the Shipyard, reducing the density of housing on Candlestick Point by about 3,800 or so units for a small net gain in residential units. Whether or not the stadium area is to become a green R&D/light industry area, a housing area, or a mixed-use area, high-quality access will always be a key component of a non-stadium alternative as well as the Project.

The most outstanding policy decision evident in all of the alternatives to the Project in the EIR is that the Project is the only development scenario with Yosemite Slough bridge auto access to the Hunters Point Shipyard — and that auto access is limited, it is only for game-day event operations. The unspoken correlate of that policy is that nothing else and no one else could possibly require or deserve that level of access. Only Alternative 3 (see Attachment A) would include a Yosemite Slough bridge and this version of the bridge would limit its use to bus rapid transit, bicycles and pedestrians.

San Francisco Metropolitan Transit Authority (SFMTA) planners have projected the transit ridership and concluded that no direct auto access from the south to the Hunters Point Shipyard is needed for development as planned without the stadium. These projections are based on generous assumptions of future ridership (transit planners almost always make generous ridership assumptions, usually overly-generous assumptions, when planning for new transit facilities) and the City’s transit-first policy. However, recently enacted cutbacks in the City’s transit services demonstrate the futility of relying entirely on transit for high-level individual circulation access.

There are three aspects of traffic and transit planning that require assessing their basic transit assumptions — all related to actual rather than projected human behavior:

1. Jobs/population balance — British new town planning experience has conclusively demonstrated that even when designed with an initial jobs/population balance, over the years initial residents of these new towns tended to remain in residence in their chosen community and travel to new locations for work as they inevitably changed jobs — thus resulting in significant amounts of regional cross commuting.
2. Mass transit — There is no doubt that global warming will require major changes in the way people and goods move about, increasing demand for mass transit of all kinds, particularly for journey-to-work and goods movements. But the realization that personal travel will also remain in high demand is prompting the auto industry to respond with the

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design of smaller, lighter, cleaner vehicles. This demand for point-to-point personal travel is not likely to significantly abate now or anytime soon.

3. High-quality access — The better the access to an area or to a site the higher the real estate value that results. This is particularly true for commercial and/or light industrial properties. The quality of access to be provided will make a significant difference in the type and quality of businesses that can be attracted to the Hunters Point Shipyard jobs development areas. It will also make a significant difference in the success of the attractions to be developed — such as the United Nations Global Warming Center, the International African Marketplace, and the Arts Center and Arts district.

The first two of these aspects of the Project transit ridership assumptions point to the same question — can transit consistently over time provide the quality of service needed to significantly improve existing ridership patterns? SFMTA planners would of course say yes, and no one can or should doubt that their intentions are of the best. Experience, however, would make it wise to question that conclusion. As currently evidenced, transit ridership does not pay the way for the quality of service needed to attract sufficient riders to pay for the level of service generally desired.

The third aspect of the Project transit assumptions points to an area of the site selection process that business managers go through when selecting a site for their new facilities. If this aspect has been explored by project sponsors in any depth it has not been revealed to the communities or citizen bodies involved to date. Area Development Online | Corporate, Industrial and Manufacturing — calling itself “the world’s leading magazine and information source for site and facility planning,” has this to say:

“Area Development readers have ranked access to interstates and other highways among the top two site selection criteria for the last five years in a row — and, in fact, they ranked this factor first in 2007 and 2008. And those of us who work in logistics could not be more pleased.

“This high ranking acknowledges what we’ve known for years: Over-the-road transportation efficiency (or the lack thereof) is inextricably linked with everything from corporate profitability and sustainability to employees’ quality of life . . .”

Will O’Shea, 3PD Inc. (Aug/Sep 09)

“The development of a Yosemite Slough bridge providing easy access into the proposed Hunters Point project from US-101 and its southerly connections, the airport and to I-380 and I-280 is absolutely essential to the success of the marketing of high-tech green technology and R&D properties. The potential tenants of these kinds of buildings come from the South US-101 R&D corridor, Palo Alto, Menlo Park and of course the expanding South San Francisco area. The other major access point through Evans Avenue is simply too long and circuitous to be effective in generating significant interest from potential tenants. In effect, if this is the only access into the project provided it would be limiting the potential tenant mix to an extension of the Third St. corridor.

It is also appropriate to provide an alternative way for potential residents to get in and out of the area without significant congestion. The above issues are of course important enough considerations to warrant the bridge development even without taking into account the potential traffic generated by a Stadium development.”

Richard Marshall SIOR | Senior Broker Associate Commercial Real Estate (Dec 09)

The question, then, is: What does this mean for successful long-term planning for access to the Hunters Point Shipyard jobs centers? As Business Development site selection managers

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affirm, attracting sustainable businesses to the Shipyard, the only area for jobs creation other than service industry jobs elsewhere in the Project, will benefit from high-quality auto access from the south.

The Hunters Point Shipyard will have some significant commercial/light industrial site selection advantages, primarily: 1] direct transit access to downtown San Francisco, 2] an adjacent small mixed-use community commercial center with a significant arts presence, 3] a nearby regional center with significant urban amenities, and 4] mixed-income housing and employee educational opportunities. The extensive bay frontage and panoramic views are also major amenities, but not necessarily limited to the Shipyard. What is missing?

The vehicular access alternatives offered from the south for the Shipyard are limited: only game-day drivers are offered high-quality auto access, all other drivers are relegated to a make-do routes wending their way through residential enclaves and the South Basin light industrial area of the Bayview. If all of the SFMTA predictions are true this route may be technically adequate for the relatively low level of auto travel projected. But that is not only questionable from the narrow point of view of projected traffic demand, it is also questionable from the point of view of competitive attraction. In other words, given all of the potential light industrial sites in the greater Bay Area that are widely marketed, how will Shipyard offerings stack up?

Bishop Ranch has long been one of the premier San Francisco Bay Area business parks. It has, and still depends on, its high-quality highway access to attract and retain new businesses. As a maturing business park it has expanded its transit services to include all available transit modes, including regional bus, commuter rail, and car-pooling services. The lesson for Shipyard business attraction and development is that equal attention must be given to all modes of employee access and goods transport — that's good for business. By inference the Project and Shipyard redevelopment planners contend that it makes sense to deny high-quality access to companies that could provide the jobs that the Bayview so badly wants and needs.

Why is paying attention to all appropriate transportation modes so difficult for the Project and Shipyard redevelopment planners? And better still, why do they think that spending very large sums of public money to build a bridge with four auto lanes that will only serve event-day traffic 12 or so times a year is a fiscally responsible thing to do? Who is behind these anti-redevelopment postures, and why? Who wants to deprive the Bayview of its last best chance for “**J**obs and economic development?” The stakeholders in the Project and the citizens of San Francisco deserve answers to these questions.

By law anything not appearing in the EIR — not assessed for its physical environmental impacts — cannot be included in the Phase II Development and Disposition Agreement (DDA) to be concluded between to be the San Francisco Redevelopment Agency and Lennar as the Master Developer. To exclude a bridge with year-round auto traffic from any version of the EIR alternatives precludes this high-quality access from being assessed and therefore from even being considered for inclusion in the DDA.

As someone with a long career in international urban and economic development project planning, it is the recommendation of this responder that the EIR include a least one project alternative with a bridge over Yosemite Slough providing for year-round auto traffic. Not to do so is to forego the possibility of satisfying the top site selection priority of industry professionals.

Marcia Dale-LeWinter
Member, Mayor's Hunters Point Shipyard Citizen's Advisory Committee
Chair, Planning and Development Subcommittee

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Attachment A – ALTERNATIVES

A number of alternatives were analyzed that would avoid or substantially lessen some of the significant effects of the project. These alternatives, which are fully addressed in Chapter 6 (Alternatives) of this document, include the following:

- **Alternative 1: No Project** — Consistent with Section 15126.6(e)(1) of the CEQA Guidelines, this alternative assumes that no new development would occur at Candlestick Point and HPS Phase II would be developed with new uses consistent with the existing Hunters Point Shipyard Redevelopment Plan (HPS Redevelopment Plan).

This alternative was selected in accordance with CEQA Guidelines Section 15126.6(e)(3)(A), which states that when the project is the revision of an existing land use or regulatory plan, policy, or ongoing operation, the "no project" alternative would be the continuation of the existing plan, policy, or operation into the future. This discussion would allow the decision-makers to compare the impacts of approving the Project with the impacts of not approving the Project.

- **Alternative 2: CP-HPS Phase II Development Plan; No Yosemite Slough Bridge** — Alternative 2 would have the same land use program proposed with the Project, including the State Parks agreement. Alternative 2 would not include the Yosemite Slough bridge. The main roadway connection between Candlestick Point and HPS Phase II would be via Ingalls Street. A bus rapid transit route would be constructed along an abandoned railroad right-of-way to provide access between Candlestick Point and HPS Phase II. This alternative assumes that the 49ers Stadium is relocated to HPS Phase II and the Agency enters into an agreement with CPSRA to reconfigure CPSRA land in the same way as for the Project.

This alternative was selected to avoid impacts to biological resources associated with bridge construction and operation. Significant traffic, noise, and air quality impacts would not be reduced. This alternative would result in greater transportation-related impacts on game days because vehicular ingress and egress to and from the stadium would be delayed and traffic levels would be increased on local streets, including Innes Avenue, Evans Avenue, and Ingalls Street.

- **Alternative 3: Reduced CP-HPS Phase II Development; San Francisco 49ers Stay at Existing Candlestick Park Stadium; Limited State Parks Agreement; Yosemite Slough Bridge Serving Only Transit, Bicycles, and Pedestrians** — Alternative 3 would be a reduced development alternative. Total housing with this alternative would be 5,210 units, about half of the units proposed with the Project. At Candlestick Point, residential development would be decreased and retail and arena uses would not be developed. Replacement of the Alice Griffith Public Housing site would occur and consist of 1,210 housing units. Minor improvements would be made to the CPSRA under the Limited State Parks Agreement. At HPS Phase II, housing would be increased; other uses at HPS Phase II would be similar to the Project. A new Yosemite Slough bridge serving only transit, bike and pedestrian traffic would extend Arellio Walker Drive from Candlestick Point to HPS Phase II. This alternative assumes that the 49ers football team would continue to use the existing Candlestick Park stadium. At HPS Phase II, the alternative would not include a new 49ers Stadium.

This alternative was selected to provide an alternative to the Project that reduces construction-related impacts generally and operational impacts associated with traffic, air quality, noise, demand for public services, biological resources, and other growth-related

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impacts. The development program of this alternative would be reduced compared to the Project and would generate fewer vehicle trips and reduce the area subject to development. This alternative would reduce traffic and noise impacts associated with an increase in vehicle trips and air quality impacts associated with Project construction and operation. This alternative would reduce impacts to biological resources associated with bridge construction and operation as a result of the narrower bridge footprint and reduced bridge traffic. Construction and/or operational impacts related to the amount of development and the development footprint, such as soil erosion and stormwater runoff, as well as operational impacts related to population and employment growth, such as police and fire services, would also be reduced by this alternative.

- **Alternative 4: Reduced CP-HPS Phase II Development; Historic Preservation; No HPS Phase II Stadium, Marina, or Yosemite Slough Bridge** — Alternative 4 would also be a reduced development alternative. Total housing with this alternative would be 7,350 units, about 30 percent less than proposed with the Project. The proposed floor areas for most uses would be approximately 30 percent smaller at full build-out in comparison to build-out of the Project. No improvements would be made in the CPSRA. This alternative includes preservation of three potentially historic structures at HPS Phase II. This alternative does not include construction of a bridge over Yosemite Slough.

This alternative was selected to provide a reduced development alternative to the Project. This alternative would reduce the area subject to development and would avoid significant impacts to historic resources at HPS Phase II. Reduced development would result in fewer vehicle trips. This alternative would reduce traffic and noise impacts associated with the increase in vehicle trips and air quality impacts associated with Project operation and construction. This alternative would also avoid impacts to biological resources associated with bridge construction and operation. Construction and/or operational impacts related to the amount of development and the development footprint, such as soil erosion and stormwater runoff, as well as operational impacts related to population and employment growth, such as police and fire services, would also be reduced by this alternative.

- **Alternative 5: Reduced CP-HPS Phase II Development; No HPS Phase II Stadium, State Parks Agreement, or Yosemite Slough Bridge** — Alternative 5 would have the same land use program proposed with the Project, except that the new stadium at HPS Phase II and the Yosemite Slough bridge would not be constructed. The total number of housing units would be the same as for the Project; however, because this alternative would not include the CPSRA boundary reconfiguration, the land area available for development would be smaller. Approximately 1,350 units would be shifted from Candlestick Point to HPS Phase II. This alternative assumes a State Parks agreement does not occur and there is no agreement with the 4gers for a stadium at the Project site.

This alternative was selected to reduce construction impacts generally and to avoid impacts to biological resources associated with bridge construction and operation. Significant traffic, noise, and air quality impacts would not be reduced. Construction impacts that relate to the size of the development footprint would also be reduced by this alternative.

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■ Letter 17: Dale-LeWinter, Marcia (1/4/10)

Response to Comment 17-1

These comments regarding the benefits of having a permanent full-time auto-use bridge over the slough do not pertain to the technical adequacy of the environmental analysis of the Project. The commenter is correct that year-round auto use of the bridge could not be approved because the EIR does not analyze this as part of the Project, variants, or alternatives. Year-round auto use of the bridge would require additional environmental review.

For the bridge to be open for public use, the City would need to formally accept the bridge as a public right-of-way through a legislative process. Upon acceptance, the City would designate the bridge as a “for transit only” facility closed to private vehicular traffic except for specified days and times. The Project’s Infrastructure Plan will establish conceptual parameters and regulatory guidance that will require that the entrance to the bridge approach streets on both sides of Arelious Walker have facilities that prevent traffic from accessing the bridge on non-game days, but allow traffic on football game days. A barrier in the form of a gate, retractable bollards, or removable barriers would be required to be installed to block the transit-only lanes such that only authorized buses and emergency vehicles can gain access, except as allowed on football game days. Photo enforcement at the bridge approach streets would also be used to monitor and restrict access. The Infrastructure Plan is an exhibit to the Interagency Cooperation Agreement (ICA) between the City and the Agency. The purpose of the ICA is to facilitate the implementation of the Project’s redevelopment plans, Proposition G, and the development of the Project Site. The detailed design of the bridge will be further defined in the Developer’s Major Phase and Sub-Phase planning documents that are submitted to the Agency for review, as well as the public improvement plans that are reviewed by the City.

Further, the State Parks Reconfiguration, Improvement, and Transfer Agreement, authorized under Senate Bill 792, between State Parks, State Lands, and the Agency will contain a restriction on use of the bridge, requiring that the bridge function primarily for transit, bicycle, and pedestrian use and be closed to private vehicular traffic except on football game days. Private vehicular traffic will be permitted on football game days, and, at all other times, the bridge will serve as a pedestrian, bicycle, and open space amenity.

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■ Letter 18: Bay Access (12/28/09)

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Letter 18



BAY ACCESS

dedicated to creating a water trail on San Francisco Bay

163 Fair Oaks Street
San Francisco, Ca. 94110
December 20, 2009

Stanley Muraoka
Environmental Review Officer
San Francisco Redevelopment Agency
One South Van Ness Avenue, Fifth Floor
San Francisco, CA 94103



Re: Extension of time for Review of EIR

Dear Mr. Muraoka:

The shoreline areas on the Candlestick - Hunter's Point - India Basin redevelopment projects are of great interest to those who work to create a Water Trail on the Bay. Many of us have been involved in the process of attempting to insure that the water's edge is friendly and accessible to future residents of the area.

The documents for review in the EIR require a little more time than the December 28, 2009 cut off date allows. Everyone knows how busy people are with family concerns during the holiday season.

We request that the time for comment be extended to a full 90 days so that people may review the documents in depth during a time when our lives are no so hectic.

Sincerely,


Paul Nixon
Bay Access, San Francisco

18-1

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■ Letter 18: Bay Access (12/28/09)

Response to Comment 18-1

Refer to Response to Comment 1-1 and Response to Comment 85-5 for a discussion of the adequacy of the public comment period, including the many opportunities for providing comments on the Draft EIR.

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■ Letter 19: Whittle, Lola (12/14/09)

1 of 1

Letter 19

From: "Lola Whittle" <lola@rencenter.org>
To: <Andrea.Bruss@sfgov.org>, <apkbayview@yahoo.com>, <fred.blackwell@sfgov.org>, <admin@bvhp-pac.org>, <info@bvhp-pac.org>, <michael.cohen@sfgov.org>, "Sharon Miller" <Sharon@rencenter.org>, <Stanley.Muraoka@sfgov.org>
Date: 12/16/2009 05:47 PM
Subject: FW: Regarding the Joint Meeting of the Hunters Point Shipyard CAC and Bayview Hunters Point PAC on Monday December 14, 2009

*** FOR IMMEDIATE RELEASE ***

A letter came out this week, authored by Arc Ecology Executive Director Saul Bloom, formally requesting that the Mayor extend the public input time for the Environmental Impact Review (EIR) of the Lennar Hunters Point Shipyard Development Project from 45 days to 90 days. Among the signatories to the letter was an organization calling itself the "Bayview Resource Center".

The Renaissance Entrepreneurship Center is unaware of any organization in the community that goes by this name and is struck by its similarity to the Renaissance Bayview Center's former name, the "Bayview Business Resource Center". Renaissance Bayview is not and never has been a signatory to this letter. We are deeply disappointed in Mr. Bloom for misrepresenting our organization's views, be it intentional or otherwise.

We ask that Mr. Bloom remove the "Bayview Resource Center" name immediately from his letter and clarify the organization from which he claims to have the endorsement.

Lola Whittle, Director
Renaissance, Bayview
3801 Third Street, Suite 616
San Francisco, CA 94124
Tel (415) 647-3728, ext. 401
Fax (415) 647-1542

www.rencenter.org

19-1

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■ **Letter 19: Whittle, Lola (12/14/09)**

Response to Comment 19-1

The comment is acknowledged. No response is required.

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■ Letter 20: Multiple Commenters (12/14/09)

1 of 1

Letter 20

Please Extend the Public Comment Period for the Hunters Point Shipyard Candlestick Point Environmental Impact Report (DEIR) to Ninety Days, ending on 12 February 2010.

Mr. Mayor,

We the undersigned organizations and individuals respectfully request a ninety day public comment period for the Candlestick Point Hunters Point Shipyard Draft Environmental Impact Report (DEIR). We believe that a public review period totaling 90 days, ending on February 12, 2010, is necessary and appropriate for the public and our organizations to review, discuss, and comment on this complicated public document.

We are not opposed to the project, Lennar, or your administration. We are not against expeditious development. We are, however, advocates of public engagement and transparency in government. It is our view that a forty-five day public review period for a document as complex and lengthy as this DEIR is simply inadequate under any circumstances. The release of this DEIR over the Thanksgiving, Hanukkah, Kwanza, and Christmas holiday is particularly troubling. Why is it that the City of Santa Clara was able to provide a longer public review period without the complication of the holidays for a DEIR that evaluated the impacts of *only a stadium project*?

By releasing a six-volume, 4,400 page document one and a half weeks before Thanksgiving, you have demanded that the public and community-based organizations choose between civic duty and national holidays, pre-arranged vacations, and obligations to family and faith. Realistically the holidays consume a minimum of ten days -- functionally reducing the time most people might reasonably devote to DEIR review to 35 days, assuming one works through the weekends. Holding public hearings a little over a month from the document's release further reduces that examination time to just a mere 25 days! Furthermore the public comment period ends December 28th, *only 3 days after Christmas*. By releasing the EIR over the winter holidays, the City has hobbled even an extension of the review period to 60 days because the New Year's holiday falls within that time compromising 4-5 days out of the added two weeks.

We recognize that some in the community, members of your staff, and Lennar are of the opinion that too much time has already been spent discussing this issue. *But this DEIR is completely different*. No prior discussion or committee action since the Phase 1 agreement in 2003, not even Prop G, carried with it the force of law of this Phase 2 DEIR. An Environmental Impact Report is an administrative **decision** document. This DEIR is the part of the approval process where ideas become concrete plans to be approved in a lawful process. The Shipyard Candlestick Project cannot be approved without an EIR. No prior discussion required City or Agency staff to present pros and cons or fully report the project's impacts. With all due respect, none of the "hundreds" of conceptual conversations, presentations, and meetings conducted by the City and Agency to this point equal the importance of giving the public the time to evaluate whether the DEIR fully and fairly reports and assesses the impacts of this project and proposes responsible solutions.

Transparency in government is not just a matter of letting the public see information. The capacity to act upon what one sees is critical to transparency and: The length of the look has a direct effect on the quality of observation. The Shipyard Candlestick project nearly doubles the population of Bayview Hunters Point. The EIR was nearly two years in the making. The City's project staff reasonably took the time to provide what in their opinion is an adequate review of the project. The public similarly deserves twelve weeks to examine and comment on your work. The City has just granted Lennar a six-month delay in the timetable for Phase 1 housing construction to allow the market time to improve and prices to rise. With Phase 1 delayed, construction for Phase 2 not expected to start until 2015, and project completion not expected before 2035. Mayor Newsom, you have the time to provide the citizens of our City with a responsible period to review this once-in-a-lifetime DEIR.

Bayview Hunters Point and San Francisco need and deserve ninety days to review the Candlestick Point Hunters Point Shipyard Draft Environmental Impact Report (DEIR). Extend the DEIR comment period to 12 February 2010.

Thank you.

Sierra Club ☼ Literacy for Environmental Justice ☼ Potrero Hill Democratic Club ☼ India Basin Neighborhood Association ☼ Visitation Valley Greenway Project ☼ San Francisco Tomorrow ☼ Urban Strategies Council ☼ Anders and Anders Foundation ☼ Neighborhood Parks Council ☼ Young Community Developers ☼ California Native Plants Society ☼ Positive Directions ☼ San Francisco Group - Bay Access ☼ Ohlone Profiles ☼ Visitation Valley Planning Alliance ☼ Golden Gate Audubon Society ☼ Visitation Valley Community Development Corporation ☼ South East Jobs Coalition ☼ Walden House ☼ Bayview Resource Center ☼ Arc Ecology
(Partial Listing)

20-1

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■ Letter 20: Multiple Commenters (12/14/09)

Response to Comment 20-1

Refer to Response to Comment 1-1 and Response to Comment 85-5 for a discussion of the adequacy of the public comment period, including the many opportunities for providing comments on the Draft EIR.

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■ Letter 21: Enea, Kristine (12/11/09)

1 of 1

Letter 21

From: Kristine Enea <kristine@indiabasin.org>
To: Muraoka Stanley <Stanley.Muraoka@sfgov.org>
Cc: Hussain Lila <Lila.Hussain@sfgov.org>, Evans Tom <tom.evans@sfgov.org>, Licia McMorro
<Licia.McMorrow@sfgov.org>
Date: 12/11/2009 07:12 AM
Subject: Shipyard-Candlestick DEIR and Innes Avenue mitigations

Hi Stanley,

One of my neighbors has been looking in the Shipyard-Candlestick DEIR for the details about traffic on Innes Avenue but can't find any, much less any proposed mitigations.

Can you point us in the right direction?

Thanks,
Kristine

Kristine Enea
kristine@indiabasin.org

21-1

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■ Letter 21: Enea, Kristine (12/11/09)

Response to Comment 21-1

Existing Conditions, Project-Only traffic volumes, and Year 2030 With Project Conditions traffic volumes are depicted on Figures 16, 31, and 32, respectively, in the Candlestick Point–Hunters Point Shipyard Phase II Development Plan Transportation Study (LCW Consulting, Fehr & Peers, and CHS Consulting Group, November 2009) (“Transportation Study”), which is included in Appendix D of the Draft EIR. Table 9 and Table 45 through Table 47 in the Transportation Study depict Existing Conditions and Year 2030 With Project Conditions intersection operating conditions along Innes Avenue.

Refer to Master Response 18 (Transit Mitigation Measures) for details regarding proposed roadway configuration and mitigation measures.

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Letter 22: Parkmerced Residents' Organization (12/9/09)

1 of 2



Letter 22

THE PARKMERCED RESIDENTS' ORGANIZATION

P.O. Box 27609, San Francisco, CA 94127-0609

Voice Mail: 415-267-3961

December 9, 2009

Attn: Stanley Muraoka
Environmental Review Officer
San Francisco Redevelopment Agency
One South Van Ness Avenue, Fifth Floor
San Francisco, CA 94103

Attn: Bill Wycko
Environmental Review Officer
San Francisco Planning Department
1650 Mission Street
San Francisco, CA 94103



Project Title: Candlestick Point-Hunters Point Shipyard Phase 2 Development Plan (Project)

Case Numbers: San Francisco Redevelopment Agency File No. ER06.05.07, Planning Dept. Case No. 2007.0946E, State Clearinghouse No. 2007082168

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Ralph Weddington

Genevieve Callejo (Emeritus)
Carolyn Cahn (President Emeritus)
Lora M. Traveler (President Emeritus)
Robert Pender (President Emeritus)

To whom it may concern:

The Parkmerced Residents' Organization represents the largest rental complex in the city of San Francisco. We submit the following comments on behalf of the existing community and planned future population being suggested by the proposed changes and our concerns for the massive redevelopment project proposed.

a) **Open-Space** - The total area is noted as 702 acres, and proposes development of 10,500 residential units, and an associated population of 24,465 residents. It states in your document a total of 240 acres of new parks, fields and waterfront recreation area in addition to 97 acres of new and improved state parkland. We request the environmental review agencies to consider the density of the proposed development in relation to a stated level of density per acre of open space. Currently there is no formal recognition of the need to provide adequate outdoor space to the residential neighborhoods being created. If you estimate alone the 702 acres divided by the approx. 35,000 new and existing total residents and you get .02 acres per person. There is no stated number of bedrooms being created, or how many people may share the developed units, so the actual need to quantify the open space and proposed housing population density is an essential measure in terms of a healthy neighborhood and the negative effects of over-populating a district, and its infrastructure. The Parkmerced neighborhood of 192 acres, was sold off to development and reduced to a current 112-116 acres, in addition we are being scheduled for development that would increase our "load" on the neighborhood by 5,700 units, which can total over 15,000-20,000 new community members in terms of population. There is a definitive need to address the open space to residential "tenant" or inhabitant of these units to ensure a healthy living environment is created for the community. The proposed open space sites and parks already seem under-scaled based on the actual future population being proposed. Please provide accurate projections of housing units and final population density to be achieved, with accurate information on the amount of space per unit being provided the residents of this future community.

22-1

PRO reserves the right to amend or reverse position statements.
VISIT OUR WEBSITE www.parkmercedresidents.org

2 of 2

b)) **Transit** - routing is shown being a secondary feature, and does not directly remove new residents from the automobile, or bus connections required to get to the downtown areas. We stated prior in memo's regarding this plan, that there was a need to route the muni system out and around the entire district being created, as a new "loop" with a separate lettered designation for the transit ridership proposed. This should be an essential infrastructure item installed and completed prior to any future building on site. The cumulative effects of these developments on the existing transit system of the T -Third light rail will overburden the current system and requires adequate review per CEQA of the effects. There is also little mention of high-speed rail routing, and the concerns for future routing of rail systems to provide linkages to future rail sites, and existing rail systems such as BART, CALTRANS, and the high-speed rail and ferry services noted. Emphasis must be placed on getting these infrastructural projects built prior to future development so as not to block off possible future transit connectivity, and ease of transit switching between systems.

22-2

c) **Rental Housing** - is not stated clearly in terms of the balance required to provide equal "opportunity" per Section 8.1 of the General Plan to build and provide, enhance and restore rental housing opportunities throughout the district and community. There is a distinct need due to San Francisco's Rent Control status that makes the need for rental housing more acute than ever in the S.F. BVHP district. There needs to be a full accounting of the number of rental units being created versus "for-sale" units, and that the city follows up to ensure that rental units that provide affordable base entry level rental prices are built and provided in EQUAL measure to the "for-sale" units being constructed. There is a need to ensure this balance due to the 2004 housing element not being in compliance, and the 2004 and 2009 housing element updates, which sadly remove protections for the creation of rental housing. Rent Control and the legal statutes of the city are unfairly being unbalanced by local housing development that does not develop equally the need for rental housing. Lenar threatened the city to back out of its agreement if forced to build rental housing. Currently the 1979 and "just-cause" eviction statues proposed by Supervisor Avalos, may be rejected by the Mayor's office, and this makes the future development of rental housing even more precarious for those existing families living in the BVHP that may move into new post 1979 housing and face evictions due to change in ownership or a multitude of issues that can cause loss of housing for working class, seniors, students, and families as a protected class in this neighborhood.

22-3

We strongly recommend reviewing the above noted issues in relation to the proposed project, as we face similar issues of TOD or transit "infill" projects that propose massive re-development and little future affordable rental housing stock with protections against evictions, adequate provisions for open space, and significant community based solutions to transit routing in the district.

Thank you for addressing these concerns in relation to this project proposal, especially the cumulative effects of density in relation to the need for healthy open space and provisions for rental housing, and adequate transit connectivity.

Sincerely ,

Aaron Goodman, President,
The Board of Directors,
The Parkmerced Residents' Organization
cc: Mayor Gavin Newsom, SF Board of Supervisors board.of.supervisors@sfgov.org ,
Nancy Wuerfel, Open Space coordinator at CSFN Coalition for San Francisco Neighborhoods, Jennifer Clary @ SF Tomorrow

■ Letter 22: Parkmerced Residents' Organization (12/9/09)

Response to Comment 22-1

Impact RE-2, Draft EIR pages III.P-15 to -31, provides the requested analysis of the amount of open space and parkland on the Project site in comparison to the new population. This analysis concludes that the Project area will include sufficient parkland to meet residents' and employees' recreational needs without leading to overuse or physical degradation of facilities.

Response to Comment 22-2

Transit is an essential component of the Project and the transit plan proposed in the Draft EIR is the product of a great deal of analysis and collaboration between key stakeholders. The following deficiencies have been identified as top community concerns in the extensive local and citywide planning efforts for the Project - and across southeastern San Francisco more generally:

- Comprehensive transit coverage, with more direct and faster service to Downtown and other San Francisco neighborhoods, and better access to regional transit (BART, Caltrain) serving regional employment centers and destinations
- Safer, more walkable streets with complete sidewalks and neighborhood traffic-calming
- Connected, safe bicycle routes connecting to the citywide bicycle network
- Area-wide traffic management to ensure access to regional highways and arterials without overwhelming residential and commercial streets
- Comprehensive parking management coordinated with the traffic network to ensure neighborhood livability in a balanced transportation system
- Clear and managed truck routes and good movement corridors to sustain local businesses without exacerbating congestion and street safety concerns

To upgrade the transportation networks in this area and address these deficiencies, various City agencies (including SFMTA, the Planning Department, the DPW, and others) have worked with the Project Applicant and other key transportation providers to ensure that the Project includes the following key improvements:

- A BRT network bringing fast, clean and quiet bus service on transit-exclusive lanes (designed for potential conversion to light rail) that link the area with the Bayview, Executive Park and Visitacion Valley neighborhoods, and connect to Caltrain, BART and the T-Third light rail and numerous Muni bus lines
- The Yosemite Slough bridge, directly connecting Candlestick Point and Hunters Point Shipyard with permanent, dedicated BRT lanes and pedestrian and bicycle paths. The bridge would reduce transit travel times throughout Southeast San Francisco and provide fast, reliable connections to BART and Caltrain. On game days, the bridge would accommodate four lanes of auto traffic for egress to and from the proposed 49ers Stadium, reducing stadium traffic delays and congestion in residential neighborhoods. During the rest of the year, these lanes would convert to a park amenity with additional pedestrian and bicycle paths.
- Extensions of key cross-town Muni trolley and motor coach lines to directly serve every quadrant of San Francisco from this area, and increasing capacity and frequency on these lines to benefit the

Project and the surrounding areas of the Bayview, Visitacion Valley, Dogpatch, the Central Waterfront, the Mission and Potrero Hill

- Two new express bus routes linking Candlestick Point and Hunters Point directly to Downtown
- Two transit transfer hubs in the Project, and a major Caltrain/light-rail/bus/BRT hub at Bayshore Station
- Design of streets within the Project to the City’s new “Better Streets” standards of accessible sidewalks, sustainable “green” infrastructure, traffic calming, landscaping, lighting and safe intersection design
- Extensive, continuous bicycle connections within the Project to connect to existing city bicycle paths, lanes and routes, as well as the Bay Trail and the Blue Greenway network
- Pedestrian improvements along main corridors between the Project and surrounding neighborhoods, including streets such as Gilman Avenue, Palou Avenue, Innes Avenue and Harney Way
- Coordinated parking and goods movement strategies to ensure high standards of livability for residents and visitors/employees coming to the area
- On-site Traffic Demand Management program for the entire Project area to maintain a balanced transportation system and ensure that transit, carpool, and other options remain viable and attractive. This includes parking management, resident and employee transit passes, and carsharing and bikesharing facilities.
- Full accommodation of game-day traffic and transit for the proposed 49ers stadium to secure both faster automobile ingress/egress than current conditions, and more frequent, reliable transit access to the rest of San Francisco, the South Bay, and the rest of the Bay Area
- State-of-the-Art “green” sustainable infrastructure innovations that adapt year-round amenities with specific game-day transportation needs, including the Yosemite Slough bridge (described above) and the green play/sports areas that would convert to game-day parking
- A phasing and monitoring plan of these transportation services, coordinated with SFMTA, to ensure the cost-effective, sustainable provision of services matching each development phase of the Project

Page III.D-37 of the Draft EIR describes the transit improvements expected to occur in the area as part of SFMTA’s TEP. Page III.D-48 of the Draft EIR describes the additional transit improvements that are proposed as part of the Project.

Refer also to Master Response 18 (Transit Mitigation Measures) for details regarding proposed roadway configuration and mitigation measures designed to reduce transit delays.

The commenter suggests that new Muni routes to Downtown should be required. As described above and in the Draft EIR, the Project would implement two new express bus routes from the Project to Downtown San Francisco, as well connections to regional transit (BART, Caltrain, and the T-Third Light Rail) all of which would provide connections to Downtown San Francisco.

The commenter also suggests that a new “loop” transit route should be created around the entire site to improve connections within the site. The proposed BRT route would travel from the center of the Hunters Point Shipyard development through the center of the Candlestick Point development, providing easy connections between the two sites, as well as to other regional transit connections.

The commenter also notes that the cumulative effects of all development currently proposed in the area should be considered, particularly with respect to capacity of the T-Third light rail line. Potential capacity impacts to transit are analyzed under Impacts TR-18, TR-19, and TR-20 on Draft EIR pages III.D-100 to -104 state that under year 2030 cumulative conditions with the Project, transit service within the project study area cordons, downtown screenlines, and regional screenlines would all operate within capacity standards. The 2030 cumulative conditions include cumulative development projected for the Bayview area and for the rest of San Francisco. Based on the analysis, the Draft EIR concluded that the Project's impacts to transit capacity would be less than significant with implementation of the Project's transit operating plan.

Finally, the commenter notes that the Draft EIR does not mention high-speed rail as a necessary component for implementation of the Project nor does it discuss potential transit connections. Although high-speed rail is currently under study by the High-Speed Rail Authority (HSRA), its funding is not certain and the analysis does not assume it would be in place. The California high-speed rail project is proposed to connect Los Angeles with San Francisco, with stops in major metropolitan areas. The trains would have travel speeds of up to 220 mph, and the journey between Los Angeles and San Francisco would be made in less than 2 hours and 40 minutes. In order to meet the desired travel times between Los Angeles and San Francisco, the train would make limited stops. In the segment between San Jose and San Francisco, three stations are preferred (in San Jose, at the San Francisco International Airport [SFO], and at the San Francisco Transbay Terminal). A potential station at either Mountain View, Palo Alto or Redwood City is also being considered. Given the proximity of the project site to the downtown San Francisco terminus, it is unlikely that a stop at CP-HPS would be provided. If high speed rail were to be implemented with a stop in downtown San Francisco, residents, employees and visitors to CP-HPS would be able to take advantage of high speed intercity rail travel between major metropolitan areas (e.g., instead of taking a plane to Los Angeles, they would take the high speed train). If implemented, the high-speed rail project itself would not likely change the travel modes to and from the project site, and the transportation impacts of the project identified in the Draft EIR would not be affected.

If, independently from or in conjunction with the high-speed rail project, a downtown extension and electrification of Caltrain were implemented (a proposal that is also not funding certain and therefore not assumed or analyzed), additional transit ridership from the Project-enhanced Bayshore Caltrain station and surrounding area would likely be generated. This could have the effect of supplementing and complementing transit ridership between the Visitacion Valley/Executive Park area, and of inducing more automobile-to-transit trips along this corridor. If so, this would likely somewhat relieve both traffic congestion in the corridor and the demand for transit service on parallel existing and proposed lines, such as the T-Third, the 9-San Bruno, and the proposed Candlestick Point Express bus, and, therefore, result in no additional potential impacts.

Response to Comment 22-3

The commenter expresses concern about the balance of rental versus for-sale housing in the Project. Of the Project's below-market housing, approximately 49.2 percent will be rental-only units, and the remainder will be for-sale or rental, consisting of the following:

- 256 Alice Griffith Public Housing replacement units to be rented at rates affordable to households earning between 0 and 60 percent of Area Median Income, as defined by the US Department of

Housing and Urban Development (HUD) for the HUD Metro Fair Market Rent Area (HMFA) that contains San Francisco

- 1,388 Agency Affordable Units to be developed by the Redevelopment Agency and rented to households earning between 0 and 60 percent of Area Median Income (AMI)
- 809 Units to be privately developed as either for-sale or rental units and sold or leased to households earning between 80 and 120 percent of AMI
- 892 Units to be privately developed as either for-sale or rental units and sold or leased to households earning between 121 and 160 percent of AMI

Refer to Response to Comment 50-13 for specific information regarding the income distribution for San Francisco.

■ Letter 23: Winter, Rhonda (12/8/09)

1 of 1

Letter 23

From: rhonda winter <rhondawinter@yahoo.com>
To: stanley.muraoka@sfgov.org
Date: 12/08/2009 05:04 PM
Subject: public comment on the Bayview Draft EIR?

Dear Mr. Muraoka-

I live in Bayview and want to make a public comment on the recently released Draft EIR. Can public comments be made somewhere online? Are there other forums to solicit feedback from the public, other than the two hearings that are scheduled for next week at City Hall? Do you know if the public comment period is going to be extended to ninety days?

23-1

Thank you very much for your help-
Rhonda Winter

<http://greenoptions.com/author/rhondawinter>

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■ Letter 23: Winter, Rhonda (12/8/09)

Response to Comment 23-1

Refer to Response to Comment 1-1 and Response to Comment 85-5 for a discussion of the adequacy of the public comment period, including the many opportunities for providing comments on the Draft EIR.

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■ Letter 24: City of Brisbane (11/18/09)

1 of 1

Letter 24

From: "Swiecki, John" <jswiecki@ci.brisbane.ca.us>
To: Stanley Muraoka <Stanley.Muraoka@SFGOV.ORG>
Date: 11/18/2009 08:16 AM
Subject: Bayview Waterfront DEIR

Hi Stan:

I understand the DEIR has been published- I've seen neither a copy of the document nor the NOA. Please advise how I can obtain a copy.

24-1

Regards
John

John A. Swiecki, AICP
Principal Planner
City of Brisbane
50 Park Place
Brisbane, CA 94005
415.508.2120
jswiecki@ci.brisbane.ca.us

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■ Letter 24: City of Brisbane (11/18/09)

Response to Comment 24-1

The Draft EIR is available for public review by appointment at the San Francisco Redevelopment Agency, One South Van Ness Avenue, Fifth Floor, San Francisco, CA 94103, or at the City Planning Department, 1650 Mission Street, Fourth Floor, San Francisco, CA 94103. The EIR will be posted for public review at <http://www.sfplanning.org> and www.sfgov.org/sfra. Additionally, the City of Brisbane received a copy of the Draft EIR and provided comments as evidenced by Letter 7 (City of Brisbane).

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■ Letter 25: Golden Gate Audubon Society (11/16/09)

1 of 1



Letter 25



November 16, 2009

Via U.S. Mail

Mr. Stanley Muraoka
Environmental Review Officer
San Francisco Redevelopment Agency
One South Van Ness Avenue, 5th Floor
San Francisco, CA 94103

RE: Project Title: Candlestick Point- Hunters Point Shipyard Phase II Development Plan (Project)
Case Number: SF Redevelopment Agency File #ER06.05.07
Planning Department Case #2007.0946E
State Clearinghouse#2007082168

Dear Mr. Muraoka:

I am writing on behalf of the Golden Gate Audubon Society and its more than 10,000 members and supporters to request a 90 day extension on the comment period for the Candlestick Point-Hunters Point Shipyard Phase II Development Plan (Project) Draft Environmental Impact Report (DEIR). Forty-five days is too brief a period for adequate review and comment on this 4,400 page DEIR. Moreover, there are many holidays that fall between November 12, 2009 and the current deadline of December 28, 2009.

In order for this project to include adequate review and input from the public, a full 90 day extension is necessary. If no extension is granted, many organizations and citizens that will be greatly affected by the Development Plan will be unable to make their voice heard in this process. With the extension, we can proceed with a final EIR that is more robust, credible, and less vulnerable to political and legal challenges.

Therefore, please extend the current comment deadline of December 28, 2009 to March 28, 2010. If you would like to discuss this issue further, please do not hesitate to contact me. Thank you for your consideration.

Sincerely,

Mike Lynes
Conservation Director

Cc: Supervisor Sophie Maxwell, District 10
Arthur Feinstein, Arc Ecology
Ruth Gravanis, Sierra Club
Peter Brastow, Nature in the City

GOLDEN GATE AUDUBON SOCIETY
2530 San Pablo Avenue, Suite G Berkeley, California 94702
phone 510.843.2222 fax 510.843.5351 web www.goldengateaudubon.org

25-1

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■ Letter 25: Golden Gate Audubon Society (11/16/09)

Response to Comment 25-1

Refer to Response to Comment 1-1 and Response to Comment 85-5 for a discussion of the adequacy of the public comment period, including the many opportunities for providing comments on the Draft EIR.

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■ Letter 26: Dodt, Dan (11/13/09)

1 of 1

From: Dan Dodt <dodt@mac.com>
To: Stanley Muraoka <Stanley.Muraoka@sfgov.org>
Date: 11/13/2009 03:17 PM
Subject: Shipyard EIR

Letter 26

Hello Stanley,

It has been some time since we last connected on our favorite subject (at least after red wine) - Bayview growth and development. I understand that a copy of the Shipyard EIR is available on Cd/DVD. Is it possible for you to send a copy my way? My mailing address is: 1556 Revere Avenue, SF 94124.

Many thanks and best wishes to you and yours.

Dan Dodt
dodt@mac.com
www.dandodt.com

26-1

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■ Letter 26: Dodt, Dan (11/13/09)

Response to Comment 26-1

Refer to Response to Comment 1-1 and Response to Comment 85-5 for a discussion of the adequacy of the public comment period, including the many opportunities for providing comments on the Draft EIR.

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Letter 27: Da Costa, Francisco (1/12/10)

1 of 15

From: Francisco Da Costa
<fdc1947@gmail.com>

To: Michael Cohen <michael.cohen@sfgov.org>, John Rahaim <john.rahaim@sfgov.org>, Rosemary Cambra <muwekma@muwekma.org>, Stanley Muraoka <Stanley.Muraoka@sfgov.org>, Fred Blackwell <fred.blackwell@sfgov.org>, Bill Wycko <bill.wycko@sfgov.org>, Tiffany Bohee <tiffany.bohee@sfgov.org>, Jaron Browne <jaron@peopleorganized.org>, Espanola Jackson <EspanolaJackson@sbcglobal.net>

Date: 01/12/2010 06:42 AM

Subject: California Senate Bill 18.

Letter 27

California Senate Bill 19 mandates outreach to the First People in this case the Muwekma Ohlone: www.muwekma.org

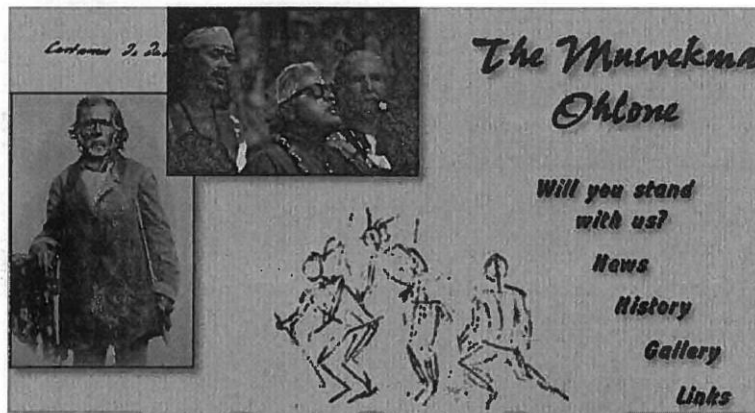
This clearly has not been done by the SF Planning Department and those Departments that are fast tracking this process:

http://www.oc-apa.org/newsletters/2006_1st_qtr.pdf

Francisco Da Costa

27-1

****Copy of Web Link 1 above****



27-2

Welcome to the official website of the Muwekma Ohlone Indian Tribe. We are the original inhabitants of San Francisco, California, USA, and the surrounding Bay Area.



To introduce ourselves, we can do no better than to quote the words of the United States District Court in Washington, DC:

"In the early part of the Twentieth Century, the Department of the Interior ("DOI") recognized the Muwekma Tribe as an Indian tribe under the jurisdiction of the United States. In more recent times, however, and despite its steadfast efforts, the Muwekma Tribe has been unable to obtain federal recognition, a status vital to the Tribe and its members."

We have just received a highly favorable judicial ruling, dated September

21, 2006, in our action seeking review of the Department of the Interior's "Final Determination Against Federal Acknowledgment.



You may also be interested to watch a short movie on the "[Death of the Muwekma Ohlone Pocket Park](#)." The park was once located in our ancestral homeland along the shores of Islais Creek, San Francisco, California. One of our mortuary mounds was found not far from there in 1910, as related in our [tribal history](#).

****Copy of Web Link 2 above****

Senate Bill 18: Expanding CEQA for the Protection of California's Traditional Tribal Cultural Places

Rachel Struglia, PhD, AICP

Mandating Discussion, Building Relationships

With unprecedented development pressures in inland counties, tribes are losing cultural resources without the opportunity to save or record them. California Senate Bill (SB) 18 (Burton, D-San Francisco) helps tribes and jurisdictions define resources and sacred areas more clearly and incorporates protection of these places earlier into General Plan and Specific Plan processes. The SB 18 process mirrors the federal 106 Review process used by archaeologists as part of the environmental review conducted under the National Environmental Policy Act (36 CFR Part 800.16). Senate Bill 18 is the first law in the nation to mandate tribal consultation at the local level.

SB 18 incorporates the protection of California traditional tribal cultural places into land use planning for cities, counties, and agencies. The California Environmental Quality Act (CEQA) has requirements for the evaluation of potential land use impacts to Native American artifacts and sites, but primarily from an archaeological point of view.

SB 18 introduces a separate process that expands the focus to include traditional tribal cultural places on both public and private lands for federally and nonfederally recognized tribes. A cultural place is a landscape feature, site, or cultural resource that has some relationship to particular tribal religious heritage or is an historic



27-2
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or archaeological site of significance or potential significance. The cultural place may be outside the reservation boundary. Many tribes have "Traditional Use Areas" that extend miles beyond reservation boundaries, reflecting their historical mobile patterns (as depicted in Figure 1). While SB 18 and CEQA are separate processes, SB 18 consultation occurs simultaneously with implementation of CEQA.

The Participants

SB 18 places the responsibility of initiating consultation on local governments. The purpose of SB 18 is to provide time for tribal input early in the planning process. Besides city staff and tribal representatives, the process may also include applicants and consultants. The local government should contact the tribe first to determine the appropriate level of private landowner involvement, because there may be occasions where the tribe prefers to maintain strict confidentiality without the inclusion of a private, third-party landowner. There is no requirement that the applicant be included. Consultants can assist in many ways: they can coordinate the correspondence to the Native American Heritage Commission (NAHC) and assist with tribal contact, they can prepare materials for the consultation meetings, and they can translate the results of the consultation into new General Plan policy or EIR mitigation, as appropriate. As the *Tribal Consultation Guidelines* state, the consultant should not initiate contact with tribal representatives. This should come from a city department head or director.

Triggering Actions

SB 18 consultation applies to the adoption and amendment of both General and Specific Plans proposed on or after March 1, 2005. SB 18 consultation is a "government to government" interaction between tribal representatives and representatives of the local jurisdiction.

Requirements

Identifying Tribes through the Native American Heritage Commission (NAHC)

Once a local government initiates a proposal to adopt or amend a General or Specific Plan, the local government must send a written request to the NAHC asking for a list of tribes to consult. Requests should clearly state that the local government is



27-2
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seeking information about tribes that are on the "SB 18 Tribal Consultation List." The NAHC is mandated to provide local governments with a written contact list of tribes in the local government's jurisdiction in 30 days.

As Figure 2 shows, in cases where tribal consultation occurs later in the process (Scenarios B or C), the CEQA-mandated timelines can act to define goals and prevent the consultation period from extending into the nebulous future. However, delays could cause significant changes to the land use plan or extensive CEQA mitigation.

Challenges

The NAHC Contact List

The NAHC contact list errs on the side of comprehensiveness and may include tribes far from the jurisdiction in question. Also, (Continued on page 4)

the tribal contacts may not be the appointed representatives of the tribe. The local government must still send a request to consult to each tribe on the list.

Locating Sacred Sites

The stumbling block in every consultation attended by The Planning Center has been pinpointing the location of tribal cultural places. In many cases, neither the city nor the tribe knew precisely where these sites might be located. It is difficult to develop a method for protection of these sites without this information.

Sharing Information and Protecting Confidentiality

Once the locations of these sites are known by the tribe and/or local jurisdiction, the two parties must reach agreement on how much information should be publicly shared so that these places remain protected. Consultation ends once the two parties agree on the suitability of the actions or have agreed not to agree. SB 18 mandates discussion, not resolution. The hope is that discussion will lead to resolution of potential land use conflicts.

Consultation for Projects Begun before March 1, 2005

The schedule can present a challenge for General Plan and Specific Plan projects already in midstream when SB 18 took effect. Since the tribal input cannot come early in the planning process in these



27-2
cont'd.

cases, the default has been to fold tribal input into the CEQA document.

Incorporating Open Space into Specific Plans

Responding to tribal input may require the jurisdiction to take several policy actions. Imagine the following scenario: a Specific Plan project is proposed and tribal input indicates that more open space needs to be dedicated to protect a tribal cultural place on-site. The Specific Plan must either increase density or lose residential units to incorporate this open space into the plan, not unlike the scenario of trying to meet an unexpected park acreage requirement. In order to meet the need for additional open space, the Specific Plan is no longer consistent with the adopted General Plan. In this case, the jurisdiction must decide whether to pursue a General Plan Amendment or define the Specific Plan to be consistent by averaging units across the site.

January/February/March 2006 **5**

(Continued from page 4)

Recommendations

We recommend the following to agencies facing their first SB 18 consultation.

- Because there is considerable confusion about where cultural places may be located, each jurisdiction should develop, in consultation with the tribes, a cultural resource "filtering" process for determining areas of high and low cultural sensitivity. It can become onerous for a local government to route every development application through each tribal government that defines the jurisdiction as part of its traditional use area. The routing of every development application would not, by itself, constitute fulfillment of the requirements of consultation. The tribe and local jurisdiction should reach a preconsultation agreement that outlines a process for filtering applications and for how the tribe should respond to assist the local government in identifying which applications have a



27-2
cont'd.

greater likelihood of impacting cultural sites. Cities and counties can do their part by conducting an annual search through the NAHC and the California Historic Resources Information System (CHRIS). Because records maintained by the NAHC and CHRIS are not exhaustive, a tribe may be the only source of information regarding the existence of a cultural place.

- Conduct consultation early in the project's planning phases. This allows the local government and tribe to develop opportunities for preservation of cultural resources and to build preservation or avoidance into the land use plan. When consultation does not occur early in the planning process and a plan is formed without tribal input, the less desirable courses of action would include plan revisions or an EIR with mitigation to avoid or reduce impacts to a cultural resource on-site.
- Keep accurate records to pinpoint the conclusion of the SB 18 consultation. This is particularly important depending on the timing of tribal consultation.
- If no response is received from a tribe within 90 days of the distribution of consultation letters, the request is considered concluded. Any letter received may still be handled as an EIR comment. The CEQA public distribution list may include tribes listed by the NAHC that have not answered the request for consultation, so it can get confusing if a non-listed tribe requests consultation later in the process.

(Continued on page 6)

6 January/February/March 2006

(Continued from page 5)

- Consult with one tribe at a time. Different tribes may have varying concerns and expectations and it becomes difficult for a jurisdiction



27-2
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to balance each concern, particularly if there are multiple—and potentially divergent—interests involved. Tribes may not always agree, and it is not the intent of SB 18 to make the jurisdiction a mediator.

Conclusion

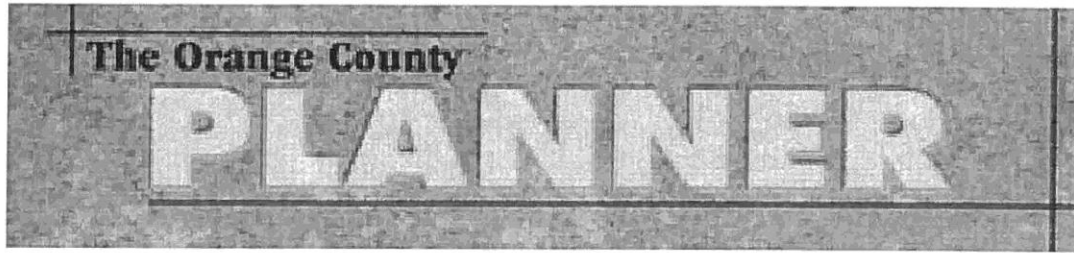
Variation is likely to be the name of the game when it comes to SB 18 consultation. Some jurisdictions will have many tribal governments responding to consultation and others will have few. One approach may not fit all.

SB 18 may seem unclear on how long or what form consultation may take, but the ambiguity allows jurisdictions and tribes to develop a customized, flexible approach to cultural resource protection that best fits their needs. SB 18 goes far in encouraging jurisdictions and tribes to build on existing relationships, with a focus on cooperation that can streamline subsequent environmental review.

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THE AMERICAN PLANNING ASSOCIATION

Senate Bill 18: Expanding CEQA for the Protection of California’s Traditional Tribal Cultural Places

Rachel Struglia, PhD, AICP

Mandating Discussion, Building Relationships

With unprecedented development pressures in inland counties, tribes are losing cultural resources without the opportunity to save or record them. California Senate Bill (SB) 18 (Burton, D-San Francisco) helps tribes and jurisdictions define resources and sacred areas more clearly and incorporates protection of these places earlier into General Plan and Specific Plan processes. The SB 18 process mirrors the federal 106 Review process used by archaeologists as part of the environmental review conducted under the National Environmental Policy Act (36 CFR Part 800.16). Senate Bill 18 is the first law in the nation to mandate tribal consultation at the local level.

SB 18 incorporates the protection of California traditional tribal cultural places into land use planning for cities, counties, and agencies. The California Environmental Quality Act (CEQA) has requirements for the evaluation of potential land use impacts to Native American artifacts and sites, but primarily from an archaeological point of view.

SB 18 introduces a separate process that expands the focus to include traditional tribal cultural places on both public and private lands for federally and non-federally recognized tribes. A cultural place is a landscape feature, site, or cultural resource that has some relationship to particular tribal religious heritage or is an his-

toric or archaeological site of significance or potential significance. The cultural place may be outside the reservation boundary. Many tribes have “Traditional Use Areas” that extend miles beyond reservation boundaries, reflecting their historical mobile patterns (as depicted in Figure 1). While SB 18 and CEQA are separate processes, SB 18 consultation occurs simultaneously with implementation of CEQA.

The Participants

SB 18 places the responsibility of initiating consultation on local governments. The purpose of SB 18 is to provide time for tribal input early in the planning process. Besides city staff and tribal representatives, the process may also include applicants and consultants. The local government should contact the tribe first to determine the appropriate level of private landowner involvement, because there may be occasions where the tribe prefers to maintain strict confidentiality without the inclusion of a private, third-party landowner. There is no requirement that the applicant be included.

Consultants can assist in many ways: they can coordinate the correspondence to the Native American Heritage Commission (NAHC) and assist with tribal contact, they can prepare materials for the consultation meetings, and they can translate the results of the consultation into new General Plan policy or EIR mitigation, as appropriate. As the *Tribal Consultation Guidelines* state, the consultant should not initiate contact with tribal representatives. This should come from a city department head or director.

Triggering Actions

SB 18 consultation applies to the adoption and amendment of both General and Specific Plans proposed on or after March 1, 2005. SB 18 consultation is a “government to government” interaction between tribal representatives and representatives of the local jurisdiction.

Requirements

Identifying Tribes through the Native American Heritage Commission (NAHC)

Once a local government initiates a proposal to adopt or amend a General or Specific Plan, the local government must send a written request to the NAHC asking for a list of tribes to consult. Requests should clearly state that the local government is seeking information about tribes that are on the “SB 18 Tribal Consultation List.” The NAHC is mandated to provide local governments with a written contact list of tribes in the local government’s jurisdiction in 30 days.

As Figure 2 shows, in cases where tribal consultation occurs later in the process (Scenarios B or C), the CEQA-mandated timelines can act to define goals and prevent the consultation period from extending into the nebulous future. However, delays could cause significant changes to the land use plan or extensive CEQA mitigation.

Challenges

The NAHC Contact List

The NAHC contact list errs on the side of comprehensiveness and may include tribes far from the jurisdiction in question. Also,

In This Issue:

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Page 6	<i>AICP Update</i>
Page 7	<i>OCAPA’s New Board Members</i>

(Continued on page 4)

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DIRECTOR'S MESSAGE

Welcome to 2006!

A new year is upon us! I hope you had a wonderful holiday season and I wish you health and happiness for the new year.

The new year sees the terms of a number of Board Members and appointed positions ending. The Board of Director's would like to thanks the following Board Members for their dedication to volunteering their time for OCAPA;

Brian Jackson, AICP (IBI Group.) – Vice Director for Membership
Victoria Beard, Phd (UCI) – Academic Liaison
Tom Holms, AICP (Michael Brandman Associates) – Legislative Liaison
Anna Pehoushek, AICP (City of Orange) – Vice Director for AICP
Jennifer Lilley, AICP (Civic Solutions, Inc.) – Vice Director for Programs

I would also like to welcome the newest members of the Board of Director's for 2006:

David Crook, AICP – Vice Director for Membership
Claire Flynn, AICP – Vice Director for AICP Certification
Kimberly Brandt, AICP – Vice Director for Programs

The new board officially begins their duties on January 1, 2006 and will be conducting a half-day retreat to set the goals and priorities for the coming year. The development of these goals will respond the input we've received from the membership in 2005. If you have any ideas you would like the Board to consider, please let us know.

A number of exciting changes are in store for 2006 which the Board believes will enhance the quality and effectiveness of your membership in APA:

Bob Goldin Memorial Scholarship Fund

In collaboration with the Planning Director's Association of Orange County, OCAPA is pleased to continue this successful scholarship fund. Scholarships will be announced at our annual Awards Banquet in Spring and professional development stipends are currently available for planning students. Please contact OCAPA for more details

2006 CCAPA Conference in Orange County!

OCAPA will be the host for the 2006 CCAPA conference to be held in October at the Hyatt Anaheim Resort.

We are please to have Brian Jackson, AICP bjackson@ibigroup.com as our Conference Chair to plan for this exciting event in Orange County. Look for updates and more information on OCAPA's website as we plan for the Conference.

Once again, welcome to 2006! On behalf of the Board of Director's I wish you happy and healthy 2005. Remember, the Board is here to serve you. If you have any question, comments or suggestions, please do not hesitate to contact us.

DAVE

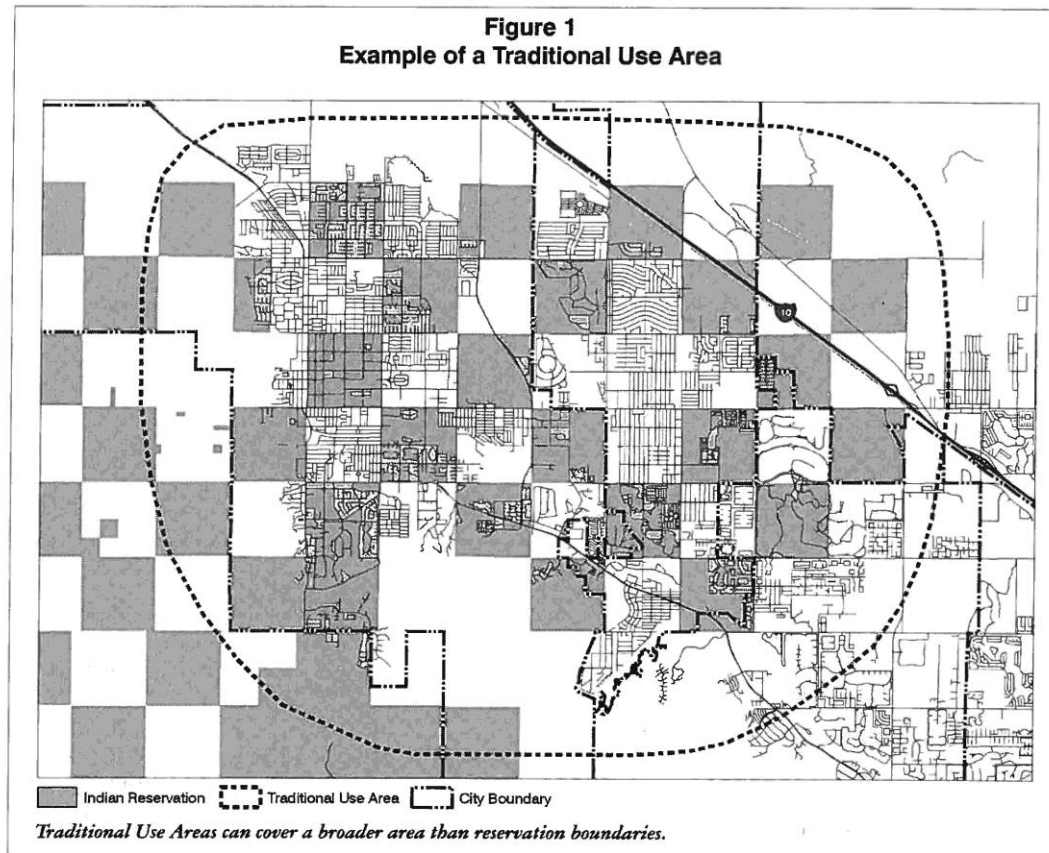
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CALENDAR OF EVENTS		
DATE	EVENTS	HOST
January 10— January 12	Living with Fire in Chaparral Ecosystems: Providing Tools for Decision Makers. This summit is the culmination of a year-long project by the USDA Forest Service, in conjunction with UC Berkeley Center for Forestry, the Edward J Blakely Center for Sustainable Suburban Development at UC Riverside and the San Diego Natural History Museum. For more information, contact Dr. Pamela Padgett at 951.680.1584 or ppadgett@fs.fed.us.	USDA Forest Service Riverside Fire Lab
January 20	UCLA Extension Land Use Law and Planning Conference. UCLA Extension Public Policy Program's annual Land Use Law and Planning Conference is a leading source of information for attorneys, planners, public officials, consultants, developers, real estate professionals, and others involved in planning and development issues in California. This year's conference presents an update to important new legislation, case laws, policies, and emerging trends in the fields of land use law and planning and environmental policy. For more information, contact Yumi Hori at yhori@uclaextension.edu.	UCLA Extension Public Policy Program
January 29— January 31	Legislative and Policy Conference. Every day, legislators and officials in Washington D.C. make decisions that affect your plans. Come to APA's 2006 Legislative and Policy Conference to find out what they're up to and attend Planners Day on Capitol Hill to meet with your congressional representatives and let them know what your community needs. For more information contact govtaffairs@planning.org	American Planning Association
February 15— February 16	Land-Use Law After the Four Supreme Court Decisions of 2005. The nine justices of the U.S. Supreme Court spent much of their 2004-2005 term changing the legal landscape in which planners work. They tackled eminent domain, the "substantially advances" test for takings, telecommunications zoning challenges, and double dipping claims. This workshop will help planners determine what these decisions mean to their communities. For more information, contact Tonicka Little at 312.786.6342 or confregistration@planning.org.	American Planning Association
February 15— February 16	Tax Policies and Techniques That Support Planning. As a source of funding for public projects and a frequent incentive for private development, taxes set the framework for many planning decisions. This workshop will give planners a better understanding of how tax policies affect their work and how they can use them to implement plans. For more information, contact Tonicka Little at 312.786.6342 or confregistration@planning.org.	American Planning Association and Lincoln Institute of Land Policy
February 17— February 18	Paying for Economic Development. A strong economic development program can bring jobs and economic activity to a community and improve its quality of life. A variety of models and tools can help communities pay for economic development. This workshop will help planners determine which are best suited to their goals. This workshop will cover all the essential skills and tools, providing a solid foundation for financing economic development. For more information, contact Tonicka Little at 312.786.6342 or confregistration@planning.org.	American Planning Association and Lincoln Institute of Land Policy
February 17— February 18	Growing Green, Achieving Sustainability. The environmental responsibilities of local governments encompass much of the natural landscape. This workshop will help planners create plans that sustain the quality of the environment, while conforming to State and Federal regulation. The workshop will be held at the Radisson Hotel Harbor View in San Diego. For more information, contact Tonicka Little at 312.786.6342 or confregistration@planning.org.	American Planning Association and Lincoln Institute of Land Policy

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3

Figure 1
Example of a Traditional Use Area



(Continued from page 1)

the tribal contacts may not be the appointed representatives of the tribe. The local government must still send a request to consult to each tribe on the list.

Locating Sacred Sites

The stumbling block in every consultation attended by The Planning Center has been pinpointing the location of tribal cultural places. In many cases, neither the city nor the tribe knew precisely where these sites might be located. It is difficult to develop a method for protection of these sites without this information.

Sharing Information and Protecting Confidentiality

Once the locations of these sites are

known by the tribe and/or local jurisdiction, the two parties must reach agreement on how much information should be publicly shared so that these places remain protected. Consultation ends once the two parties agree on the suitability of the actions or have agreed not to agree. SB 18 mandates discussion, not resolution. The hope is that discussion will lead to resolution of potential land use conflicts.

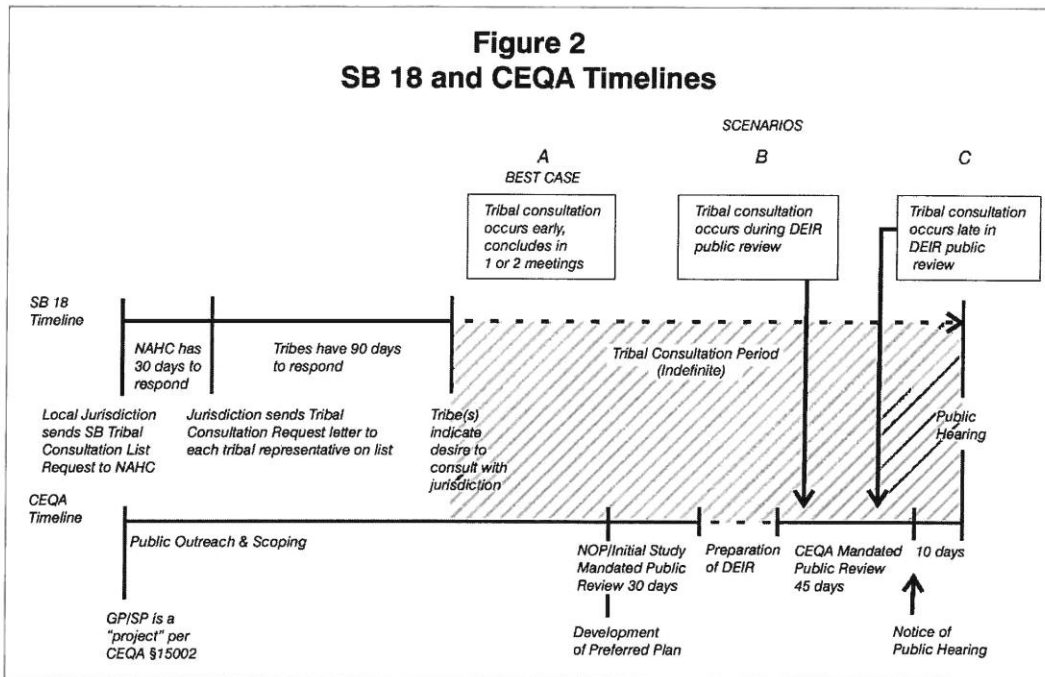
Consultation for Projects Begun before March 1, 2005

The schedule can present a challenge for General Plan and Specific Plan projects already in midstream when SB 18 took effect. Since the tribal input cannot come early in the planning process in these cases, the default has been to fold tribal input into the CEQA document.

Incorporating Open Space into Specific Plans

Responding to tribal input may require the jurisdiction to take several policy actions. Imagine the following scenario: a Specific Plan project is proposed and tribal input indicates that more open space needs to be dedicated to protect a tribal cultural place on-site. The Specific Plan must either increase density or lose residential units to incorporate this open space into the plan, not unlike the scenario of trying to meet an unexpected park acreage requirement. In order to meet the need for additional open space, the Specific Plan is no longer consistent with the adopted General Plan. In this case, the jurisdiction must decide whether to pursue a General Plan Amendment or define the Specific Plan to be consistent by averaging units across the site.

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(Continued from page 4)

Recommendations

We recommend the following to agencies facing their first SB 18 consultation.

- Because there is considerable confusion about where cultural places may be located, each jurisdiction should develop, in consultation with the tribes, a cultural resource "filtering" process for determining areas of high and low cultural sensitivity. It can become onerous for a local government to route every development application through each tribal government that defines the jurisdiction as part of its traditional use area. The routing of every development application would not, by itself, constitute fulfillment of the requirements of consultation. The tribe and local jurisdiction should reach a pre-consultation agreement that outlines a process for filtering ap-

plications and for how the tribe should respond to assist the local government in identifying which applications have a greater likelihood of impacting cultural sites. Cities and counties can do their part by conducting an annual search through the NAHC and the California Historic Resources Information System (CHRIS). Because records maintained by the NAHC and CHRIS are not exhaustive, a tribe may be the only source of information regarding the existence of a cultural place.

- Conduct consultation early in the project's planning phases. This allows the local government and tribe to develop opportunities for preservation of cultural resources and to build preservation or avoidance into the land use plan. When consultation does not occur early in the planning process and a plan is formed without tribal input,

the less desirable courses of action would include plan revisions or an EIR with mitigation to avoid or reduce impacts to a cultural resource on-site.

- Keep accurate records to pinpoint the conclusion of the SB 18 consultation. This is particularly important depending on the timing of tribal consultation.
- If no response is received from a tribe within 90 days of the distribution of consultation letters, the request is considered concluded. Any letter received may still be handled as an EIR comment. The CEQA public distribution list may include tribes listed by the NAHC that have not answered the request for consultation, so it can get confusing if a non-listed tribe requests consultation later in the process.

(Continued on page 6)

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(Continued from page 5)

- Consult with one tribe at a time. Different tribes may have varying concerns and expectations and it becomes difficult for a jurisdiction to balance each concern, particularly if there are multiple—and potentially divergent—interests involved. Tribes may not always agree, and it is not the intent of SB 18 to make the jurisdiction a mediator.

Conclusion

Variation is likely to be the name of the game when it comes to SB 18 consultation. Some jurisdictions will have many tribal governments responding to consultation and others will have few. One approach may not fit all.

SB 18 may seem unclear on how long or what form consultation may take, but the ambiguity allows jurisdictions and tribes to develop a customized, flexible approach to cultural resource protection that best fits their needs. SB 18 goes far in encouraging jurisdictions and tribes to build on existing relationships, with a focus on cooperation that can streamline subsequent environmental review.

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2006 AICP Exam

The next opportunity for certification by the American Institute of Certified Planners (AICP) will be at the examination next May. Now is the time to apply and begin preparing if you are interested. To find out about applying from the APA website, at www.planning.org; click on "About APA," then "AICP," and then "Certification." This page will give you information including dates, fees, and study materials, which can also be viewed at www.planning.org/certification/.

The California Chapter also offers a study guide, which can be obtained from Kimberly Christensen, the chapter Professional Development Officer, by emailing her at Kchristensen@elsegundo.org. The deadline for applying for the May exam has not been announced but will likely be in February 2006. Workshops by AICP and private vendors will also be offered next year with announcements made as they become available.

AICP Code of Ethics

How should planners present themselves to the public and other planners? How should they balance client desires and the public's interest? How should issues be portrayed and information shared? These and other aspects of our responsibilities are addressed through the AICP code of Ethics and Professional Conduct. A new code has been prepared that took effect on June 1, 2005. As Certified Planners, AICP members have obligations to abide by the Code and also share with others the principles by which we practice our profession.

Just to remind everyone, our primary responsibility is to serve the public interest with compassion for the welfare of all people. Doing so will convey the sense that we are concerned with the highest integrity. However, ethics is situational and therefore tricky to implement consistently. Training in ethics is possible from materials provided by AICP at the APA website available at www.planning.org/ethics/.

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WELCOME—OCAPA’S Newest Board Members

It is my pleasure to announce the election results to the Board of Directors for OCAPA! Congratulations and thank you for contributing to the success of OCAPA.

Claire Flynn, AICP (Vice Director for AICP Certification)

Claire Flynn, AICP is a Senior Planner at the City of Costa Mesa, and she formerly served as OCAPA Vice Director of Professional Development (Years 2000-2001). She is member of the American Institute of Certified Planners (AICP) and has a Master's degree in Urban and Regional Planning from UCI.

Ms. Flynn believes that certification is important because it demonstrates a high level of proficiency in the planning profession. Currently about one-third of the OCAPA membership has earned this distinction. Ms. Flynn hopes to increase the number of certified planners in Orange County by coordinating AICP certification activities with California Chapter representatives. One of her goals would be to organize an AICP training workshop with recently certified planners who can provide insight in the following areas: Exam Structure, Question Format and Construction, Personal Experiences, Test Areas, and Helpful Testing Tips. In addition, she would like to work with State/National APA officers on AICP continuing education activities. Her previous service on the Board was a positive experience, and she is looking forward to being involved again with OCAPA.

Kimberly Brandt, AICP (Vice Director for Programs)

Kimberly Brandt, AICP, is a Principal Planner with the City of Costa Mesa Development Services Department, with over 18 years in the planning field. Prior to joining Costa Mesa, Kimberly worked for the City of Rancho Mirage Community Development Department and served on the La Quinta Planning Commission from 1985 to 1987. She received her Bachelors of Art in Social Ecology from the University of California – Irvine.

Kimberly recognizes that the demands of “planning” in Orange County are being redefined at a rapid rate, and she hopes to provide a diverse slate of programs that address these challenges and are relevant to both public and private sector planners. She also sees the APA programs as an excellent opportunity to team with other related professional organizations in providing educational opportunities.

David Crook, AICP (Vice Director for Membership)

David Crook, AICP, is currently an environmental planner with RBF Consulting in Irvine, working on a variety of public and private development projects throughout southern California. Prior to joining RBF, Mr. Crook worked for another consulting firm in Orange County, as well as the County of San Luis Obispo. David received his B.S. in Environmental Studies from the University of California at Santa Barbara and a Master of City and Regional Planning from California Polytechnic State University at San Luis Obispo. As Vice Director for Membership, David will attempt to bolster our OCAPA ranks through continued advertisement in OCAPA publications and at related events, and also through focusing recruitment efforts at Orange County colleges and universities. As our Chapter continues to grow, our ever-expanding, collective knowledge and experience will serve to enhance the value of OCAPA for all members.

January/February/March 2006

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THE ORANGE COUNTY PLANNER

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■ Letter 27: Da Costa, Francisco (1/12/10)

Response to Comment 27-1

Refer to Master Response 1 (SB 18) for a discussion of consultation with the Native American community under SB 18.

Response to Comment 27-2

Refer to Master Response 1 (SB 18) for a discussion of consultation with the Native American community under SB 18.

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■ Letter 28: Hamman, Michael (1/4/10)

1 of 1

From: Michael Hamman <mhamman@igc.org>
To: Stanley Muraoka <Stanley_Muraoka@ci.sf.ca.us>, Stanley Muraoka
<Stanley.Muraoka@SFGOV.ORG>
Cc: Kristine Enea <kristine@indiabasin.org>, Joe Boss <joeboss@joeboss.com>, Chris VerPlanck
<cvp73@yahoo.com>, Al Williams <awconsul@aol.com>, Jack Gold <jgold@sferitage.org>,
bruce <bruce@bonacker.com>
Date: 01/04/2010 11:12 PM
Subject: Shipyard EIR

Letter 28

Stanley:

My reading of Section "J" pg 33, second graph indicated that there is a potential "Historic District", Hunters Point Commercial Dry Dock District, that includes the drydocks and several surrounding buildings. Further the drydocks **AND** buildings 140, 204, 205, & 207 are **EACH** eligible to be listed in the CRHR. The next page, p 34, second graph indicates that the five buildings that are condemned i.e. #208, 224, 211, 231, & 253 are all contributory to the "Historic District" **AND** if they are destroyed the "Historic District" will no longer be possible. So it is not just the five buildings, but if they go, we are forever precluded from forming the "Historic District"

28-1

To my way of thinking this is a tragic loss and should require more than merely "documenting" the buildings with pictures and descriptions. This is like someone saying they are going to kill you but don't worry you will get a small headstone on your grave. It would take more than that to make me want to take a bullet!

--
Michael Hamman
mhamman@igc.org

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■ Letter 28: Hamman, Michael (1/4/10)

Response to Comment 28-1

Alternative 4 (Reduced CP-HPS Phase II Development, Historic Preservation) was included in the Draft EIR to analyze an alternative with preservation of all five historically eligible structures (Buildings 208, 211, 224, 231, and 253).¹⁰³ Although the text of Alternative 4 in the Draft EIR inadvertently omitted reference to Buildings 208 and 231, this was a typographical error and the text has been revised in the Draft EIR (Section F [Draft EIR Revisions]) to clarify that four buildings would be retained and/or rehabilitated according to the Secretary of the Interior's Standards. (Building 208 is included in the Project, so Alternative 4 has been clarified to indicate that it includes Buildings 211, 224, 231, and 253.) That Alternative 4 includes a reduced development plan compared to the Project does not affect the analysis of the historic preservation component in Alternative 4.

When considering Project approval, the Lead Agencies have the flexibility to approve all or any portion of the Project. This flexibility extends to approving all or any portion of an alternative as well. Therefore, the Lead Agencies could adopt the Project *and* the historic preservation component of Alternative 4 without the EIR providing a separate analysis of such an option. Both the Project's land use plan and the historic preservation option were thoroughly analyzed in the Draft EIR. The Project ultimately approved by the Lead Agencies could include a combination of components of the Project, any of the variants, and/or any of the alternatives.

The analysis of the historic preservation component of Alternative 4 would not change regardless of whether that element is combined with a variant, another alternative, or the Project. While not required, a subalternative to Alternative 4—Subalternative 4A (CP-HPS Phase II Development Plan with Historic Preservation)—has been included in the Final EIR to fully respond to comments. This is not a substantially different alternative, but one that combines the Project's development plan with preservation of the historically eligible buildings, both of which were analyzed in the Draft EIR. Similar to Alternative 4, (Draft EIR Chapter VI, pages VI-93 through -126), Subalternative 4A would retain the historic buildings (Buildings 211, 224, 231, and 253) that would otherwise be demolished under the Project. In order to accommodate the historic preservation component in the Project's development plan, some adjustments in the location and intensity of some of the Project's land uses and a more cost-effective approach for providing sea level rise protection for the historic resources area have been included in this subalternative. In all other respects, Subalternative 4A assumes a development plan that is identical to the Project.

Refer to Section F (Draft EIR Revisions) of this document, which discusses Subalternative 4A (CP-HPS Phase II Development Plan with Historic Preservation) that would retain the structures in the California Register of Historical Resources (CRHR)-eligible Hunters Point Commercial Drydock and Naval Shipyard Historic District. As discussed therein, Subalternative 4A would retain and rehabilitate the structures in the CRHR historic district, including structures in this National Register of Historic Places (NRHP)-eligible Hunters Point Commercial Drydock Historic District: Drydocks Nos. 2 and 3, and Buildings 104, 204, 205, and 207. The larger CRHR-eligible historic district would encompass the boundaries and the

¹⁰³ It should be noted that, since publication of the Draft EIR, the decision has been made to retain Building 208 under all development scenarios

contributory structures in the NRHP district. Subalternative 4A would avoid significant adverse effects on historic resources.

Draft EIR Section III.J (Cultural Resources and Paleontological Resources) discusses the NRHP-eligible Hunters Point Commercial Drydock Historic District, as identified in 1998. The Hunters Point Commercial Drydock Historic District is shown in Figure III.J-2 (Potential Historic District), page III.J-23. As discussed in Draft EIR Chapter II (Project Description), page II-7, the Project would retain structures in this NRHP-eligible Hunters Point Commercial Drydock Historic District, including Drydocks Nos. 2 and 3, and Buildings 104, 204, 205, and 207. Impact CP-1b (Impact of Hunters Point Phase II), pages III.J-33 to -34, notes that that the Project would have less-than-significant impacts on the NRHP-eligible district. Section III.J also identified a larger CRHR-eligible Hunters Point Commercial Drydock and Naval Shipyard Historic District, shown on Figure III.J-2, that would include Buildings 208, 211, 224, 231, and 253. The Project would demolish those buildings, and, as stated in the Draft EIR, this would be an unavoidable significant adverse impact on the CRHR-eligible district. The NRHP-eligible resources would remain and would continue to be part of the NRHP-eligible Hunters Point Commercial Drydock Historic District.

As noted in the comment, mitigation measure MM CP-1b.1, pages III.J-34 to -35, requiring documentation of the CRHR-eligible resources before demolition, would reduce but would not avoid the Project's significant effects on CRHR-eligible resources. To clarify this comment, the differences between the NRHP and CRHR are also provided. The CRHR is a listing of State of California resources that are significant within the context of California's history. The CRHR criteria are modeled after NRHP criteria; however, the CRHR focuses more closely on resources that have contributed to the development of California. All resources listed in or formally determined eligible for the NRHP are eligible for the CRHR. In addition, properties designated under municipal or county ordinances are also eligible for listing on the CRHR. The primary difference between the NRHP and the CRHR is that the latter allows for a lower level of integrity for a resource to be considered historically significant.

Alternative 4 and Subalternative 4A would retain the structures in the CRHR-eligible Hunters Point Commercial Drydock and Naval Shipyard Historic District and would avoid significant adverse effects on historic resources.

Letter 29: Bay Area Council (1/4/10)

1 of 2

Letter 29



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President & CEO, Bay Area Council

January 4, 2010

Mr. Rick Swig
President
San Francisco Redevelopment Agency
One South Van Ness Avenue 5th Floor
San Francisco, CA 94103

**Re: Adequacy of the Draft Environmental Impact Report for the
Candlestick Point – Hunters Point Shipyard Phase II Development Plan Project;
Bayview Hunters Point and Hunters Point Shipyard Redevelopment Project Areas**

Dear President Swig:

The Bay Area Council supports the redevelopment of the Hunters Point Shipyard and we believe that the current Draft EIR adequately analyzes the impacts of this proposed development. We believe that the proposed development is of regional significance and importance and should proceed on schedule.

The Draft Environmental Impact Report (DEIR) prepared for the City and County of San Francisco and released on November 12, 2009 concludes that the proposed development of Candlestick Point-Hunters Point Shipyard will create new neighborhoods, improve degraded urban areas and implement a range of environmental protections and improvements. We believe the document is adequate and no further delays for public comment are necessary.

According to the DEIR, the proposed development for southeast San Francisco will “remove and rehabilitate existing structures and create a mixed-use community with a wide range of residential, retail, office, research and development, civic and community uses, and parks and recreational open space.”

The 702 acre project area of underutilized land will revitalize the Bayview-Hunters Point community by providing increased business and employment opportunities; housing options at a range of affordability levels; improved public recreation and open space amenities; an integrated transportation, transit and infrastructure plan; and other economic public benefits, all of which would collectively have no net negative impact on the City’s General Fund.

Key features and benefits of the Project include:

- The creation of up to 10,000 permanent new jobs in San Francisco.
- The replacement of the Alice Griffith Public Housing development without displacing any current residents.
- The creation of 10,500 new homes with 32 percent priced below market rate.
- The creation of more than 300 acres of new parks and open space, including major improvements and funding for the Candlestick Point State Recreation Area.
- The development of new transit, bicycle and pedestrian routes to serve Bus Rapid Transit and reconnect the Candlestick Point and Hunters Point communities.
- The planting of 10,000 new trees, creation of new wildlife habitat and wetlands and the use of nesting boxes for bird species in southeast San Francisco.

29-1



2 of 2

- The creation of neighborhood-serving retail, including shops, cafes and a grocery store for the Bayview-Hunters Point neighborhood.
- The acceleration of the environmental clean up of Hunters Point Shipyard.
- The creation of permanent space at Hunters Point Shipyard for an existing artists colony.
- The commitment to 15 percent greater energy efficiency than required under California energy efficiency standards for building (Title 24 2008 standards).
- The commitment to achieving LEED Gold LEED for Neighborhood Development 2007 pilot standards
- The exploration of innovative district heating and cooling and, water reclamation and re-use systems.
- The development of a football stadium site, performing arts venue and sports arena.

29-1
cont'd.

Potential environmental effects by the development and methods of mitigation are analyzed in the document. Further it confirms the project land use and design elements will protect and enhance natural resources, ensure consistency with the relevant resources policies of the *San Francisco General Plan*. Sustainability practices will be incorporated into the design of these features. The project is designed to protect and enhance the City's natural resources (including wildlife habitat and open space), and ensures the incorporation of high environmental standards consistent with City policies, regulations and laws.

The DEIR includes consideration of alternatives to the development as authorized by San Francisco voters, including additional locations for a proposed football stadium, alternative transit routes and varying housing densities. These alternatives were rejected for "one or more factors, including (1) they did not reduce significant environmental effects; (2) they did not achieve most of the basic Project objectives; and/or (3) they were not capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors."

As such we urge the City agencies to proceed with the review and comment period and move swiftly on the entitlements of this historic project. San Francisco and the Bay Area need affordable housing and jobs to stimulate our economic recovery.

Sincerely,



Matt Regan
Vice President
Bay Area Council

Cc: Darshan Singh, Vice President
London Breed
Miguel Bustos
Francee Covington
Leroy King

■ Letter 29: Bay Area Council (1/4/10)

Response to Comment 29-1

The comment is acknowledged. No response is required.

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Letter 30: San Francisco Planning + Urban Research Association (1/4/10)

1 of 1

Letter 30



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January 4, 2010

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Mr. Rick Swig
President
San Francisco Redevelopment Agency
One South Van Ness Avenue 5th Floor
San Francisco, CA 94103

**Re: Adequacy of the Draft Environmental Impact Report for the
Candlestick Point – Hunters Point Shipyard Phase II Development Plan Project;
Bayview Hunters Point and Hunters Point Shipyard Redevelopment Project Areas**

Dear President Swig:

The San Francisco Urban Planning Association (SPUR) is a member-supported, nonprofit dedicated to unifying citizens to jointly craft solutions to solve our common problems.

The Bayview Hunters Point community and the City have been working together for nearly a decade to plan the revitalization and redevelopment of the Hunters Point Shipyard. It is an extremely significant project, for both the Bayview and the city as a whole.

The plan is consistent with the City's General Plan, and it is furthermore, the perfect place in the region for this kind of "recycling" of a polluted brownfield site into new uses. It will also create jobs, create housing units, and provide an economic boost to the city.

The legal question before the commission is whether the draft environmental impact report adequately discusses the impacts of the development project. I believe that it does.

This project has been reviewed and discussed for many years, through countless public meetings. The public process surrounding it has been immense.

It is time to move forward.

Sincerely,

Gabriel Metcalf
San Francisco Urban Planning Association

Cc: Darshan Singh, Vice President
London Breed
Miguel Bustos
Francee Covington
Leroy King

30-1

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■ **Letter 30: San Francisco Planning + Urban Research Association
(1/4/10)**

Response to Comment 30-1

The comment is acknowledged. No response is required.

[This page is intentionally left blank.]

■ Letter 31: San Francisco Bay Trail (1/12/10)

1 of 6

Letter 31



January 12, 2010

Stanley Muraoka
San Francisco Redevelopment Authority
One South Van Ness, Fifth Floor
San Francisco, CA 94103

Mr. Bill Wycko
Acting Environmental Review Officer
San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco, CA 94103-2479

Subject: Candlestick Point—Hunters Point Shipyard Phase II Development Plan DEIR

Dear Mr. Muraoka and Mr. Wycko:

The Bay Trail Project is a nonprofit organization administered by the Association of Bay Area Governments (ABAG) that plans, promotes and advocates for the implementation of a continuous 500-mile bicycling and hiking path around San Francisco Bay. When complete, the trail will pass through 47 cities, all nine Bay Area counties, and cross seven toll bridges. To date, slightly more than half the length of the Bay Trail alignment has been developed.

Within the City and County of San Francisco, 13 of 28 miles of shoreline path are complete, with the majority of this mileage located on the northern waterfront. The current adopted Bay Trail alignment on the southern waterfront is located inland of Hunters Point Shipyard as shoreline access has been historically prohibited. The redevelopment of the Shipyard represents an unparalleled opportunity for the people of San Francisco and the region to regain access to their shoreline via a comprehensive system of parks and open spaces, and a fully connected and continuous Bay Trail.

Our comments on the document will focus on the following sections of the DEIR:

- Transportation and Circulation
- Recreation
- Aesthetics
- Project Description

31-1

Transportation and Circulation

Bay Trail System Designations

The Bay Trail consists of "planned" and "adopted" segments, and of "existing" and "proposed" segments. Planned segments have not yet been officially adopted into the Bay Trail system by the organizations' Steering Committee, but are identified on Bay Trail maps and in literature as they are a logical location for a future trail based on known development plans. Hunter's Point Shipyard and various railroad alignments throughout the region are prime examples of segments that are classified as "planned" but not "adopted".

31-2

While the existing vs. proposed designation is self-explanatory, it is important to note that the overarching goal of the Bay Trail project is a Class I, fully separated, multi-use pathway. In certain instances where such a facility is truly infeasible, Class II bike lanes and sidewalks can be considered "complete" Bay Trail if determined appropriate by Bay Trail staff, steering committee, and the local jurisdiction in charge of the project. Page III.D-19 of the DEIR with the heading "San Francisco Bay Trail" properly identifies the Bay Trail as consisting of paved multi-use paths, dirt trails, bike lanes, and sidewalks, but incorrectly states that "...city streets signed as bike routes" are a part of the Bay Trail system. A Class III bike route is never considered "complete" Bay Trail.

On October 12, 2006, the Bay Trail Steering Committee approved staff's recommendation to make minor adjustments to the Bay Trail alignment in southern San Francisco. The reason for the change was to make the Bay Trail's alignment consistent with the City's bike route in this area. From north to south, the current adopted Bay Trail alignment is as follows: Illinois to Third to Phelps to Palou to Keith to Carroll to Fitch (Walker) to Gilman. All of these segments are currently "proposed" as no bike lanes or Class I facilities exist on these streets. The DEIR properly notes that this inland route is currently designated as proposed Bay Trail only because shoreline access through the Shipyard has been infeasible until now. This route will be (happily) removed from the Bay Trail system once a Class I path through the entirety of the site has been constructed.

31-3

Streetscape Improvements

Under the heading "Streetscape Improvements" on pg III.D-45, the document states that Harney Way, Innes, Palou, Gilman, Ingerson and Jamestown Avenues "...would serve as primary routes for pedestrians, bicyclists, transit riders, and drivers", and goes on to say that "Specific streetscape treatments would vary depending on existing right-of-way and traffic demands". If these roadways, carrying significantly increased vehicular loads as a result of the proposed project are to be "primary routes" for bicycles and pedestrians, the streetscape improvements cannot be dependent upon ROW and vehicular needs. It is the responsibility of the project proponent to make all of the above-referenced streets safe for bike and pedestrian travel, and this must include Class I or II bike lanes and sidewalks of sufficient width to accommodate and encourage non-motorized trips.

31-4

3 of 6

Yosemite Slough and Yosemite Slough Bridge

The current Bay Trail alignment in this area is along the shoreline adjacent to the Yosemite Slough Restoration Project, and the Bay Trail has funded trail construction by way of a \$172,000 grant to the California State Parks Foundation. The DEIR makes reference to incorporating the Bay Trail into the Yosemite Slough Bridge. It is important to note that this does not reflect our current, planned, or adopted alignment, and as will be discussed further in the Aesthetics section of this letter, the Bay Trail Project has serious reservations regarding the bridging of the Slough. Please remove reference to the Bay Trail as part of the Yosemite Slough Bridge in the Final EIR.

31-5

It is unclear why the Yosemite Slough, which the project proposes to bridge, is not part of the study area. Multiple aspects of the Slough will clearly be impacted by the proposed bridge. Further, the purpose of a DEIR is to examine alternatives. What alternatives to bridging the Slough were analyzed? If no stadium is built, the Yosemite Slough Bridge will presumably serve only Bus Rapid Transit (BRT). Please provide a detailed analysis of subsidy per rider should the Bridge only support this one single user group.

31-6

Football Stadium

Table III.D-6 "Projected Football Game Day Trip Generation by Mode" does not list bicycle or pedestrian modes in its projections. With a projected increase of 25,000 residents in the immediate vicinity as a result of the project, and the construction of a world-class multi-use waterfront pathway seamlessly connected to the City's existing and proposed bicycle network, people are sure to arrive by bike and by foot. As referenced elsewhere in the report, bike parking is integral to game days at AT&T Park. Please revise the table in the FEIR to appropriately reflect the number of spectators arriving by bike or by foot via the Bay Trail and other bike/pedestrian facilities, and what tools the project proponent will employ to actively encourage spectators to arrive by non-motorized means.

31-7

As referenced above, a main purpose of CEQA review is the evaluation of alternatives. Please describe in the FEIR how the Bay Trail alignment would change in the absence of the stadium.

31-8

Bay Trail and Blue Greenway

Pg. III.D-50 discusses the Bay Trail, the Blue Greenway, and Bicycle Circulation Improvements. It is important to note that the purpose of the Blue Greenway is to link the Bay Trail along the Southeastern waterfront to existing and proposed Water Trail launch sites. The Bay Water Trail is a planned network of launch sites and facilities around the nine-county San Francisco Bay shoreline for human-powered watercraft. While SF Bay Water Trail Plan has not been officially adopted and is currently undergoing environmental review, the Final EIR should discuss the draft plan and where proposed water trail sites will be incorporated. Wind Meadow and Northside Park are suggested locations that the FEIR should evaluate.

31-9

4 of 6

Also in this section (pg. III.D-50) the document states that "Bicycle lanes would be provided along major roadways, consistent with City guidelines..." Please identify in the Final EIR what constitutes a "major roadway" where Class II bicycle lanes will be provided.

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31-9
cont'd.

Completion of Bay Trail at Yosemite Slough

The Bay Trail Project is pleased to see that the Candlestick Point-Hunter's Point Shipyard Project proposes to complete the Bay Trail at Yosemite Slough as referenced on pages III.D-50 "Bay Trail, Blue Greenway, and Bicycle Circulation Improvements" and again on page III.D-137 under the heading "Impact TR-42: Stadium 49ers Game State Park Access Impacts". It is also encouraging that while listed under the heading of an impact, the DEIR does not propose completion of the trail at Yosemite Slough as a mitigation, but an integral part of the Project Description thereby assuring ABAG and the public that the Yosemite Slough Bay Trail will be constructed as part of the project irrespective of final plans for the stadium.

31-10

Recreation

The Recreation section discusses the Bay Trail and shows a detailed map of its location in Figure III.P-2. As referenced above, neither planned, proposed, nor adopted Bay Trail alignments include the Yosemite Slough Bridge and the Bay Trail Project has serious reservations regarding a bridge over the slough. Please remove reference to the Bay Trail as part of the bridge. As referenced above in the Transportation and Circulation Section, completion of the Bay Trail around Yosemite Slough is part of the Candlestick-Hunter's Point Shipyard project. Please note its location around the perimeter of Yosemite Slough on the "Proposed Parks and Open Space" figure as Proposed Bay Trail.

31-11

Land Swap

Table III.P-2 shows the proposed land swap between California State Parks and the developer, and the proposed swap is also shown in Figure III.P-3. However, the figure indicates that a large amount of City park land is also being removed from the area, but no discussion regarding this loss could be found in the document. In the Final EIR, please provide a detailed discussion of the removal of this public resource.

31-12

Project Description

Phasing

Figure II-17 "Proposed Building and Parks Construction Schedule" indicates that a large portion of the HPS development will be complete by 2017, with sizeable tracts facing the south basin not scheduled for completion until 2025, and portions of Candlestick State Park not complete until 2029. It is our understanding that the current facilities at Candlestick Point will remain and be accessible to the public in the interim, and that portions marked in brown on this figure will include a complete, open and accessible Class I multi-use Bay Trail. If this is not the case, please clarify in the Final EIR.

31-13
↓

5 of 6

The Bay Trail Project fully appreciates the level and amount of remediation work that is required to make this site habitable. However, the timeline for completion of the areas in yellow on Figure II-17 essentially prevent a through connection for the Bay Trail for an additional 8 years after completion of the trail in areas shown in brown. As a continuous alignment is of paramount importance to the Bay Trail, we urge the developer to construct and maintain an interim Bay Trail path along the southwestern edge of the completed sections of the project, facing the south basin. It is understood that fencing would be required to keep the public out of the areas marked in yellow that will be undergoing remediation and shoreline repair work.

The large scale Mission Bay development slightly to the north of the HPS project was pursuing a similar phased development approach to their large-scale construction project several years ago. That project agreed to provide an interim path through a future phase parcel. Today, that path is a critical connection for hundreds of residents and employees on a daily basis. It is not possible to overstate the importance of an interim path to ABAG's San Francisco Bay Trail Project.

Connections to the Bay Trail—North and South

The Bay Trail in Brisbane, immediately adjacent and south of the proposed project, is located on Sierra Point Parkway. The connection from existing Bay Trail at Candlestick SRA to proposed Bay Trail on Sierra Point Parkway will be made via the new Harney Way Interchange. Current plans shown in the DEIR indicated that a Class I fully separated multi-use path on the south side and a Class II bike lane on the north side will be a part of the newly configured interchange. Regardless of the final configuration, it is of the utmost importance that a seamless, safe, and direct connection between Bay Trail segments in both counties is made through this area.

To the north of the project, there is an adopted, proposed segment of Bay Trail on Hudson Street. While it is our understanding that this segment will be constructed by a separate project, please describe in the FEIR how a seamless connection to this segment of Bay Trail will be made.

Aesthetics

Page III.E-58 "Aesthetics" under Environmental Setting, Impacts and Mitigation Measures states that "The Yosemite Slough Bridge would change the appearance of a portion of the Slough, with the addition of a bridge structure and roadway approaches....The bridge would replace some views of open water as seen from nearby locations". The paragraph closes with the statement that "Overall, the bridge would not substantially damage a resource that contributes to a scenic public setting."

While Yosemite Slough does not currently consist of a scenic park-like setting, its restoration is currently underway. Once fully restored with a continuous Bay Trail alignment around its perimeter, this portion of the Candlestick Point State Recreation Area will be an important parkland resource for an extremely park-poor community. To determine that placing a bus lane and game-day traffic bridge over the slough, thus

31-13
cont'd.

31-14

6 of 6

blocking views of the Bay from a shoreline park, will have no impact to aesthetics and needs no mitigation is incorrect. Please identify appropriate mitigation for this significant impact to a visual resource in the FEIR.

↑
31-14
cont'd.

Conclusion

The Association of Bay Area Governments and the San Francisco Bay Trail Project appreciate the opportunity to comment on this important document. While it may be too early to discuss specific Bay Trail widths within the project area, the developer should bear in mind that the 12-foot path with 2-foot shoulders referenced in the Bay trail guidelines are *minimum* recommended widths, and that the type and intensity of use expected to occur within a development of this size likely calls for much more generous widths.

31-15

As referenced above, it is extremely important to the Bay Trail Project that an interim path around the first phase of development as shown in brown on figure II-17, Section II.F "Development Schedule" be constructed as part of the project. A high-quality shoreline Bay Trail will be completed through nearly 50% of the site by 2017. The Project should connect this important piece of site infrastructure to a temporary path along the perimeter of the completed parcels shown in brown and connecting to bike and pedestrian facilities outside the project area with connections to the Bay Trail around Yosemite Slough. Such progressive construction phasing will demonstrate Lennar's commitment to sustainability, non-motorized transportation, and would give proper recognition of the public's significant underlying interest in this long-shuttered waterfront resource belonging to the people of San Francisco and the region.

The Bay Trail Project intends to remain actively involved in the pursuit of an interim path and welcomes continued collaboration with the City of San Francisco, Lennar Urban and the Bay Conservation and Development Commission in this mission. If you have questions or comments regarding the Bay Trail, please do not hesitate to contact me at (510) 464-7909 or by e-mail at maureeng@abag.ca.gov.

Sincerely,

Maureen Gaffney
Bay Trail Planner

■ Letter 31: San Francisco Bay Trail (1/12/10)

This letter is identical to Letter 87. Both letters are dated January 12, 2010, and both were jointly submitted to the Agency and the San Francisco Planning Department.

Response to Comment 31-1

This comment contains introductory or general background information and is not a direct comment on environmental issues or the content or adequacy of the Draft EIR. No response is required.

Response to Comment 31-2

In response to the comment, the text in Section III.D (Transportation and Circulation), under the San Francisco Bay Trail heading, third sentence, page III.D-19 has been revised as follows:

... At various locations, the Bay Trail consists of paved multi-use paths, dirt trails, and in some cases, bike lanes; and sidewalks, ~~or city streets signed as bike routes.~~ ...

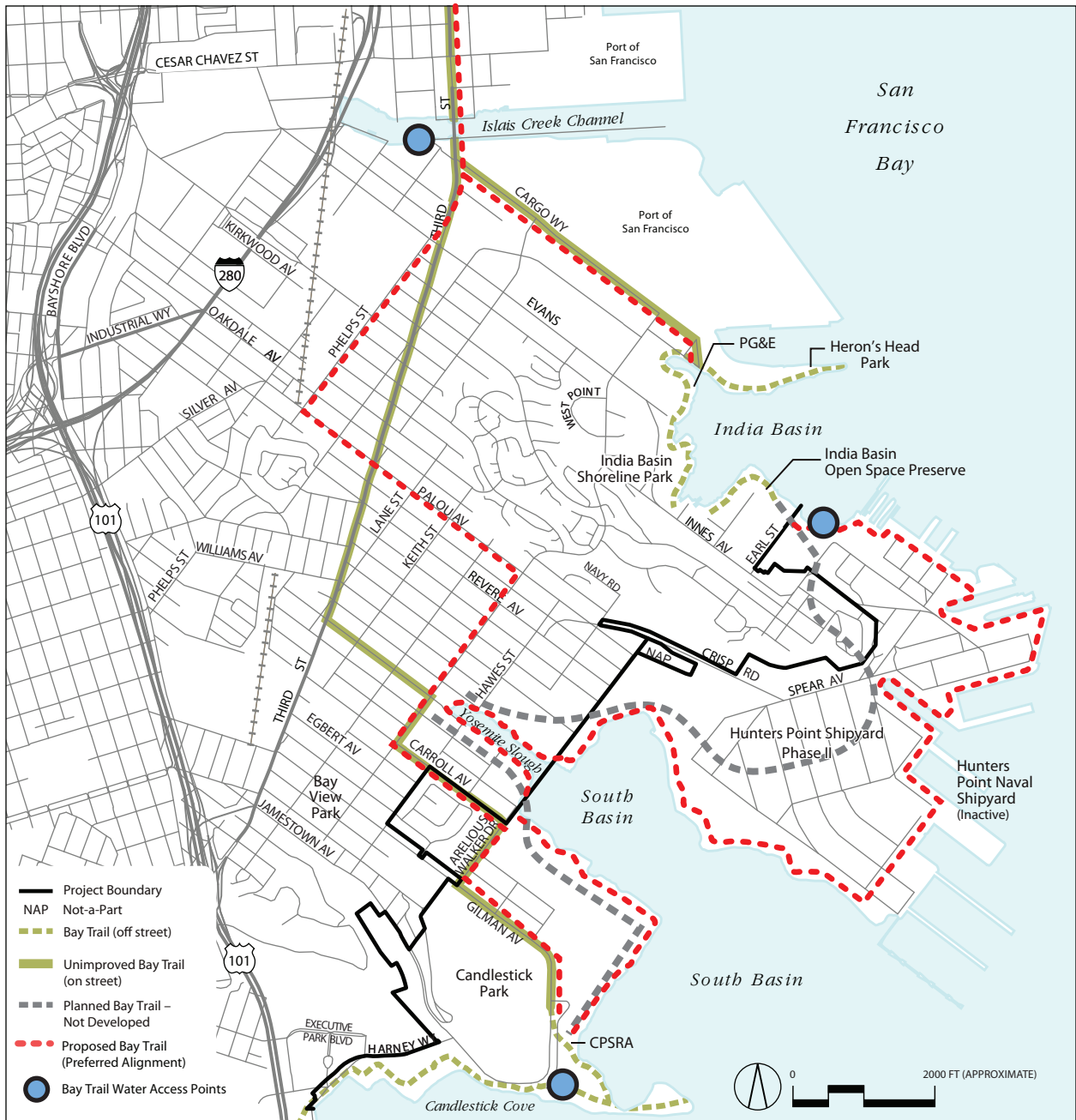
Response to Comment 31-3

In response to the comment, Figure III.B-3 (Existing San Francisco Bay Trail Route) has been revised to show the Bay Trail in the preferred alignment, along the Yosemite Slough shoreline.

Response to Comment 31-4

All proposed streetscape improvements would be designed to improve the safety and experience of pedestrians and bicyclists in the area. Improvements to the pedestrian realm are discussed on Draft EIR pages III.D-50 to -52. Generally, streetscape improvements for internal streets as well as improvements to external streets are consistent with the City Planning Department's Draft Better Streets Plan.

As shown on Figure III.D-10 (Project Bicycle Network and Bay Trail Improvements), the Project would provide a combination of new Class I, Class II, and Class III bicycle facilities throughout the project site, as well as connections to the City's bicycle network outside of the Project site. Specifically, the Project would connect to and extend existing City Bicycle Routes on Innes Avenue (Route #68), Palou Avenue (Route #7), Carroll Avenue (Route #805), and would create a new Class III route along Gilman Avenue, which would connect the Candlestick Point development to Third Street and Paul Street, both of which are part of the City's bicycle network. The Project would also improve and connect to the Class I shared bicycle/pedestrian facility along Harney Way. Further, the Project would include a number of internal bicycle facilities, including Class I, Class II, and Class III, as shown on Figure III.D-10.

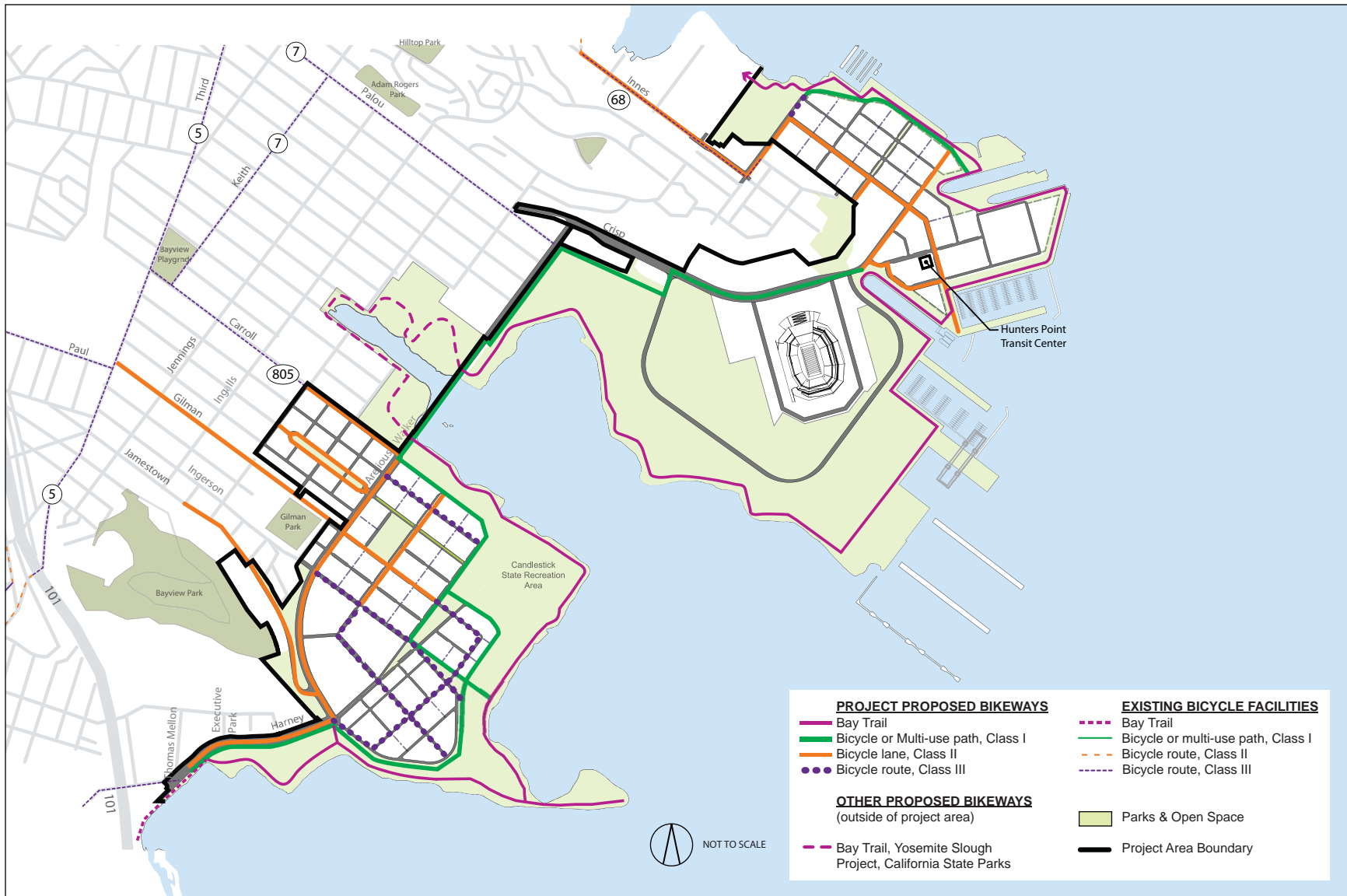


SOURCE: San Francisco Bay Trail Plan; PBS&J, 2010.

PBS&J 04.19.10 02056 | JCS | 10

Candlestick Point — Hunters Point Shipyard Phase II EIR
EXISTING SAN FRANCISCO BAY TRAIL PLAN ROUTE

FIGURE III.B-3



SOURCE: Fehr & Peers, 2010.

PBS&J 04.16.10 02056 | JCS | 10

FIGURE III.D-10



Candlestick Point — Hunters Point Shipyard Phase II EIR
PROJECT BICYCLE NETWORK AND BAY TRAIL IMPROVEMENTS

Response to Comment 31-5

The Bay Trail alignment proposed in the Draft EIR has been amended in response to public comments. The amended alignment traces the slough shoreline and connects with the proposed Bay Trail alignments on Candlestick Point and Hunters Point. The Bay Trail must cross Arelious Walker Street on both sides of the slough. On the north side, the crossing will be possible without substantial deviation from the shoreline alignment. On the south side, visitors walking the Bay Trail will need to walk along Arelious Walker for a block inland (southward) in order to cross the street, then return to the shoreline. The trail alignment along Arelious Walker will be clearly marked. The Bay Trail will remain a continuous shoreline trail.

Response to Comment 31-6

Refer to Master Response 3 (Impacts of the Project on Yosemite Slough [Biological Resources]) with regard to Project boundary determinations.

Chapter VI of the Draft EIR presents the alternatives and includes discussion of the impacts of a “no bridge” alternative (Alternative 2). Chapter VI includes a discussion of the transportation-related impacts associated with Alternative 2.

Under conditions without the new NFL stadium, the bridge would serve the same users as it would serve under conditions with the stadium on non-game days, including transit passengers, bicyclists, and pedestrians. The bridge would be part of the Project and constructed by Project Applicant. Therefore detailed analysis of subsidy per rider is neither appropriate nor required for this EIR.

Response to Comment 31-7

The commenter requests that Table III.D-6 (Projected Football Game Day Trip Generation by Mode) be revised to reflect the number of spectators arriving by bike or by foot, and what tools the project applicant would employ to actively encourage spectators to arrive by non-motorized modes.

The game day trip generation forecasts used in the analysis are based on actual auto and transit usage at the existing stadium, with modest increases to transit use likely to occur with the robust transit improvements proposed to serve the stadium. While information on the number of patrons that currently walk or bicycle to games is not known, it is reasonable to expect an increase in the number of game day patrons who walk and bicycle to the stadium. Sufficient data is not available to estimate trips by walk and bicycles for special events at the proposed stadium, such as NFL games. However, the potential that some patrons would arrive by bicycle or walking are accounted for in the game day conditions.

The Project would improve bicycle access to the area in terms of new bicycle lanes on existing and reconfigured roadways, and bicycle access within and in the vicinity of the Project site would be maintained on game days. The Project would include a number of wider sidewalks near the stadium connecting to the adjacent neighborhoods and to transit connections to accommodate pedestrians. Further, the game day traffic control plan calls for maintenance of Class II bicycle lanes on several streets that would be reconfigured to increase peak directional auto capacity during pre- and post-game periods. For stadium patrons arriving by bicycle, the proposed stadium would provide improved amenities such as bicycle lockers at stadium entrances and a bicycle valet similar to the service operate at AT&T Park for the San Francisco Giants baseball games.

As described on page III.D-132 and III.D-133 of the Draft EIR, the stadium operator would be required to prepare a Transportation Management Plan (TMP) which would address all modes. Actions included in the TMP to encourage non-motorized modes include:

- The use of charter buses to the stadium shall be encouraged and expanded.
- The stadium operator shall implement measures to encourage carpools of 4-plus persons per vehicle.
- The stadium operator shall charge a higher parking cost for low occupancy vehicles.
- The stadium operator shall develop a separate Travel Demand Management (TDM) plan for employees of the stadium and concessionaries, to reduce number of employees and concessionaries that arrive by auto.

Response to Comment 31-8

Chapter IV of the Draft EIR describes the transportation improvements that would occur under Variants 1 and 2, which would not include a new stadium. As noted on pages IV-18 and IV-87, which describe the transportation improvements associated with Variants 1 and 2, respectively, in the absence of stadium, the proposed Bay Trail alignment would not change from what is proposed as part of the Project.

Alternative 1 (No Project) would not include any Bay Trail improvements. Alternative 2 (CP-HPS Phase II Development, No Bridge), Alternative 4 (Reduced CP-HPS Phase II Development, Historic Preservation) and Alternative 5 (Reduced CP-HPS Phase II Development) which do not include the Yosemite Slough Bridge, and Alternative 3 (Reduced CP-HPS Phase II Development, 49ers stay at Candlestick Park) which includes the Yosemite Slough Bridge, would also have the same Bay Trail alignment as the Project.

Response to Comment 31-9

Revised Figure III.D-10 (Project Bicycle Network and Bay Trail Improvements) presents the location of the proposed bicycle improvements, including proposed Class II bicycle lanes. Note that Figure III.D-10 has been revised such that the improvements to Gilman Avenue are proposed to be Class III bicycle route rather than a Class II route, as shown in the Draft EIR. Major roadways include the streets that provide access through the Project site.

As stated in Response to Comment 44-1, Figure III.B-3 (Existing San Francisco Bay Trail Route) has been revised to include Bay Area Water Trail access points in the Project vicinity. The Bay Area Water Trail Plan, which is still in draft form, shows an existing launch site in the Project area at CPSRA. The development of shoreline parks and open space under the Project will provide access for personal non-motorized watercraft. While the precise location of access points within the Project site will be determined through future public processes, including the CPSRA General Plan Amendment process, the Project would provide access for small non-motorized recreational watercraft and, therefore, would advance the purposes of the Bay Area Water Trail.

Response to Comment 31-10

The comment is acknowledged. No response is required.

Response to Comment 31-11

In response to the comment, Figure III.B-3 (Existing San Francisco Bay Trail Route) has been revised to show the Bay Trail in the preferred alignment, along the Yosemite Slough shoreline. Refer to Response to Comment 31-9 for the revised figure.

Response to Comment 31-12

The City parkland noted on Figure III.P-3 (Proposed CPRSRA Reconfiguration) consists of Candlestick Park stadium and its associated parking lots; these facilities are under the jurisdiction of the City through the SFRPD. (Figure III.P-3 has been revised and is presented in Response to Comment 50-23 to correct the legend and clarify the park boundaries around the stadium site.) These facilities do not provide public outdoor recreation opportunities beyond the stadium use. Therefore, the development of these areas as part of the Project will not cause significant environmental impacts related to recreational opportunities. The impacts of construction and operation of the Project in this area are analyzed throughout the Draft EIR.

Further, Proposition G, approved by the San Francisco voters, authorizes removal of this land from SFRPD jurisdiction provided that the Project as a whole meets several conditions. It must include new park or open space land at least as large as the approximately 77-acre stadium site. The Project must also be consistent with the following goals:

- Produce tangible community benefits for the Bayview and the City
- Reunify the Project Site with the Bayview and should protect the character of the Bayview for its existing residents
- Include substantial new housing in a mix of rental and for-sale units, both affordable and market-rate, and encourage the rebuilding of Alice Griffith Housing
- Incorporate environmental sustainability concepts and practices
- Encourage the 49ers—an important source of civic pride—to remain in San Francisco by providing a world-class site for a new waterfront stadium and supporting infrastructure
- Be fiscally prudent, with or without a new stadium

The Project advances each of these goals and, as shown in Table III.P-3 (Residential Units and Park Acreage Provided during Each Stage of Development); it includes approximately 216 acres of new park and open space land. Thus, the Project meets Proposition G's requirements. The transfer of the stadium area out SFRPD jurisdiction is thus authorized by Proposition G, reinforcing the conclusion that such transfer would not constitute a significant environmental impact. (Table III.P-3 has been revised in Section F (Draft EIR Revisions) to reflect that development activities would occur 1 to 2 years later than originally planned.)

Response to Comment 31-13

CPSRA will remain open and accessible throughout the phases of the Project, although construction associated with the proposed improvements will require closures of some areas at some times.

The specific improvements to be provided within CPSRA, including permanent and potential interim Bay Trail alignments, will be identified by the CDPR during the CPSRA's General Plan Amendment process. Outside CPSRA, the City, Agency, and Lennar Urban are committed to working with Bay Trail planners

and stakeholders to develop plans for the specific Bay Trail alignment and to seek safe, feasible interim alignments.

Refer to Response to Comment 31-4 for a discussion of development of a “complete, open and accessible Class I multi-use Bay Trail.”

Response to Comment 31-14

In general, individual responses to aesthetics and changes in aesthetics are subjective and cannot be quantified. Section III.E (Aesthetics) of the Draft EIR analyzes whether the Project would have a substantial effect on a scenic view or substantially degrade the visual character or quality of the site or its surroundings. These statements are taken directly from Appendix G (Environmental Checklist Form) of the CEQA Guidelines. In accordance with the CEQA Guidelines, the key word in determining whether an aesthetic impact is significant or not is “substantial.” Substantial is generally accepted to mean fairly large, or a considerable amount, size, or quantity. This determination is a subjective evaluation based on an analysis of facts. The analysis in the Draft EIR considers the magnitude of the change relating to existing conditions in determining the significance of the impact. The Draft EIR analysis does not determine there would be *no* impact on views or the visual character or quality of the site; it determined the impact would be *less than significant* (that is, not substantial) for the reasons stated in Section III.E.

Views of the Bay and the remainder of the slough would be retained from numerous other vantage points, including along the shoreline, from the view corridors within the Project site, the CPSRA, and the bridge itself. The Project would not interfere with the Bay Trail proposed around the slough. The bridge would be constructed at the periphery of the CPSRA and slough. On the north side, it would be at the CPSRA boundary and would not encroach within the CPSRA. On the south side, it would impinge on the CPSRA for a length of about 270-280 feet (less than 300 feet). The Project would improve access to the entire area, allowing a greater number of people to take advantage of the scenic resources at CPSRA and the slough. Inclusion of a bridge into a natural setting does not necessarily degrade the character or quality of the setting or substantially block views, depending on its design. The final design of the bridge would include maximum consideration for its aesthetic appeal, integration into the natural environment, and view conservation. The bridge has also been designed with a low profile that would not protrude significantly above grade. Views of the slough and the Bay would be offered from the bridge itself, as well as from the improved shoreline areas that would be included as part of the Project, which would provide additional viewing opportunities not currently available. Additional visual simulations are provided in Response to Comment 47-46 of various viewpoints of the Yosemite Slough bridge are provided to help the reader visualize how the bridge would look in its surroundings. Refer to Responses to Comments 47-34, 47-36, 47-46, 47-58, 47-73, and 47-76 regarding aesthetic impacts relative to the bridge, slough, and CPSRA.

The traffic along the bridge would obstruct views of the Bay from only certain vantage points along the slough, and interruptions in view would occur only intermittently and for very brief periods of time when the BRT is operating. The bridge would be open to automobile traffic only on game days (10 to 12 NFL games per year).

Response to Comment 31-15

Refer to Response to Comment 31-13 regarding the City, Agency, and Lennar Urban's commitment to working with Bay Trail planners and stakeholders to develop plans for safe, feasible interim alignments during the construction phasing of the project.

■ Letter 32: Docomomo/US, Northern California Chapter (1/11/10)

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Letter 32

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documentation and conservation
of buildings, sites and neighborhoods of the
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January 11, 2010

Mr. Stanley Muraoka
Environmental Review Officer
San Francisco Redevelopment Agency
One South Van Ness Avenue, Fifth Floor
San Francisco, CA 94103

Mr. Bill Wycko
Environmental Review Officer
San Francisco Planning Department
1650 Mission Street
San Francisco, CA 94103

Re: Candlestick Point-Hunters Point Shipyard Phase II Development Plan DEIR

Dear Mr. Muraoka and Mr Wycko:

The Northern California Chapter of Docomomo/US would like to take this opportunity to comment on the Draft Environmental Impact Report for Candlestick Point-Hunters Point Shipyard Phase II (File 2007.0946E).

Docomomo is an international organization dedicated to the preservation and significance of Modern architecture and sites. The Northern California chapter of Docomomo (Docomomo NoCa) was established in 1998 as a non profit 501(c)3 organization, and its mission is to promote education and awareness of the modern movement.

We agree with the statements in the Historic Context Statement (prepared by Circa and part of the EIR) that the Hunters Point Shipyard is a site of national historic significance, and includes a significant number of potentially important modern era buildings. The Context Statement states that Hunters Point Shipyard (along with Mare Island and Puget Naval Shipyard) "compromised the heart of US Navy activities during the second world war on the West Coast. As important as Hunters Point was to World War II Naval campaigns, it gained significance in its own right in the post-war period through its role as home to the Naval Radiological Defenses Laboratory. It was one of the only facilities of its kind in the United States in either private or military control, was recognized as a leading research facility on a national scale and played a major role in every US nuclear weapons test during its 25 year history. Together, these areas of importance are reflected in the built environment."

It is our opinion that the EIR is inadequate in relationship to the analysis and treatment of historic resources. We feel the EIR is inadequate in the following areas:

1. While the Context Statement establishes the significance of the site, the Evaluation of Historic

32-1

32-2

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of buildings, sites and neighborhoods of the
modern movement

Northern California Chapter

Resources, Volume II, also prepared by Circa, is flawed and inadequate in its evaluation of resources and determination of which resources are eligible to the California or National Register. Resources that we believe would be eligible under Criterion A (events) and Criteria C (Construction) are inadequately assessed and dismissed. The EIR does not include the required assessment of the potential significance of the Candlestick Park Stadium by John Savage Bolles, which is now 50 years old.

2. The EIR does not include an adequate Preservation Alternative. Because of the significance of the site as established in the Context Statement, the EIR should include an Alternative whose primary focus is historic preservation, which would include at a minimum buildings within the areas identified to be eligible for a National Register District. This Alternative would include preservation of these buildings as part of a holistic master plan for the site that would strive to meet the majority of project objectives. An alternative which only addresses the configuration of buildings within the National Register historic would not be considered a true preservation alternative.
3. We feel that the Feasibility Study by Page & Turnbull / CBRE examining the reuse potential of buildings 211, 231, and 253 is based on flawed logic. A realistic and appropriate feasibility study would look at the broader context of the master plan and include changes that could be made to adjacent blocks to address programmatic modifications required as a result of keeping these three buildings, rather than only examining the buildings in isolation as was done in the Page & Turnbull / CBRE study. In addition, the feasibility study did not adequately study a variety of uses for the buildings, and we believe the selection of parking as the primary use of building 231, which has some of the most dramatic views of any location on the site, is inappropriate.

Thank you for the opportunity to comment.

Sincerely Yours



Chandler McCoy, AIA
Northern California Chapter, Docomomo/US

32-2
cont'd.

32-3

32-4

■ Letter 32: Docomomo/US, Northern California Chapter (1/11/10)

Response to Comment 32-1

This comment contains introductory or general background information and is not a direct comment on environmental issues or the content or adequacy of the Draft EIR. No response is required.

Response to Comment 32-2

Refer to Response to Comment 39-1, for a discussion of the adequacy of the evaluation of historic resources at Hunters Point Shipyard Phase II and 39-4 on the evaluation of Candlestick Park stadium under NRHP and CRHR criteria. As discussed in that Response, Candlestick Park stadium would not meet NRHP or CRHR criteria as an historic resource.

Response to Comment 32-3

Refer to Response to Comment 39-2 with regard to Alternative 4 (Reduced CP-HPS Phase II Development, Historic Preservation) as a preservation alternative, and to Section F (Draft EIR Revisions) of this document, discussing Subalternative 4A (CP-HPS Phase II Development Plan with Historic Preservation) that would retain the structures in the CRHR-eligible Hunters Point Commercial Drydock and Naval Shipyard Historic District and would avoid significant adverse effects on historic resources.

Response to Comment 32-4

Refer to Response to Comment 28-1 with regard to Alternative 4 (Reduced CP-HPS Phase II Development, Historic Preservation) and Subalternative 4A (CP-HPS Phase II Development Plan with Historic Preservation) as preservation alternatives that would retain the structures in the CRHR-eligible Hunters Point Commercial Drydock and Naval Shipyard Historic District and would avoid significant adverse effects on historic resources. Section F (Draft EIR Revisions) of this document discusses the reuse of historic structures and reconfiguration of adjacent blocks considered in Subalternative 4A, and the uses proposed in the structures that would be retained. Section F notes that all buildings in the historic district would be rehabilitated according to the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings. Building 231 would be reused for parking. Buildings 211 and 253 would accommodate R&D uses. The rehabilitation would occur generally as recommended by Page & Turnbull's *Hunters Point Shipyard Feasibility Study* (July 1, 2009, included in the EIR as part of Appendix J) That feasibility study proposed parking uses for Building 231, to accommodate parking as part of the overall HPS Phase II land use program, and as a use appropriate for the large volume of Building 231. The Page & Turnbull report, page 16, states, with regard to Building 231 reuse:

Pros

- Existing building is re-used in its original location
- New program makes relatively minor impact on the original structure
- Minor upgrades and demolition required to existing structure to accommodate program
- Additional floor plates help brace the existing structure
- Parking levels and/or Mechanical floor can be exchanged for office space if desired (building as configured would still meet code)

- Retail use at lower level “activates” long edges of building, engaging pedestrians and creating a lively streetscape
- Large number of cars can be accommodated without any addition of height or density
- Large roof area conducive to alternative energy production, i.e. solar.
- Excellent views from upper floor

Cons

- Addition of a floor plate alters original open plan and volume
- Independent structure is required for new floor plates
- Cost per parking spot is relatively high
- Much of the glass at the upper level would need to be replaced due to breakage
- If alternative (office) use is preferred, not all offices would have direct access to natural light (based on the wide floor plate)

■ Letter 33: Antonini, Michael J. (1/11/10)

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Letter 33

COMMENTS ON CANDLESTICK POINT HUNTERS POINT SHIPYARD DEIR

This is a very complete and well-written document. I do have some ideas on the need to mention future beneficial enhancements that to the project

The EIR should indicate that additional parking, beyond that identified under the Project's "built out condition", shall be available for many years after the completion of the new football stadium. Far beyond 21,000 parking spaces will be available on game days. Only as the build out of the final proposed uses on Candlestick Point are completed would a potential parking deficit exist. It should be made clear that the City of San Francisco will work with the Forty Niners to assure that game day parking needs are always met. Should projections that deal with percentages of fans using other than automotive means of transport to the stadium prove to be overstated, alternative private or public parking lots could be obtained to replace any lots taken out of service as development proceeds. There should never be a "parking deficit."

33-1

It should be mentioned that the EIR could allow for football stadium enlargement up to 80,000 person capacity to would qualify it to be Super Bowl or be Olympic ready.

Although India Basin is a separate EIR, the HPCPS EIR should mention a possible traffic, pedestrian and, perhaps, transit bridge over India Basin that would allow more direct and robust access to and from Hunters Point to the north. The DEIR mentions that as early as 1908 a rail bridge of 4,110 feet was built across Islais Creek. One would assume in the 21st century we have the technology to do, at least, the same. Additionally, mention must be made of a looping light rail extension that could occur from the planned multimodal station at Bayshore Cal Train/ end of the Muni Metro "T" line to follow the expanded Harney Way past existing Candlestick Park, proceed along Arelious Walker across the Yosemite Slough bridge, service Hunters Point and its football stadium, cross India Basin either on a new bridge or on Innes, follow Jennings to Cargo and meet existing 3rd Street light rail at Illinois. Also, the other end of this line would follow the Geneva Avenue extension, from the Bayshore Cal Train station, in the southwesterly direction to meet Balboa Park BART.

33-2

Mention needs to be made of the multiuse turf/parking fields. I understand they are in use at the new Dallas Cowboys stadium as well as over 12,000 such spots in the University of Connecticut stadium.

Emphasis needs to be placed on the increase of the existing grade at Hunters Point. It should be noted that the grading plan for Hunters Point shipyard will provide a stadium site will be raised five feet (60 inches) above its current grade (Volume II Page54) and the rest of the parking/ playing fields areas will be raised 55 inches. This brings the site above the absolute highest sea level rise scenario of 51 inches projected by the year 2100.

33-3

Why not more lanes on Arelious Walker and Yosemite Slough bridge? Cost can't increase that much to increase to six or eight traffic lanes in addition to bike, transit and pedestrian lanes. This widening might allow for quicker exit times out of parking lots on game days. Once across the bridge much of traffic would choose to go right on Carroll to 3rd Street. A future Carroll extension to meet Paul at the Hwy 101 freeway onramp is a great enhancement. The bridge over Yosemite Slough could be finished within one year of the beginning of construction. If funding is obtained and entitlements in place, a completion date of 2012 is possible. Finally, consideration should be given to having this bridge open to auto traffic at all times. Seems odd to invest transportation funding in a vital structure linking Hunters Point Shipyard to the south, but limit its auto availability to game days. If one were looking to establish a residence or locate a business on Hunters Point, the ability to access that home or workplace would be a strong factor in the selection process.

33-4

2 of 2

The EIR should clarify that the stadium completion could also be much sooner than 2017, along with the completion of all the Phase I development improvements noted in the EIR document and diagrams. At least \$100 million is assured in the Lennar development agreement; the only limiting factor to completing the stadium earlier is a commitment to funding from the NFL, the 49ers or any other possible investment partners.

33-5

Parking garage at Candlestick Point should be planned for more than 1,000 spaces to serve game day uses. If possible, it should allow for 8,000 spaces. Many persons would exit Harney at this point and could BRT, which should be converted to light rail, or at least a people mover, to access Hunters Point, particularly on game days. Also, at this same location, the turn from Harney on to Arelious Walker / Giants Drive is too sharp. Its 90 degrees. Turn needs to be more gradual to allow continuous traffic flow with no stop. Maybe switch should be made to move light rail site closer to Bayview Hill and roadway to be placed in present parking lot. Both could be to "hill side" on residential development. Maybe parking, commercial should be sited in between.

33-6

We should allow for a Forty Niner Practice Field as part of the acres of new playing fields as well as allow for a training facility and Forty Nine Executive offices in the area.

33-7

The existing recreational vehicle parking lot should be relocated nearby within the Bayview to allow R.V. users to walk to the stadium.

33-8

References to 40% of Forty Niner season ticket holders living in the "South Bay" are misleading. In this case, the term "South Bay" means anywhere south of the San Francisco County line. San Mateo County, beginning a few yards from Candlestick, is not the South Bay. We need to separate ticket holders of San Mateo from those in Santa Clara County. The division used was based on an ABAG method that does not consider the Peninsula (650) as separate from Santa Clara County (408 area code). San Mateo County probably has the highest percentage of Forty Niner season TIX holder- many living within 10 miles of Hunters Point, Candlestick.

33-9

The fan exiting time from the new Hunters Point stadium lots at the Shipyard to the freeways is just over one hour and represents a 29% increase in fan exiting times from the existing stadium. While this is a significant accomplishment and provides for a world class stadium site that will also allow for fans to access the stadium from the Bay at a beautiful ferry terminal (similar to A.T.and T. Park), work should be done to identify traffic enhancements that would bring exit times from parking lots at the new Hunters Point stadium to less than one hour. The NFL average for parking lot exit times is one hour. Wider roads and an India Basin bridge on the North and a wider bridge at Yosemite Slough might help.

Although a "no stadium" option is mentioned in the DEIR, it would be unwise to demolish Candlestick Park unless a new stadium is built in or very near San Francisco. Let's never be a City without a football stadium. Doesn't matter what may happen elsewhere in the Bay Area. There is always a place for a pro football team in San Francisco.

33-10

Some thought might be given to a future expansion of the arena proposed for Candlestick Point for up to 20,000 seats. Some consideration should be given to allowing that facility to be built at Hunters Point as an option.

Is the projection of 24.5% of fans arriving at the new stadium by means other than b autos on game days too high? Enhancements as outlined in this document that propose enhanced northern exit routes with light rail and BRT should base help to make this figure a realistic one.

33-11

Mike Antonini, Member Planning Commission,
City and County of San Francisco
Saturday, January 9, 2010

■ Letter 33: Antonini, Michael J. (1/11/10)

Response to Comment 33-1

As noted in the comment, the stadium would be completed prior to build-out of the Project land uses within the Candlestick Point area. Between completion of the new stadium and build-out of the land uses and parkland at Candlestick Point, the parking supply for the existing stadium would be available for stadium parking. The number of parking spaces that would be available would depend on the Project phasing and construction plan for the Candlestick Point roadway infrastructure and building construction.

As indicated on page III.D-138 of the Draft EIR, it is anticipated that any parking shortfalls (i.e., game days where parking demand exceeds the supply of 17,415 spaces) would be met similar to existing conditions, where spectators park in satellite parking lots, on street, or within private lots in the area. Some spectators may also switch to alternative modes of transportation, such as transit or charter bus. The Transportation Management Plan (TMP) that would be required to be prepared by the stadium operator as part of mitigation measure MM TR-38 (TMP for the Stadium) on Draft EIR pages III.D-132 and -133, would include parking management strategies. The TMP has not yet been developed, however, would be developed in consultation with SFMTA.

Expansion of the proposed stadium to 80,000-person capacity is not proposed as part of the Project. If it were required as part of a special event such as a Super Bowl or if San Francisco were to be selected to host a future Olympic Games, the associated venue modifications and their configuration, along with regional transportation improvements and overall arrangement of the event, would require extensive planning, analysis, and approvals, all of which are beyond the scope of the Draft EIR.

Response to Comment 33-2

The commenter references a potential multi-modal bridge over India Basin, parallel to Innes Avenue. Such a facility is not proposed by the Project, nor is it required as a mitigation measure to lessen Project impacts. Therefore, no such facility was evaluated as part of this Draft EIR.

The commenter also references a light rail extension from Bayshore Caltrain station (the current terminus of the T-Third route is at Bayshore Boulevard/Sunnydale Avenue, near the Bayshore Caltrain station). The referenced extension would follow the proposed BRT alignment along Harney Way, across Yosemite Slough, through the Hunters Point Shipyard site, and extend along Innes Avenue back toward Third Street, essentially forming a loop around the Bayview neighborhood. Such a route extension is not proposed by the Project, nor is it required as mitigation measure to lessen project impacts. Further, funding for such a system has not been identified. Therefore, no such service modification was evaluated as part of this Draft EIR. However, provision of light rail in the future, as suggested by the commenter, is not precluded by the roadway network improvements proposed by the Project.

The commenter also notes that similar multi-use turf/parking field facilities are provided at the new Dallas Cowboys stadium. This is acknowledged. No response is required.

Response to Comment 33-3

Comment acknowledged. The grading plan for Hunters Point Shipyard will provide a stadium site that is approximately 60 inches above its current grade and the rest of the parking/playing fields areas will be raised about 55 inches. This will bring the site above the 55-inches-sea-level-rise-by-2100 scenario provided as guidance by the State.

Response to Comment 33-4

The commenter suggests that additional lanes be provided on the Yosemite Slough bridge, that an extension of Carroll Avenue be provided, and that the Yosemite Slough bridge be open to traffic at all times.

Additional Lanes on Yosemite Slough Bridge—The Yosemite Slough bridge has been designed to accommodate four lanes of traffic between Harney Way and the proposed stadium. The proposed stadium egress plan would achieve an over 40 percent increase in stadium exit capacity compared to the existing facility and would provide a typical post-game clearance time similar to other new NFL stadiums (approximately 1 hour).

Under conditions with the Yosemite Slough bridge, the primary exit constraint is the gates exiting the stadium parking lot. As a result, widening Yosemite Slough bridge would not increase stadium exit capacity unless additional exits from the stadium parking lot were provided and Crisp Road, Arelious Walker Drive, and Harney Way were all widened beyond their proposed configurations. Widening these roads would be inconsistent with the project's goals of creating a transit-oriented, pedestrian and bicycle-friendly neighborhood because they would increase roadway crossing distances and generally make transit less accessible. Therefore, a wider bridge was not considered since it would not be necessary in order to achieve acceptable stadium exit times and due to the general inconsistency with the Project's goals and the City's Transit First policy.

Carroll Avenue Extension—The commenter also suggests that Carroll Avenue be widened to increase traffic capacity, and that an extension of Carroll Avenue west of Third Street to the Paul Avenue/US-101 interchange be considered. The project proposes to widen Carroll Avenue between the Project and Third Street. The resulting cross section would provide 12-foot sidewalks on each side, a 7-foot on-street parking lane on each side, and two vehicular travel lanes on each side. Further widening to increase stadium egress, as suggested by the commenter, would result in sidewalks that would be inconsistent with the City's Draft Better Streets Plan (which recommends a minimum 12-foot width) or acquisition of private property, including Production, Distribution, and Repair (PDR) businesses and private residences, neither of which would be considered feasible or desirable.

An extension of Carroll Avenue to connect with the Paul Avenue/US-101 interchange was evaluated as part of the Bayview Transportation Improvement Projects (BTIP) Study, and at that time was determined to be difficult due to geometric constraints, costs associated with relocation of the spur tracks that are located adjacent to the main Caltrain tracks in the vicinity of Carroll Avenue, and overall costs even though it would provide some circulation options. Constructing Carroll Avenue to the west to connect with Egbert Avenue west of the Caltrain tracks would require an overcrossing or undercrossing of the Caltrain tracks and spur tracks that run parallel to Third Street. Going under the tracks was determined to be infeasible due to the large-capacity sewer line that runs parallel to the tracks, while an overcrossing was determined

to be challenging and expensive, as it would result in a very steep downgrade and would conflict with entrances to existing and planned development.

Refer to Response to Comment 17-1 for a discussion of the process that would be required for the bridge to be open for public use.

Response to Comment 33-5

As noted on page II-50 of Chapter II (Project Description) of the Draft EIR, new development at HPS Phase II would begin with the construction of the 49ers stadium, scheduled for completion by 2017. It is possible that the stadium could be completed earlier than 2017 depending on availability of funding. If any substantive changes to Project phasing are made during the course of implementation of the Project, City and Agency staff would make a determination whether the changes materially affect the analysis in the EIR and whether additional environmental review is necessary.

As described in Section B (Project Refinements), since publication of the Draft EIR, the development schedule has been updated to reflect that site preparation activities would begin 1 to 2 years later than originally planned, and the completion of building construction would be extended from 2029 to 2031, with full occupancy by 2032. Refer to Section F (Draft EIR Revisions) for the updated text and figures (including page II-50).

Response to Comment 33-6

The parking structure at the Candlestick Point retail center has been proposed to accommodate approximately 2,300 parked vehicles. On game days, 1,000 of these spaces would be reserved for game-day patrons, leaving 1,300 parking spaces available for the retailers located in the 635,000 square foot regional retail center. It is not feasible to reserve additional spaces in this garage for game-day patrons and still provide adequate parking for businesses in the retail center. Further, expanding the proposed facility to 8,000 spaces as suggested by the commenter is not proposed as part of the Project.

Finally, the commenter references travel within the Candlestick Point site and travel to the stadium site by light rail. The transit service proposed would be BRT and not light rail. Although the BRT has been designed so as not to preclude potential conversion to light rail at a later date if deemed desirable by decision makers, it is important to note that light rail is neither proposed as part of the project nor proposed by SFMTA, and has not been considered in the Draft EIR.

Response to Comment 33-7

The comment is acknowledged. No response is required.

Response to Comment 33-8

As indicated on Figure III.D-17 in the Draft EIR, space for 44 RVs, 17 limousines, and 340 buses would be provided in the dual-use turf surface parking lots adjacent to the new stadium.

Response to Comment 33-9

The commenter notes that the term “South Bay” as used in the Draft EIR to describe the geographic distribution of 49er season ticket holders refers to the entire San Francisco Bay Area Peninsula (Peninsula) south of the City of San Francisco, including all of San Mateo County. In response to the comment, the text in Section III.D (Transportation and Circulation), third paragraph, third sentence (under Table III.D-6), page III.D-61, has been revised as follows:

... The information obtained from the 49ers indicates that approximately 40 percent of the season ticket holders reside in the South Bay (including all of San Mateo County), 16 percent in the East Bay, 14 percent within San Francisco, and 10 percent in the North Bay counties. ...

Additional detail regarding the location of 49ers season ticket holders (i.e., the percentage in San Mateo County versus counties to the south) was unavailable, but would not affect the transportation analysis since the ingress/egress routes would remain the same.

The commenter also suggests that roadways should be widened to improve stadium clearance times beyond those provided by the project. Refer to Response to Comment 33-4, above. Generally, widening existing roadways to provide increased vehicular exit capacities from the stadium beyond those proposed would involve acquisition and demolition of existing private property, affecting existing PDR uses and private residences.

Response to Comment 33-10

Alternative 3, discussed in Section VI.C in the Draft EIR, evaluates the environmental impacts associated with a project that would retain Candlestick Park and not construct a new stadium at the Hunters Point Shipyard. These other ideas (e.g., expanding the arena to 20,000 seats; building the arena at Hunters Point) were addressed in Chapter VI (Alternatives) (Table VI-11, pages VI-170 through VI-172). These ideas were rejected because operation of the arena could increase traffic-related impacts, would result in additional trips to HPS Phase II, and could increase impacts along the Third Street corridor.

These comments do not address the technical adequacy of the environmental analysis of the Project. The comments relate to policy issues that will be identified herein for review by decision makers during the Project approval process.

Response to Comment 33-11

Currently, there is no regularly scheduled transit service to Candlestick Park. On game days, special express and shuttle bus service is implemented connecting the stadium with regional transit. Despite the fact that transit service to Candlestick Park is very unique and not part of the City’s regular transit system, approximately 19 percent of existing patrons opt to take transit to 49ers football games, based on data provided by the San Francisco 49ers.

According to the 49ers, patrons have consistently expressed a desire to see new and improved transit service to football games as an alternative to travel by auto. The Project would enhance transit service during game days, and would:

- Include substantial investment in regularly scheduled transit service to and from the new stadium (including extension of trolley and motor coach service and introduction of new Bus Rapid Transit service)
- Provide transit preferential treatments designed to improve transit travel time and reliability through exclusive transit right-of-way on Palou Avenue and along the BRT route
- Manage the provision of parking immediately adjacent to the stadium to accommodate multi-modal access and support realistic transit ridership goals

Given these factors, the familiarity and sophistication of Bay Area patrons with respect to using transit, and the demonstrated evidence from other NFL stadium locations that NFL patrons are interested and willing to use transit as a means to reach games, an increase in transit ridership of six percentage points from 19 percent to 25 percent would be within a reasonable range of increased transit utilization.

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Letter 34: San Francisco Architectural Heritage (1/11/10)

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Letter 34

January 11, 2010

Mr. Stanley Muraoka
Environmental Review Officer
San Francisco Redevelopment Agency
One South Van Ness Avenue, Fifth Floor
San Francisco, CA 94103

Mr. Bill Wycko
Environmental Review Officer
San Francisco Planning Department
1650 Mission Street
San Francisco, CA 94103

Re: Candlestick Point-Hunters Point Shipyard Phase II Development Plan DEIR

Dear Mr. Muraoka and Mr. Wycko:

San Francisco Architectural Heritage would like to take the opportunity to comment on the Draft Environmental Impact Report issued for the Candlestick Point-Hunters Point Shipyard project.

It is our opinion that the DEIR is inadequate in the following areas relating to historic resources: evaluation of the historic resources present on the site, analysis of the impacts to the historic resources, a preservation alternative that meets the project goals, and mitigation measures to lessen impacts on the historic resources.

The DEIR's evaluation of historic resources on the project site is incomplete. There is little to no analysis of architectural styling and its relationship to the historical context of the site [governmentally prescribed, utilitarian modern architecture]. Even the specific architect for an individual building is not noted. There is also no analysis of the buildings outside the proposed district, which ignores many buildings from other periods of the site's history. The report claims there are examples of this type of architecture on other bases, but does not identify where they are or what condition they are in. This is critical in determining the rarity of the resource. Additionally, the evaluation of individual buildings is inconsistent with the findings as stated in the context statement. The context statement explains that the project site is one of significance, yet the individual buildings are not evaluated to support this statement. The few resources that were evaluated are insufficient in encompassing the entirety of the site history.

It is also our opinion that Candlestick Point Stadium is not adequately evaluated. Even though it was the first major league baseball stadium constructed with concrete, the DEIR states that "if reviewed at the 50-year mark, [the stadium] would not meet criteria for listing on the NRHP or CRHR due to lack of physical integrity resulting from extensive alterations." Not only do we disagree with this conclusion, the technical

34-1

34-2

34-3

2 of 3

studies from Circa, which were used in the preparation of the DEIR, do not include any recommendation regarding the eligibility of the stadium now that it is over 50 years, nor does it include an evaluation of eligibility as per the California Register of Historic Resources.

34-3
cont'd.

In terms of impacts on the identified historic resources, the DEIR is insufficient in its analysis of the impacts of park development on the integrity and eligibility of the identified Hunters Point Commercial Dry Dock and Naval Shipyard Historic District. Individual dry docks are studied for compliance to the Secretary of Interior's Standards, but there is no analysis of comprehensive impacts to the district as a whole. Additionally, there is a general lack of diagrams and maps showing the impact on resources.

34-4

The DEIR does not provide for a preservation alternative for the removal of five of the eleven contributing elements in the California Register-eligible Hunters Point Commercial Dry Dock and Naval Shipyard Historic District. Alternative 4 is not a sufficient alternative, as it includes many additional variables not pertaining to preservation. An adequate preservation alternative would start with preservation as the main goal, and come closer to meeting the square footage goals of the project sponsor. The DEIR does not adequately show why retention and rehabilitation of the five contributing buildings that are proposed for demolition is infeasible. A preservation alternative does not mean that all development must stop, but it should retain the buildings identified in the potential historic district.

34-5

We believe this is inconsistent with federal requirements, which stipulates special efforts be made to protect historic sites. We disagree that a prudent and feasible alternative cannot be designed that would minimize harm to the known historic resources.

The mitigation measures outlined in the DEIR are unsatisfactory in compensating for the loss of resources if the proposed project is approved. HABS/HAER documentation and interpretive panels will not sufficiently convey the significance of the site. Mitigation measure MM CP-1b.2 states that "Interpretive displays related to the history of HPS shall be installed at Heritage Park at Drydocks 2 and 3." It is our opinion that interpretation should be included other places as well, since the site is so large and will be utilized in a variety of uses.

34-6

Additionally, a designation program should be established to ensure eligible buildings be listed through the project. In fact, the Hunters Point Shipyard Reuse Final EIR from 2000 includes a designation agreement through which the National Register eligible properties would be listed as San Francisco City Landmarks. It is our opinion that this would be an appropriate mitigation for this project and should be included in the EIR.

In summary, it is our conclusion that the DEIR for the Candlestick Point-Hunters Point Shipyard Phase II Development Plan is insufficient in its analysis and recommendations regarding historic resources. Heritage is supportive of the plan to reactivate and

34-7

3 of 3

redevelop a site that contributes such a rich chapter to San Francisco's history, and we have no desire to delay the project longer than necessary. We do however believe that the DEIR needs further supplementary analysis before it can be certified, and we request that such additional work be completed.

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34-7
cont'd.

Thank you for the opportunity to comment.

Sincerely,



Jack A. Gold
Executive Director
/ab

Cc: Joy Navarrete, Planning Department
Anthea Hartig, National Trust for Historic Preservation
Elaine Stiles, National Trust for Historic Preservation
Brian Turner, National Trust for Historic Preservation
Jennifer Gates, California Preservation Foundation
Charles Chase, Historic Preservation Commission
Courtney Damkroger, Historic Preservation Commission
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Andrew Wolfram, Historic Preservation Commission
James Buckley, Historic Preservation Commission
Karl Hasz, Historic Preservation Commission
Diane Matsuda, Historic Preservation Commission
Gretchen Hilyard, Docomomo - Northern California

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■ Letter 34: San Francisco Architectural Heritage (1/11/10)

Response to Comment 34-1

This comment contains introductory information and refers to specific historic resource topics in the Draft EIR in subsequent paragraphs in the letter. Those comments are addressed below.

Response to Comment 34-2

Refer to Response 39-1 with regard to the Draft EIR evaluation of Hunters Point Shipyard, and the adequacy of conclusions on historic resources and potential historic districts.

Response to Comment 34-3

Refer to Response to Comment 39-4 with regard to the evaluation of Candlestick Park stadium under NRHP and CRHR criteria. That response cites and summarizes a recent study that evaluates Candlestick Park Stadium, as a 50-year-old structure in 2010, for eligibility for the National Register of Historic Places (NRHP), the California Register of Historical Resources (CRHR), and San Francisco historic registers. As discussed in Response to Comment 39-4, Candlestick Park stadium would meet NRHP and CRHR criteria as an historic resource for association with events, the introduction of major league baseball on the West Coast; and for association with persons, the career of Willie Mays with the San Francisco Giants. But the stadium lacks integrity related to its period of significance under both associative criteria, due to the extensive alteration of the stadium in the 1970s. Therefore, the stadium would not be considered a historic resource.

Response to Comment 34-4

The Draft EIR found that the Project would not have a significant adverse effect on the NRHP-eligible Hunters Point Commercial Drydock District. As stated on Draft EIR pages III.J-33 to -34:

The Project proposes to retain the buildings and structures in the potential Hunters Point Commercial Dry Dock District, identified in 1998 as eligible for listing in the NRHP. Drydocks 2 and 3 and Buildings 140, 204, 205, and 207 would be rehabilitated using the Secretary of the Interior Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings. Page & Turnbull, architects and historic resource consultants, reviewed the proposed treatment and rehabilitation of Drydocks 2, 3, and 4. The treatments would include repair of concrete surfaces of the drydocks and addition of guardrails along their perimeter. Page & Turnbull found that the proposed treatments would provide a methodology for resolving severe deterioration issues, and ultimately provide for the longevity of the historic resources; the treatments would be consistent with the *Secretary of the Interior's Standards for Rehabilitation*²⁶⁶ (refer to Appendix J [Drydock Assessment]). Heritage Park is proposed at Drydocks 2 and 3 and would include interpretive display elements related to the history of HPS. Per CEQA Guidelines Section 15064.5(b)(3), these impacts would be mitigated to a less-than-significant level.

As discussed on in Section III.J, pages III.J-33 to -34, the Project would demolish structures identified as part of the CRHR-eligible Hunters Point Commercial Drydock and Naval Shipyard Historic District; this would be a significant and unavoidable adverse effect. Refer to Response to Comment 28-1 with regard to Alternative 4 (Reduced CP-HPS Phase II Development, Historic Preservation) and Subalternative 4A (CP-HPS Phase II Development Plan with Historic Preservation) as preservation alternatives that would

retain the structures in the CRHR-eligible Hunters Point Commercial Drydock and Naval Shipyard Historic District and would avoid significant adverse effects on historic resources.

The Draft EIR includes supplementary information on the historic treatment of the Drydocks 2, 3, and 4 as atypical structures. All buildings to be retained in the NRHP-eligible Hunters Point Commercial Drydock Historic District, would, as noted, be rehabilitated under the Secretary of the Interior Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings. The Draft EIR, page III.J-29, third full paragraph, notes:

CEQA Guidelines Section 15064.5(b)(3) states that “generally, a project that follows the Secretary of the Interior’s Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings or the Secretary of the Interior’s Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings shall be considered as mitigated to a level of less than a significant impact on the historical resource.

Draft EIR Figure III.J-2 (Potential Historic District), page III.J-23, illustrates historic resources identified in the Draft EIR. The legend indicates the boundary of the NRHP-eligible Hunters Point Commercial Drydock Historic District, and the location of Drydocks 2 and 3, and Buildings 140, 204, 205, and 207 that are contributory to that district. Figure III.J-2 also indicates the boundary of the CRHR-eligible Hunters Point Commercial Drydock and Naval Shipyard Historic District (which encompasses the smaller NRHP district), and the locations of Buildings 208, 224, 211, 231, and 253 that are contributory to that district. (It should be noted that Building 208 would now be retained as part of the Project and all variants and alternatives.)

Response to Comment 34-5

Refer to Response to Comment 28-1 with regard to Alternative 4 (Reduced CP-HPS Phase II Development, Historic Preservation) and Subalternative 4A (CP-HPS Phase II Development Plan with Historic Preservation) as preservation alternatives that would retain the structures in the CRHR-eligible Hunters Point Commercial Drydock and Naval Shipyard Historic District and would avoid significant adverse effects on historic resources. As discussed therein, Subalternative 4A would retain and rehabilitate the structures in the CRHR historic district, including structures in the National Register of Historic Places (NRHP)-eligible Hunters Point Commercial Drydock Historic District: Drydocks Nos. 2 and 3, and Buildings 104, 204, 205, and 207. Subalternative 4A would maintain the land use program at HPS Phase II and avoid significant adverse effects on historic resources.

Response to Comment 34-6

The Project would develop interpretive materials and displays related to the history of the site at appropriate locations, including Heritage Park—the Hunters Point Commercial Drydock Historic District—and other locations related to the nineteenth and twentieth century history of the Shipyard.

The following underlined text changes on Draft EIR page III.J-21, paragraph two, note that the Navy is completing the National Register process for the Hunters Point Commercial Drydock Historic District identified in 1998:

The HPS Phase II site contains buildings and structures identified historic significance. Since Shipyard decommissioning in 1974, two studies evaluated historic resource at the Shipyard. In 1988, a report concluded that four properties were eligible for listing on the NRHP: Drydock 4; Building

253; the 450-ton Re-gunning crane, and the Hunters Point Commercial Dry Dock Historic District (including Drydock 2, Drydock 3, remnants of Drydock 1 and Buildings 140, 204, 205, and 207).²⁵² The Deputy State Historic Preservation Officer (SHPO) concurred with the findings of the 1988 report. In 1997, JRP Historical Consulting Services completed an updated report for HPS and concluded that Drydock 4 and the potential Hunters Point Commercial Dry Dock Historic District appeared eligible for listing in the NRHP. The JRP report concluded that Building 253 and the Re-gunning crane, identified in the 1988 study, were not eligible due to integrity issues. In 1998, the SHPO concurred with findings that the Drydock 4 and the potential Hunters Point Commercial Dry Dock Historic District appeared eligible for inclusion in the NRHP.²⁵³ The Navy is currently completing National Register nominations and Historic American Engineering Records documentation for the Hunters Point Commercial Dry Dock Historic District, pursuant to the Memorandum of Agreement with SHPO and the Advisory Council on Historic Preservation, discussed under “Regulatory Framework,” below.

Response to Comment 34-7

This comment contains concluding information and refers to preceding specific historic resource topics in the Draft EIR. Those comments are addressed above.

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■ **Letter 35: Hamman, Michael (1/12/10)**

1 of 5

Letter 35

Michael Hamman, General Contractor
702 Earl Street
San Francisco, CA 94124

January 12, 2010

Mr. Stanley Muraoka
Environmental Review Officer
San Francisco Redevelopment Agency
One South Van Ness Avenue, 5th Floor
San Francisco, CA 94103

Mr. Bill Wycko
Environmental Review Officer
San Francisco Planning Department
1650 Mission Street
San Francisco, CA 94103

**RE: Candlestick Point–Hunters Point Shipyard Phase II Development Plan
DEIR.**

Dear Mr. Muraoka and Mr. Wycko:

I am writing to comment on several Sections of Draft Environmental Impact Report for this project.

Section: **III D Transportation.**

1. The transportation Analysis is based on the Nov 4, 2009 Transit Study by Fehr & Peers referenced and included. That study describes the method used to determine: a.) transportation demand and, b.) The method to apportion that demand between the principal modes of transit, i.e., cars, Public Transit, and Walking. This analysis is seriously flawed.
 - a. The determination of demand in the form of trips generated is in error. This study assumes that over thirty percent of all trips will be internal, that is, within the Shipyard. This is based on the assumption that there will be sufficient opportunities for employment, recreation and especially retail close by. This is not the case, as the planned development of these amenities will not

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35-1
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2 of 5

happen (if at all) for twenty or more years. In the interim period and until these amenities are actually operational the residents of this project will be very isolated and will need to travel significant distances for all their daily needs. It is over five miles to the nearest supermarket, almost two miles to even a drugstore. This condition is not even planned to change for almost two decades and the plan is already a year behind schedule. For twenty plus years, these residents will need to drive to have even their most basic needs met. For many this will be the remainder of their lives. This EIR must recalculate the demand based upon the near term conditions and assume 100% of the calculated demand and not reduce it for factors that are not even planned to be built for at least twenty years. It is unacceptable to the existing residents and indeed the new residents to accept intolerable conditions for a period that long.

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35-1
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- b. The assumptions for transit ridership are skewed by the same error. When people live so far away from retail outlets they tend to shop less frequently and then to make larger purchases. These larger purchases will be transported by car, not transit. How often do you see a transit rider attempting to carry six bags of groceries? Transit use is predicated on the ability to shop on the way home from work and secure the necessities on a daily basis. When people live in an area distant from retail shops, as in suburbia, they behave like suburbanites, that is, they shop less often and buy large quantities and carry them in a car! The convenient availability of transit will not by itself change that behavior. The residents will ride the transit home from work and get into the car to drive the five miles each way to the supermarket. The calculation of transit ridership must be revised down to a more realistic level for what will be essentially suburban conditions. Further the patterns of behavior established in the first twenty years of the project will carry on for some time even if retail is finally built. Also such patterns of shopping elsewhere will inhibit the successful development of local stores as people will continue to shop in their established patterns.

35-2

- 2. The estimated need for parking is in error for the reasons identified in #1 above. The residents and neighbors will need to use their cars more and they will have more cars than the study assumes. Inadequate parking for whatever reason has serious negative impacts on the quality of life for the neighboring residents as well as the new residents. Cars are stuffed into all sorts of inappropriate places, and the conflicts over existing spaces often get out of hand. If the need for parking declines as the level of local amenities increases the excess space is easily converted to other uses. Whereas the lack of adequate parking is difficult to ameliorate.

35-3

3 of 5

3. The proposal to create a Bicycle lane on each side of Innes will have several unavoidable negative impacts. None of the following impacts were analyzed.
- a. Removing the existing on street parking will create a real hardship for those existing residents living in older (in some cases historic) homes with no garage or other off street parking. Innes is unique in that there are no parallel streets on either side, and there is only one half of a side street in a six block stretch of Innes. Quite simply, there is no other place to park and to remove the only possible parking option would constitute a “taking” to those home owners along Innes.
 - b. It is not good planning to locate bike lanes on such a heavily traveled route with BRT lines and possible future rail lines. Further this is designated as a major truck route. Mixing bicycles with this traffic will be dangerous and slow down the traffic. Separate stripped pathways will not prevent this mixing (especially see c. below).
 - c. Innes Avenue now has, and current planning for the future continues to provide for, a separate driveway for each twenty five foot parcel. The disruption to traffic from cars backing in and out of garages is significant and is especially dangerous for bicyclists. This hazard and impediment to traffic flow was not analyzed.
 - d. Locating the Bay Trail on Innes (even for a few blocks) with the trucks, BRT and traffic, defeats the purpose of the Bay Trail which was intended to be a peaceful route for one to enjoy the many joys and pleasures of our wonderful Bay. Dodging traffic and breathing exhaust were not the intended benefits.
 - e. The Hudson Avenue alignment was not studied as a mitigation for the problems identified in; a. – d. above, and the EIR is inadequate without such study.

35-4

III Q Utilities

1. There is no analysis of the possible impacts on the local domestic water pressure. The separate high pressure fire supply system, AWSS, is analyzed and mitigations for the adverse impacts are recommended. However, there no discussion of the local domestic delivery system, i.e. the pipes that travel under India Basin. The existing water pressure is very, very low throughout the Bayshore and especially in India Basin. Even the Water Department considers it marginal, but for some residents the delivered pressure is actually BELOW the allowed minimum. The Shipyard plans to use the existing distribution system, i.e. pipes, and that increase in load can be

35-5

4 of 5

expected to further lower the pressure. Let me be clear I am not talking about the supply of water, there was plenty of discussion as to how the PUC has sufficient capacity, but I question the ability of the existing pipes to "deliver" the necessary pressure. This question must be studied to complete the EIR.

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2. The electrical power needs of the development will be supplied by the High Capacity Trunk Line running down Innes Avenue. These wires carry very high voltage that will be "stepped down" at the new transformer constructed at the corner of Earl & Innes. This line is unusual in that it is one of the very few remaining High Voltage trunk Lines in San Francisco that is still run overhead. The project will draw 44MW through these lines and the impacts of that usage need to be evaluated.

- a. Large current draw through such high voltage lines generate significant fields of Electromotive Force (EMF). The effects of EMF exposure should be evaluated, and possibly mitigated.
- b. The physical hazards of overhead high voltage wires in the event of a collision with a pole should be evaluated. The likelihood of such a collision will increase dramatically with the increase in traffic on Innes.
- c. The safety of the residents of Innes should be evaluated in the event of an earthquake. Very tall wood power poles are known to behave poorly in earthquakes. And the severity of damage is proportional to the voltage of the lines overhead.
- d. The reliability of the power supply should be evaluated as this will be the main supply for the development. Is it acceptable to have that many people subject to interruptions due to accidents, weather, and earthquakes? Because these lines are such high voltage and capacity their repair will be more time consuming. This risk should be evaluated.

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35-6

3. The telephone service and the CATV service is also planned to run overhead on the same poles. Today, communications via phone and high speed internet on the CATV cables is a necessity, and no longer a luxury. The adequacy and reliability of that service shares the same threats as does the power above. The safety and reliability of this service should be evaluated in the EIR.

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35-7

4. The obvious mitigation to these problems would be to underground the overhead lines down Innes Avenue. The accessibility of such critical

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5 of 5

infrastructure invites terrorist attack and this possibility needs to be addressed and possibly mitigated.

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35-8
cont'd.

Sincerely,

Michael Hamman

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■ Letter 35: Hamman, Michael (1/12/10)

Response to Comment 35-1

The commenter notes that the transportation analysis is based on full build-out of the project, which includes a mix of uses that reduce the external vehicle traffic generation, since many trips can be made within the project site. The commenter suggests that the residential component of the project would be constructed prior to construction of essential neighborhood-serving retail services and that the reductions taken in the transportation analysis are not valid until those retail services are constructed.

While the commenter is correct that the Project would be built out over many years, it is important to note that each major phase of development would include a mix of uses, including residential units and neighborhood-serving retail. In addition, transit lines serving the development phases would be extended and increased in frequency to support transit-oriented travel behavior. This would be matched with street and sidewalk improvements to support increased walking and bicycle trips.

As described in Section B (Project Refinements), since publication of the Draft EIR, the development schedule has been updated to reflect that site preparation activities would begin 1 to 2 years later than originally planned, and the completion of building construction would be extended from 2029 to 2031, with full occupancy by 2032. Section F (Draft EIR Revisions) contains updated text and figures (including Table II-15). As shown in Table II-15 on page II-79 of the Draft EIR, the first phase of development includes 2,160 residential dwelling units, 583,000 square feet of research and development space, and 84,000 square feet of neighborhood-serving retail space at the Hunters Point Shipyard site. Ultimately, as shown on the table, all of the neighborhood-serving retail in HPS and Candlestick Point (a total of 250,000 square feet) would be constructed by the third development phase (out of four). The fourth development phase consists of additional residential development at Candlestick Point, such that the retail referenced by the commenter would be constructed prior to the full residential program.

Therefore, even in early phases, when the overall trip generation would be less than it would be under full build-out, the Project would contain a mix of uses that would offer essential neighborhood serving retail trips that could be made within the project site. The analysis presented in the transportation study, which is based on full project build-out, presents a worst-case analysis, since the trip generation would be less during interim years.

Response to Comment 35-2

The commenter states that residents of the Project would live far away from retail, which would cause them to be more likely to travel by auto than by transit. Refer to Response to Comment 35-1, above, which describes that the retail component of the Project would actually be fully built out prior to build-out of the residential component.

The commenter also questions the validity of the transit mode share forecasts. The predicted transit usage is based on a statistical regression analysis developed from travel patterns currently made by travelers within other neighborhoods of San Francisco. The forecasting model accounts for type of trip (work vs. non-work), parking costs, and travel times as influential predictors of transit use. Other variables were considered but found to not be statistically significant (i.e., they were not useful predictors of transit use).

The commenter also notes that if large amounts of development occur prior to implementation of transit services, auto-oriented travel patterns would develop that are difficult to change making transit less successful once implemented. The transit phasing plan has been designed with this concept in mind, such that transit services would be implemented earlier in the Project schedule, and transit-oriented travel patterns would be encouraged from the early stages. New transit service would be established at approximately 20 percent of completion of the first major development phase, and transit services to each development area would largely be fully in place by the time approximately 50 percent of completion of build-out of each of the Candlestick Point and Hunters Point Shipyard sites.

Response to Comment 35-3

As described on page III.D-63 of the Draft EIR, parking demand was estimated based on the SF Guidelines methodology. The parking demand rates in the SF Guidelines were based on citywide average demand surveyed throughout the City. As described on pages II-34 and II-35, the Project would include a number of Transportation Demand Management (TDM) strategies designed to reduce automobile travel and encourage residents, employees, and visitors to the Project to walk, bicycle, and use transit. These strategies, in addition to the robust transit service planned for the new neighborhoods, should reduce automobile dependence, thereby reducing parking demand. The parking demand analysis presented in the Draft EIR does not include any reduction or credit for the TDM strategies described above, and is thus considered conservatively high.

The project's forecasted parking demand, supply, and projected parking shortfall is discussed as part of Impact TR-35, presented on pages III.D-120 through III.D-125. As described, in San Francisco, parking supply is not considered a permanent physical condition, and changes in the parking supply would not be a significant environmental impact. Therefore, the parking shortfall associated with the Project is considered a less than significant environmental impact.

Response to Comment 35-4

As noted on page III.D-125, Impact TR-36 discusses the impact of removing on-street parking. The provision of a bicycle lane on Innes Avenue would result in removal of 51 parking spaces on the south side of the street. Parking would still be available on the north side of Innes Avenue, adjacent to residential development. In addition, off-street parking would likely be provided as part of any new development along Innes Avenue (i.e., new development not part of this Project). Project-related parking impacts discussed in Impact TR-36 are considered less than significant because the parking demand could be accommodated along other portions of Innes Avenue and other streets in the study area. At some locations, residents and visitors would have to walk further between their parking space and destination. In addition, the City of San Francisco does not consider loss of parking supply to be a significant impact.

Finally, the commenter suggests that removal of public on-street parking spaces would be considered a taking. On-street parking spaces are publicly owned and not for the sole use of adjacent uses, and are therefore, not considered a taking.

The commenter suggests that BRT and/or light rail is proposed for Innes Avenue. Neither BRT nor light rail is proposed for Innes Avenue. Further, the commenter suggests that bicycle lanes adjacent to truck routes would be dangerous. While Innes Avenue is identified as an existing route with substantial truck

traffic, redevelopment of the Shipyard would transform the roadway's character from primarily industrial traffic to traffic from residential and office uses, which would be less truck-intensive.

A Class II bicycle lane, as proposed for Innes Avenue, is consistent with the bicycle lanes for Innes Avenue included in the San Francisco Bicycle Plan, which was cleared in its own environmental review process. Further, the proposed roadway design would meet City of San Francisco design standards. These standards were developed to safely accommodate all roadway users, including transit, bicycles, trucks, pedestrians, and private automobiles.

Although there is a separate planning study underway contemplating potential future development along Innes Avenue, there is no planning that identifies that a separate driveway would be provided for each 25-foot-wide parcel on Innes Avenue. The existing and potential future conditions on Innes Avenue would not be unlike other streets in San Francisco. However, even if there were driveways for each 25-foot-wide parcel, they would be designed according to City standards and exiting vehicles would be visible to bicyclists.

As shown on Figure III.D-5 in the Draft EIR, the Bay Trail is not proposed to extend on Innes Avenue. The Project would not affect the Bay Trail west of Earl Street.

The commenter suggests an alignment of the Bay Trail through the India Basin site along Hudson Street be considered as a mitigation measure. As discussed above, no impact to bicycles was identified and therefore no mitigation is required. Further, the Project Applicant does not have control over the Hudson Avenue alignment, which is part of a separate development project. However, the Project would not preclude the use of Hudson Avenue as a continuation of a recreational Bay Trail, and such a use could be studied as part of the planning for redevelopment of India Basin. The analysis of bicycle impacts on Innes Avenue is therefore adequate and additional analysis for the EIR is not required.

Response to Comment 35-5

Continued analysis of the low-pressure water systems since issuance of the Draft EIR has confirmed no off-site modifications to the City system are required and that the systems will meet or exceed the City's pressure requirements.¹⁰⁴ Specifically, an analysis of the low-pressure water system has shown that no improvements to the City water system are required between the Project site and the University Mound water storage/supply (located in the vicinity of the intersection of Bacon Street and Bowdoin Street), as existing piping will provide the required pressure and flow without any modifications. The Draft Low Pressure Water Analysis for CP-HPS Phase II has been reviewed by the SFPUC and the SFPUC has not required any improvements to the existing system outside of the Project site.

Response to Comment 35-6

The scientific evidence suggesting that electromagnetic field exposures pose any health risk is weak, according to a report published by the National Institutes of Health.¹⁰⁵ According to the World Health

¹⁰⁴ *Candlestick Point/ Hunters Point Shipyard Infrastructure Concept Report* (2007) prepared by Winzler & Kelly Consulting Engineers.

¹⁰⁵ NIEHS Report on Health Effects from Exposure to Power-Line Frequency Electric and Magnetic Fields, NIH Publication 99-4493, May 1999.

Organization (WHO),¹⁰⁶ some individuals have reported a variety of health problems that they relate to exposure to electromagnetic fields (EMF). This reputed sensitivity to EMF has been generally termed “electromagnetic hypersensitivity” or EHS. EHS is characterized by a variety of non-specific symptoms that differ from individual to individual. EHS has no clear diagnostic criteria and there is no scientific basis to link EHS symptoms to EMF exposure. Further, EHS is not a medical diagnosis, nor is it clear that it represents a single medical problem. Not only has there been no accepted link between EHS symptoms and EMF exposure, there has been no determination of a threshold of exposure, expressed in length of exposure or magnitude of the field, beyond which there are substantiated adverse health effects. There is no demonstrable impact related to EMF exposure as a result of the Project, and this impact does not require further analysis.

Overhead power lines exist all over the City, and could represent a safety hazard if a vehicle collides with a power pole with sufficient force or a seismic event causes power lines to break. These events could cause interruption in service. However, interruption in service is not an identified CEQA threshold and requires no further analysis. While traffic would increase on Innes Avenue as a result of the Project, there is no measurable increased risk of collisions with power poles that independently warrants undergrounding of the power lines along Innes Avenue. The undergrounding of utility lines is within the purview of Department of Public Works: Utility Undergrounding Program. Within the Bayview, major corridors contain undergrounded utilities, including 3rd Street, Mendell Avenue, and Evans Avenue.¹⁰⁷

The Project has not yet selected an electricity provider. The electricity provider may service the project via new extensions of the 12KV distribution and or 115KV transmission lines into the Project site and improvements could include a new substation within HPS Phase II (page III.Q-61 of the Draft EIR). Because the exact connection is unknown, it is also unknown what voltage increases would occur along the High Capacity Trunk Line on Innes Avenue as a result of Project connections. Page III.Q-61 of the Draft EIR states:

... all utility connections would be constructed in accordance with the Uniform Building Code, City ordinances, and Department of Public works standards to ensure an adequately sized and properly constructed electrical transmission and conveyance system.

Thus, voltage increases along this distribution line, if any, are regulated, and would not represent a substantial safety risk to area residents. With regard to reliability of the power supply, that is within the purview of the utility providers. PG&E and California Public Utilities Commission (CPUC) have indicated there is sufficient capacity to accommodate the needs of the Project.

Response to Comment 35-7

The reliability of telecommunications services are outside the scope of the CEQA process. There are no known safety problems associated with existing telecommunications service in the City. Further, no evidence is provided by the commenter to substantiate that there are safety problems associated with existing telecommunications service in the City, and there is no reason to believe that there would be any safety concerns arising as a result of the Project.

¹⁰⁶ World Health Organization, “Electromagnetic Fields and Public Health,” Fact Sheet No. 296, December 2005.

¹⁰⁷ http://www.sfgov.org/site/sfdpw_page.asp?id=32694. Accessed March 12, 2010.

Response to Comment 35-8

Whether overhead power lines would be the subject of a terrorist attack is speculative and outside the scope of the CEQA process. Comment is noted.

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■ Letter 36: San Francisco Green Party (1/12/10)

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Letter 36

1/12/2010

Public Comments On:

- CITY AND COUNTY OF SAN FRANCISCO PLANNING DEPARTMENT File No. 2007.0946E
- SAN FRANCISCO REDEVELOPMENT AGENCY File No. ER06.05.07
- State Clearinghouse No. 2007082168

Candlestick Point-Hunters Point Shipyard Phase II Development Plan Project (formerly the "Bayview Waterfront Project") Draft Environmental Impact Report

TO:

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and

Stanley Muraoka
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FROM:

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Environmental Review Officers,

I am submitting these comments to point out, and insist upon correction of, serious inadequacies, in the the Draft Environmental Impact Report (DEIR) for the Candlestick Point-Hunters Point Shipyard Phase II Development Plan Project, and in the project plans to which the DEIR refers.

I will focus my comments in two categories -

- 1) SERIOUS INADEQUACIES IN ADDRESSING, AND FAILURES TO ACCOUNT FOR, PROJECTED SEA LEVEL RISE
- 2) FAILURE TO ACCOUNT FOR AND AVOID HEALTH AND ENVIRONMENTAL HAZARDS OF TOXIC MATERIALS, INCLUDING BUT NOT LIMITED TO CHRYSOTILE ASBESTOS AND IONIZING RADIATION; AND, FAILURE TO MEET THE LEGAL PRECAUTIONARY PRINCIPLE ESTABLISHED BY ORDINANCE IN THE SAN FRANCISCO, CALIFORNIA, ENVIRONMENT CODE CHAPTER 1: - PRECAUTIONARY PRINCIPLE POLICY STATEMENT - SECTIONS 100-104 (see <http://library.municode.com/HTML/14134/level1/C1.html>)

Comments:

- 1) SERIOUS INADEQUACIES IN ADDRESSING, AND FAILURES TO ACCOUNT FOR, PROJECTED SEA LEVEL RISE

As is now commonly understood and established by widespread and

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overwhelming scientific consensus, the Earth's oceans and the San Francisco Bay are now undergoing sea level rise due to planetary climate warming.

Until very recently, science policy groups, including and especially the Intergovernmental Panel on Climate Change (IPCC) had been projecting that the worst case scenario for global sea level rise would be no higher than 1.5 meters by the year 2100.

However new data and reports released in November 2009 now indicate that the worst case scenario for global sea level rise is now projected to be at least 2 meters by the year 2100. More importantly, NASA's James Hansen, widely recognized as the preeminent climate change expert on Earth, argued credibly as early as 2007 that worst case scenario sea level rise will instead be 5 meters by the year 2100. In light of the fact that the IPCC's predictions of sea level rise from just two years ago have been found to be inadequate by an entire one half meter, and that James Hansen had previously argued in 2007 that the IPCC's projections were indeed inadequate, Hansen's projection of a worst case scenario of 5 meters sea level rise by the year 2100, must now be assumed as the guide for all plans for the Candlestick Point-Hunters Point Shipyard Phase II Development Plan Project.

The following data and reports prove this case:

- On Nov 22, 2009 NASA released new satellite gravimetric data from a 7 year study of Antarctica showing that the massive East Antarctic Ice Sheet, which scientists previously thought was gaining in volume, is suddenly (as of 2006) undergoing rapid and widespread melting. See <http://www.guardian.co.uk/environment/2009/nov/22/east-antarctic-ice-sheet-nasa>

The NASA study report itself can be ordered from Nature Geoscience at <http://www.nature.com/ngeo/journal/v2/n12/full/ngeo694.html>
This research also shows massive new and more rapid melting in West Antarctica and Greenland.

- As of November 24, 2009, in a report entitled 'The Copenhagen Diagnosis', even historically overly equivocal IPCC scientists revised their sea level rise projections to a possible 2 meters (6.5 feet) by the year 2100. See the Reuters news release on the report at <http://www.reuters.com/article/idUSTRES5AN4L620091124> and the actual report itself at <http://www.copenhagendiagnosis.org/download/default.html>
The portion of this report which describes new sea level rise projections begins on page 37 of the report.

- In a March 2007 report, NASA's James Hansen, who first alerted the general public and policy makers to the global climate crisis, discusses the probability of a 5 meter (16.25 feet) sea level rise. See Hansen's report at: http://www.iop.org/EJ/article/1748-9326/2/2/024002/erl7_2_024002.html
Note that Hansen's report is speculative by nature, simply because ice sheet melting and other data will not exist to prove the case that he argues, until that level of melting is already happening. However, given that the NASA gravimetric data noted above shows that Antarctic and Greenland ice sheets are currently undergoing rapidly accelerating melting at previously unforeseen rates (and at rates which continue to accelerate even further) there is absolutely no reason whatsoever to doubt Hansen's predictions; especially in light of the fact that Hansen's past predictions have consistently proved to be correct.

CONCLUSIONS - SEA RISE:

Hence, since James Hansen's prediction of a worst case 5 meter sea level



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rise by the year 2100 is highly credible, it is, at the very least, that standard of a predicted 5 meter rise which must be used as the guideline for all plans for the Candlestick Point-Hunters Point Shipyard Phase II Development Plan Project.

More importantly, good engineering practice (especially when dealing with a factor with such high unpredictability and potentially severe and costly outcomes as climate induced sea level rise) would call for at least an additional 100% margin of safety over worst case projections to be adopted for the Candlestick Point-Hunters Point Shipyard Phase II Development Plan Project. This means that the standard for assumed sea level rise in the project should be at least 10 meters (32.5 feet) of sea level rise by the year 2100. Even if planners were to use the likely far too equivocal 2 meter worst case sea rise projection in The Copenhagen Diagnosis, an additional 100% margin of safety would still demand a minimum 4 meter rise assumption.

Since the project plans and DEIR for the Candlestick Point-Hunters Point Shipyard Phase II Development Plan Project could not have envisioned the November 2009 reports noted above, and since planners and drafters were apparently unaware of Hansen's earlier and even more serious 5 meter rise projection, the project plans and DEIR are therefore utterly inadequate in addressing and including sufficiently high sea level rise projections.

Specific Inadequacies Numerous And Widespread - In Addition Most DEIR Sections Have No Sea Rise Analysis At All, And Must Now Include Such Analysis

The sections of the DEIR which deal most comprehensively with sea level rise; Volume 2 Section II. Project Description; and Volume 2 Section III.M. Hydrology and Water Quality; have numerous entries on sea level rise. In nearly every instance, the core predictions and plans referenced in the DEIR are dramatically overwhelmed by even the new -minimum- worst case scenario described above of 2 meters (78 inches) sea level rise. Most of the DEIR and project plan sections mentioning sea level rise assume a maximum of 36 inches sea level rise. Most notably, even where a potential 55 inch rise is mentioned as theoretically possible, that potential is downplayed with the following statement which, in light of the new information shown above, can now be seen to be completely and dangerously incorrect;

"Even among projections considered plausible, albeit high, by the CALFED Independent Science Board, a SLR of 36-inches would not occur until about 2075 to 2080 and by about 2100 the SLR could reach 55 inches. However, sea level observations since the publication date of the ice cap melt studies, although not conclusive to establish a new trend in SLR, do not show the accelerated SLR trajectory predicted by some of the reports."

Clearly, new observations do -indeed- show such accelerated sea level rise.

Other sections of the DEIR which specifically mention sea level rise and which need to be carefully and extensively revised to account for both the new data and Hansen's report are:
Volume 2 Sections III.K and III.L
and
Volume 3 Sections III.N and III.S, Section IV. and Section VI.

Furthermore, almost every -other- section of the DEIR and the project plan referenced, is impacted by sea level rise; and in light of the much higher 2 to 5 meter sea level rise projections now shown to be warranted, nearly the entire DEIR and the project plan that it



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references must be carefully reexamined and revised to account for sea level rise impacts.

To get a sense of why such an overarching reexamination of nearly the entire DEIR is necessary, see the following online interactive sea level rise projection maps:

The Project Area At 2 Meters Sea Level Rise:
<http://flood.firetree.net/?ll=37.7293,-122.3995&z=3&m=2>

The Project Area At 5 Meters Sea Level Rise:
<http://flood.firetree.net/?ll=37.7293,-122.3995&z=3&m=5>

Even at the minimum 2 meter rise worst case assumption, the sea inundations into the project area clearly and profoundly impact the entire project in fundamental ways that are not adequately addressed in the DEIR and the referenced project plan. And the 5 meter projection map is undeniably astounding in its implications.

Therefore the following sections; III.A. Intro to Analysis; III.B. Land Use; III.C. Pop., Housing, & Employment; III. D. Transportation; III. E. Aesthetics; III.H. Air Quality; III.J. Cultural and Paleontological Resources; III.O. Public Services; III.P. Recreation; III.Q. Utilities; III.R. Energy; and V. Other CEQA Considerations; all of which shockingly contain no significant references to sea level rise whatsoever, must now all be carefully reviewed and revised to account comprehensively for the far reaching impacts of the sea level rise projections indicated above.

Furthermore, all of the DEIR Appendices must likewise be assessed as to their accuracy in regard to sea level rise. Most notably, Appendices L, S, and V-2 each reference sea level rise, largely mirror the same serious shortcomings and errors shown in the DEIR, and must therefore be strongly questioned. And as in the case of the overall DEIR itself, all of the other Appendices are also affected and should be reexamined in relation to the new data and reports as to their adequacy. Particularly important in this respect is Appendix N-2 which discusses Yosemite Slough with almost no mention of sea level at all; this when sea level rise will clearly have profound impacts on plans for the Slough.

Sea Level Rise Interactions With Liquefaction & Hazardous Materials

The most important inadequacies of the DEIR and project plan lie in their failure to account adequately for the potential of sea level rise to severely exacerbate both liquefaction and the leaching and harmful interactions of hazardous materials in the project area.

Liquefaction

In the report entitled 'Vulnerability assessment to liquefaction hazard induced by rising sea-levels due to global warming' (see http://www.thefreelibrary.com/_/print/PrintArticle.aspx?id=155784183 - or purchase the full article with graphics at http://eproceedings.worldscinet.com/9789812701602/preserved-docs/9789812701602_0069.pdf) the report authors establish clearly that liquefaction dangers increase as sea levels rise, and increase rapidly after sea level rise exceeds 1 meter.

Shockingly, neither the DEIR section III.L. Geotechnical; nor section III.M. Hydrology and Water Quality; mention in any substantial way the dangers of potential interactions between sea level rise and liquefaction.

It is absolutely imperative that the DEIR and the project plan, outline



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a detailed analysis of these potentially extremely hazardous interactions, and outline plans for how they would be prevented; all with the full range of 2 to 5 meters sea level rise assumed.

Hazardous Materials

By far the most troubling aspect of the DEIR and project plan's neglect of sea level rise assessments is in their failure to sufficiently address potential sea level rise interaction with hazardous materials in and on the project site.

In 'Implications of Sea Level Rise for Hazardous Waste Sites in Coastal Floodplains' (see http://www.epa.gov/climatechange/effects/downloads/Challenge_chapter9.pdf) the authors establish clearly the extensive dangerous interactions that can occur as sea level rise exacerbates flooding and triggers other negative impacts in hazardous waste sites, such as those in the Candlestick Point-Hunters Point Shipyard Phase II Development Plan Project.

Yet astoundingly, neither the DEIR section III.K. Hazards and Hazardous Materials; III.L. Geotechnical; nor section III.M. Hydrology and Water Quality; assess in any comprehensive or substantial way the very serious dangers of potential interactions between sea level rise and the numerous hazardous materials and residues in the project plan area.

It is crucial that comprehensive detailed assessments of such potential interactions be included in the DEIR and project plan; assessments which assume the full spectrum of 2 to 5 meters sea level rise projected above.

However, regardless of the findings of such new assessments, the dramatic sea level rise scenarios projected above could so overwhelm the project area that unforeseen and unavoidable extremely dangerous leaching, flushing, mixing, out-gassing and dispersion of a veritable toxic soup of hazardous materials could take place in the project area. It is therefore imperative that all hazardous materials be completely removed from the entire project area before any development is permitted to proceed. Under a scenario of sea level rise between 2 and 5 meters, no capping or other on-site containment of any hazardous wastes can be adequate to assure the prevention of unacceptably dangerous leaching, flushing, mixing, out-gassing and dispersion of hazardous materials; all which in turn would lead to the inevitable poisoning of the environment, animals, and people, living in, working in, and visiting the area.

These remarks on sea level rise disrupted hazardous materials now segue well into the second and final category of my comments.

2) FAILURE TO ACCOUNT FOR AND AVOID HEALTH AND ENVIRONMENTAL HAZARDS OF TOXIC MATERIALS, INCLUDING BUT NOT LIMITED TO CHRYSOTILE ASBESTOS AND IONIZING RADIATION; AND, FAILURE TO MEET THE LEGAL PRECAUTIONARY PRINCIPLE ESTABLISHED BY ORDINANCE IN THE SAN FRANCISCO, CALIFORNIA, ENVIRONMENT CODE CHAPTER 1: - PRECAUTIONARY PRINCIPLE POLICY STATEMENT - SECTIONS 100-104 (see <http://library.municode.com/HTML/14134/level1/C1.html>)

Chrysotile Asbestos

Two recent European Union (EU) directives can be viewed at http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=31999L0077&model=guichett and at

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http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=32003L0018&model=guichett

In those directives, the EU establishes that "No threshold level of exposure has yet been identified below which chrysotile asbestos does not pose carcinogenic risks;".

In those directives, the EU also bans all applications and uses of chrysotile asbestos as of the year 2005.

Chrysotile or 'white' asbestos is the same type existing naturally in serpentine rock at the Candlestick Point-Hunters Point Shipyard Phase II Development Plan Project area and in other development areas in the Bayview Hunters Point. Previous grading and other development activities in those other development areas has resulted in chrysotile dust contamination on the Candlestick Point-Hunters Point Shipyard Phase II Development Plan Project area.

Because it has been established that there is no safe level of exposure to chrysotile asbestos, all asbestos dust which has arisen from other construction sites must be completely removed from the Candlestick Point-Hunters Point Shipyard Phase II Development Plan Project area before any development can begin in the area.

Further, because it has been established that there is no safe level of exposure to chrysotile asbestos, no grading whatsoever of any asbestos laden serpentine rock can be allowed in the Candlestick Point-Hunters Point Shipyard Phase II Development Plan Project area. Such grading presents unnecessary and unacceptable risks to human health.

All plans of the Candlestick Point-Hunters Point Shipyard Phase II Development Plan Project which permit the grading of asbestos laden serpentine rock must be nullified, and alternative plans which will not disturb chrysotile asbestos must be adopted.

Ionizing Radiation

In June 2005 the National Academies of Science reported that there is no safe dose of ionizing radiation (see <http://www8.nationalacademies.org/onpinews/newsitem.aspx?RecordID=11340>)

Therefore no development can be allowed to proceed in the Candlestick Point-Hunters Point Shipyard Phase II Development Plan Project area until all radiological waste materials are completely removed from the area. Proceeding with any development while such wastes remain anywhere in the project area, presents unnecessary and unacceptable risks to human health.

The Precautionary Principle And All Hazardous Materials

Furthermore, because San Francisco's own legally established Precautionary Principle also requires that no person be unnecessarily exposed to chrysotile asbestos, ionizing radiation, or any other hazardous materials, it is doubly mandated that all asbestos laden serpentine rock must be left completely undisturbed, and all radiological and other hazardous materials must be completely removed from the Candlestick Point-Hunters Point Shipyard Phase II Development Plan Project area before any development can proceed.

-end of comments-

Eric Brooks

36-6
cont'd.

36-7

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■ Letter 36: San Francisco Green Party (1/12/10)

Response to Comment 36-1

This comment contains introductory or general background information and is not a direct comment on environmental issues or the content or adequacy of the Draft EIR. No response is required.

Response to Comment 36-2

Refer to Master Response 8 (Sea Level Rise) and Responses to Comments 57-1 and 58-3 for a comprehensive discussion of the sea level rise documents reviewed, the levels of sea level rise taken into account for various Project components, and the plan to provide flood protection if higher levels of sea level rise occur.

Thousands of journal articles, newspaper stories, and publications on the topic of climate change, and associated sea level rise, have been published in the past 20 years, and no document of reasonable size could summarize them all. Instead, the EIR selected eight peer-reviewed documents that are not only widely recognized as very credible sources in the scientific community, but are also accepted as the most relevant to the specific subject of sea level rise.

Additional documents that are either not refereed (peer-reviewed) or are less high-profile, but are illustrative of ongoing development in the scientific, engineering, and planning communities, were also reviewed. Most of these publications do not include specific analysis of sea level rise; instead, they present observations of ice sheet melt rates, carbon dioxide (CO₂) levels, temperature changes, etc. along with empirical or hypothetical Projections of sea level rise. For example, the recent *Copenhagen Diagnosis—Updating the World on the Latest Climate Science* report was a summary of ongoing literature rather than new analysis. A few quotes from the report that are specific to sea level rise are reproduced below:

Future sea level rise is highly uncertain, as the mismatch between observed and modeled sea level already suggests.

Based on a number of new studies, the synthesis document of the 2009 Copenhagen Climate Congress (Richardson et al. 2009) concluded that “updated estimates of the future global mean sea level rise are about double the IPCC Projections from 2007.”

Although it is unlikely that total sea level rise by 2100 will be as high as 2 meters (Pfeffer et al. 2008), the probable upper limit of a contribution from the ice sheets remains uncertain.

Additionally, commentaries on the methods which have been used to determine sea level rise estimates have been published by individuals such as James Hansen. Hansen’s commentary states:

As an example, let us say that ice sheet melting adds 1 centimetre to sea level for the decade 2005 to 2015, and that this doubles each decade until the West Antarctic ice sheet is largely depleted. This would yield a rise in sea level of more than 5 metres by 2095.

Of course, I cannot prove that my choice of a 10-year doubling time is accurate but I'd bet \$1000 to a doughnut that it provides a far better estimate of the ice sheet's contribution to sea level rise than a linear response.

These types of articles do not provide fact-based scientific analysis of sea level rise, but rather provide illustrative cases. As such, they have not been reviewed or included in our sea level rise estimates.

Also, it is recognized that recent reports published by NASA scientists show that there is active ice sheet melting which has the potential to impact estimates of sea level rise. However, the reports referenced by the commenter provide no scientific analysis of the relation of this ice sheet's melting rate to the estimate of sea level rise by 2100, or over the next century.

The EIR recognizes that the science related to climate change and sea level rise rates will continue to evolve into the future; therefore, Project plans do not include a specific upper limit of sea level rise. Rather a risk-based analysis was conducted, based on development elevations, setbacks, and a Project-specific Adaptation Strategy was prepared for the Project. The Adaptation Strategy includes preparing an Adaptive Management Plan which outlines an institutional framework, monitoring triggers, a decision-making process, and an entity with taxing authority that would pay for infrastructure improvements necessary to adapt to higher than anticipated sea levels.

With respect to the effects of sea level rise on the design of Yosemite Slough bridge, Draft EIR Appendix N2 (MACTEC, Yosemite Slough Bridge Drawings—Stadium and Non-Stadium Options) states that 55 inches of sea level rise are incorporated into the design to the bridge clearance over the existing 100-year flood elevation.

Response to Comment 36-3

Refer to Master Response 8 (Sea Level Rise) for a discussion of the potential effect of sea level rise on liquefaction potential and potential interaction with and leaching of hazardous materials.

Response to Comment 36-4

Refer to Master Response 6 (Seismic Hazards), Master Response 7 (Liquefaction), Master Response 8 (Sea Level Rise), as well as Impacts GE-5, GE-7, and HY-12, and mitigation measures MM GE-5a and MM HY-12a.1 for discussions on the interrelationship between potential liquefaction and sea level rise. Liquefaction occurs in loose, non-plastic soils below the groundwater table. The comment presents a concern that sea level rise will cause a subsequent rise in the groundwater table, thereby increasing the amount of soil susceptible to liquefaction. As indicated in Master Response 7, design-level liquefaction analysis will factor in a 36-inch rise in groundwater elevation to account for the impacts of predicted sea level rise on liquefaction susceptibility of site soils. Site-specific final design geotechnical studies will be performed to determine what engineering and construction measures need to be implemented to mitigate liquefaction potential if present.

Response to Comment 36-5

Refer to Master Response 8 (Sea Level Rise) for a discussion of the potential effect of sea level rise interaction with hazardous materials and a discussion of sea level rise considered and how the Project will deal with higher levels of sea level rise should they occur.

Refer to Master Response 13 (Post-Transfer Shipyard Cleanup) for a discussion of the residual contaminants that may remain at the Hunters Point Shipyard site after transfer of Shipyard property from the Navy.

Response to Comment 36-6

Refer to Master Response 9 (Status of CERCLA Process for a discussion of the current status of the Navy's progress on the cleanup of hazardous materials. Refer to Master Response 11 (Parcel E-2 Landfill) for a discussion of landfill investigation and cleanup. Refer to Master Response 12 (Naturally Occurring Asbestos) for a discussion of the asbestos monitoring and control measures that would be implemented during soil-disturbing activities. Refer to Master Response 13 (Post-Transfer Shipyard Cleanup) for a discussion of the cleanup of hazardous materials. Refer to Master Response 15 (Proposition P and the Precautionary Principle) regarding concerns about toxins. Refer to Master Response 16 (Notification Regarding Environmental Restrictions and Other Cleanup Issues) for a discussion of the notice that will be given to property owners, residents, and neighbors on the environmental restrictions and other cleanup issues.

Response to Comment 36-7

Refer to Master Response 9 (Status of the CERCLA Process) and Master Response 13 (Post-Transfer Shipyard Cleanup) regarding ionizing radiation.

Response to Comment 36-8

Refer to Master Response 12 (Naturally Occurring Asbestos) and Master Response 15 (Proposition P and the Precautionary Principle) regarding removing toxins.

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■ Letter 37: San Francisco Bay Herring Fisherman's Association (1/12/10)

1 of 1

Letter 37

Dear Mr. Wycko,

It has been brought to my attention that the development of the Candlestick-Bayview-Hunters project will include a automobile bridge over Yosemite Slough and that this bridge will be supported by three hundred pilings.

The area around Yosemite Slough is a herring spawn site that is frequently visited by returning schools during the months of December, January and February. In light of this I would request that you consider the following;

1. Pilings should be concrete or should be sheeted in ABS plastic to facilitate the survival of herring eggs that may be deposited on the surfaces of the pilings (if they are seaward of the high tide mark in that vicinity). Un-sheated creosote soaked pilings are unacceptable and toxic to the eggs of fish that utilize them for egg deposition.
2. Placement of pilings should not occur during the spawning season of herring during the months of December through February.

Thank you for your consideration of these requests on behalf of the members of our association and the resource of San Francisco Bay herring.

Ernie Koepf, President
San Francisco Bay Herring Fishermen's Association

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37-1

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■ Letter 37: San Francisco Bay Herring Fisherman's Association (1/12/10)

This letter is identical to Letter 95. To avoid duplication, all responses are provided to Letter 37, which is the first occurrence of these two letters in this C&R document.

Response to Comment 37-1

The Draft EIR identifies known herring spawning areas near the project site, as discussed on page III.N-34 of the Draft EIR and depicted in Figure III.N-4:

According to NMFS, known herring spawning areas within the area immediately adjacent to the Project site include several piers and areas of shoreline both north and south of the proposed marina (refer to Figure III.N-4 [Pacific Herring Spawning Habitat]).

With respect to the type of piles to be used, as discussed in Impact BI-9b, page III.N-82 (and Table ES-2, page ES-104), the current design for the Yosemite Slough bridge would have columns supported by steel piles. Nevertheless, unsheathed creosote-soaked pilings are not proposed and will not be used. In response to the comment, the text in mitigation measure MM BI-9b, to add a third design measure, has been revised as follows:

MM BI-9b ...

2. *Design structures that can be installed in a short period of time (i.e., during periods of slack tide when fish movements are lower).*
3. *Do not use unsheathed creosote-soaked wood pilings.*

...

With respect to the placement of pilings during the herring spawning season (December through February), mitigation measure MM BI-9b also requires installation of steel piles during the June 1 to November 30 work window, or as otherwise recommended by National Marine Fisheries Services (NMFS). However, in response to the comment, the text in mitigation measure MM BI-9b has been revised to add the following construction measure:

MM BI-9b ...

3. *Avoid installation of any piles during the Pacific herring spawning season of December through February. Consult with the CDFG regarding actual spawning times if pile installation occurs between October and April.*
34. *If steel piles must be driven with an impact hammer, an air curtain shall be installed to disrupt sound wave propagation, or the area around the piles being driven shall be dewatered using a cofferdam. The goal of either measure is to disrupt the sound wave as it moves from water into air.*
45. *If an air curtain is used, a qualified biologist shall monitor pile driving to ensure that the air curtain is functioning properly and Project-generated sound waves do not exceed the threshold of 180-decibels generating 1 micropascal (as established by NMFS guidelines). This shall require monitoring of in-water sound waves during pile driving.*
56. *Unless the area around the piles is dewatered during pile driving, a qualified biologist shall be present during pile driving of steel piles to monitor the work area for marine mammals. Driving of steel piles shall cease if a marine mammal approaches within 250 feet of the work area or until the animal leaves the work area of its own accord.*

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■ Letter 38: Da Costa, Francisco (1/11/10)

1 of 13

Letter 38

From: Francisco Da Costa <fdc1947@gmail.com>

To: John Rahaim <john.rahaim@sfgov.org>, Fred Blackwell <fred.blackwell@sfgov.org>, Ron Miguel <rm@well.com>, Christina Olague <c_olague@yahoo.com>, Gwyneth Borden <plangsf@gmail.com>, "Michael J. Antonini" <wordweaver21@aol.com>, "William L. Lee" <bill.lee@flysfo.com>, Kathrin Moor <mooreurban@speakeasy.net>, Hisashi Sugaya <hs.commish@yahoo.com>, Lawrence Badiner <larry.badiner@sfgov.org>, Linda Avery <Linda.Avery@sfgov.org>, Stanley Muraoka <Stanley.Muraoka@sfgov.org>, Dennis Herrera <CityAttorney@sfgov.org>, Matt Dorsey <Matt.Dorsey@sfgov.org>, "Gavin. Newsom" <gavin.newsom@sfgov.org>, Michael Cohen <michael.cohen@sfgov.org>, Michael Farrah <mike.farrah@sfgov.org>, Tiffany Bohee <tiffany.bohee@sfgov.org>, Rosemary Cambra <muwekma@muwekma.org>, Monica Arellano <marellano@muwekma.org>, Norma Sanchez <nsanchez@muwekma.org>, Espanola Jackson <EspanolaJackson@sbcglobal.net>, Alan Leventhal <aleventh@email.sjsu.edu>, Jaron Browne <jaron@peopleorganized.org>, Mishwa Lee <mishwa.lee@gmail.com>, Corrina Gould <shellmoundwalk@yahoo.com>

Date: 01/11/2010 06:19 PM

Subject: A short history of the Muwekma Ohlone

This is a short history of the Muwekma Ohlone that has to be incorporated with the other comments linked to the Draft, EIR - Hunters Point Shipyard and Candlestick Park.

<http://www.coloredreflections.com/decades/Decade.cfm?Dec=2&Typ=3&Sty=1&PID=1027>

Tomorrow, there will be a Press Conference by several Ohlone Tribes and supporters of the Ohlone.

Rosemary Cambra will be present and so will experts on Shellmounds and ethno-historians.

The purpose is simple - time should be given to address the over 20 Sacred Burial Sites some within the area of the Draft, EIR and others within a quarter mile area of Hunters Point Shipyard and Candlestick Point.

The Press Conference will be held on the steps of City Hall at 12 noon.

Several State Laws have be compromised and the SF Planning Department with intent chose to avoid contacting the Muwekma Ohlone for sure but other tribes too.

Francisco Da Costa

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The Muwekma Ohlone Tribe

Perspective

The following was a paper presented by Rosemary Cambra, invited panalist and chair of the Muwekma Ohlone Tribe during last October's 30th anniversary of Alcatraz. Presently, Muwekma has a formal determination of "previous unambiguous Federal Recognition (as of May 24, 1996) by the Interior Department and is listed for Ready Status for Active Consideration in the Federal Register. Also Muwekma is named under the present bill sponsored by Congress George Miller to be reaffirmed as a Federally Recognized Tribe under the 106 Congress.

The Muwekma Ohlone Tribe of the San Francisco Bay and Alcatraz and Angel Islands

by Alan Leventhal (Tribal Ethnohistorian), Hank Alvarez (Tribal Councilman), Monica Arellano (Tribal Councilwoman), Carolyn M. Sullivan (Tribal Councilwoman), Concha Rodriguez (Tribal Councilwoman), and Rosemary Cambra (TribalChair)

Introduction: Cultural and Geographical Landscape of the Muwekma Territory - 10,000 Years Ago to European Contact in 1769

Over ten thousand years ago, before the waters of the Pacific Ocean passed through the gap now spanned by the Golden Gate Bridge and filled the interior valley-basins, Alcatraz and Angel Islands were small mountain peaks which were later isolated by the encroaching sea water, the ancestors of the Muwekma Ohlone and the neighboring tribal groups had established their homes within this changing landscape. The people comprising these early tribal groups gave birth, hunted, fished, harvested a great diversity of seeds, fruits and vegetables, managed large tracts of land through selected burning, married, grew old and died within the greater San Francisco Bay region.

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Over these millennia the Muwekma Ohlone tribal groups along with their neighboring linguistic cousins, inter-married and developed complex societies which anthropologists call ranked chiefdoms. Many of the complex aspects of their social, cultural, religious and ceremonial institutions have been traced back through the archaeological record to over 4500 years ago within the greater Sacramento/San Joaquin Delta and Bay Area regions, thus culturally and biologically linking this larger geographic area.

Based upon this archaeological record, it appears that sometime around 4000 years ago, these ancestral California tribal cultures developed a system of social ranking (meaning hereditary noble lineages and elites who controlled wealth, production, distribution and power) and there also evolved institutionalized religions. This complex system of social distinction was reflected in the elaborate mortuary (burial) treatment of the dead as expressed within the larger geographical area. Many of the social elites (nobility) were buried with grave wealth in the form of social and religious markers of distinction. Furthermore, many these high lineage people during the early and middle periods of time, were buried in extended positions, oriented toward the west, and placed in cemeteries that developed into large earth mounds.

Such was the case within the greater San Francisco Bay region, beginning approximately 4000 years ago, when people were interred in what has become commonly known as the "shellmounds". Historically, these "shellmounds" have been misinterpreted by scholars over the past 100 years as remnant "villages", "kitchen middens", "garbage dumps" and "habitation sites", however archaeological evidence suggests to the contrary, that these mounds formally served as the final resting places for the elite and distinguished members (e.g. fallen warriors) of the many ancestral Muwekma Ohlone tribal societies living around the San Francisco Bay.

In 1769, the evolution of these complex Ohlone societies, were adversely impacted and became another casualty within the international arena of European colonialism. In that year, the Bourbon Monarchy of the Hispanic Empire decided to expand its presence into Alta California. Thus began the first of a series of contacts between the Spanish colonial empire



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and the aboriginal Costanoan/Ohlone people (whom the Spaniards referred to as Costeños or Coastal People) living within the Monterey/San Francisco Bay regions. Although the term Muwekma is used as an identifier of the modern survivors of the aboriginal people of the greater San Francisco Bay region and whose direct ancestors were missionized into Missions Dolores, San Jose and Santa Clara, Muwekma also means "The People" in the Tamien and Chochenyo Ohlone languages spoken around the San Francisco Bay [note: collectively the Ohlone languages spoken in southern Napa, Contra Costa, Alameda, Santa Clara, Santa Cruz, San Mateo and San Francisco Counties have been classified as either Northern Costanoan or Muwekma by anthropologists and linguists].

Late Eighteenth Century Land and Sea Exploration:
Impressions of the Muwekma Ohlone People, Alcatraz and Angel Islands and the San Francisco Bay

During the early Spanish expeditions from Monterey into the San Francisco Bay region (1769 - 1776), the Spaniards encountered an number of Muwekma Ohlonean tribes and villages (rancherías) along the way. Accounts of these first hand encounters were kept by the priests and the military leaders of the expeditions and they provide important information in our understanding of the nature and complexity of 18th century Ohlone societies and their world-view.

In simplistic terms, it appears that the Ohlone treatment towards the presence of strangers within their territories was divided into two general considerations: strangers were considered as either enemies (and/or other powerful forces that could cause harm) or as distinguished guests. Apparently, during this formative, contact/pre-mission period, the Spaniards were not viewed as enemies by the Ohlone they encountered, but in most cases they were invited to their villages and treated as distinguished guests. An example of one such encounter occurred on April 2, 1776, near the Carquinez Straits (East Bay), when Father Font wrote the following account:

We set out from the little arroyo at seven o'clock in the morning, and passed through a village to which we were invited by some ten Indians, who came to the camp very early in the morning singing. We were welcomed by the Indians of the village, whom I



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estimated at some four hundred persons, with singular demonstrations of joy, singing and dancing.

A year earlier in 1775, the first Spanish ship, the San Carlos, circum-navigated the San Francisco Bay. On board was Captain Juan Manuel de Ayala, First Sailing Master and Map Maker, Jose de Canizares, and Father Vincente Santa Maria, who after having some preliminary contact with the Karkin (northern Ohlones), decided to go ashore and visit a village located some distance inland. Father Santa Maria left us with the following account: *There was in authority over all of these Indians one whose kingly presence marked his eminence above the rest. Our men made a landing, and when they had done so the Indian chief addressed a long speech to them*

After the feast, and while they were having a pleasant time with the Indians, our men saw a large number of heathen approaching, all armed with bows and arrows."

This fear obliged the sailing master to make known by signs to the Indian chieftain the misgivings they had in the presence of so many armed tribesmen. The themi (chief), understanding what was meant, at once directed the Indians to loosen their bows and put up all of their arrows, and they were prompt to obey. The number of Indians who had gathered together was itself alarming enough. There were more than four hundred of them, and all, or most of them, were of good height and well built.

Alcatraz apparently was used as a fishing station, while Angel Island was more permanently occupied by Muwekma people at the time of European contact. Both islands were mapped by the Jose de Canizares of the San Carlos. On August 12, 1775, Captain Ayala noted in his log: *The longboat was lowered and I set out in it to find a better anchoring ground for the ship. I was looking over the island that I called Angels' Island, the largest one in this harbor, and making close search for an anchoring place that handily provided water and firewood. Although I found some good ones, I was inclined to go further and look over another island, and found it quite barren and rugged and with no shelter for a ship's boats. I named it Pelican Island because of the large number of pelicans that were there.*

Alcatraz was so named Ysla de Alcatrazes (Pelicans) by



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Captain Ayala (although some believe this is actually Yerba Buena Island). On August 14, 1775, the San Carlos casts her anchor opposite a large island which they named Santa Maria de los Angeles (Angel Island) in honor of the Blessed Virgin as Queen of the Angels. On this island they found two Ohlone rancherias and also evidence of religious activities. Father Vincente Santa Maria described some of these shrines: *These were slirr round shafts about a yard and a half high, ornamented at the top with bunches of white feathers, and ending, to finish them off, in an arrangement of black and red-dyed feathers imitating the appearance of the sun. This last exhibit gave me the unhappy suspicion that those bunches of feathers representing the image of the sun (which in their language they call gismen [the Ohlone word for sun] must be objects of the Indian's heathen veneration*

The Post-Contact Muwekma Ohlone and their ties to the Yelamu Ohlone of San Francisco, Missions Dolores, San Jose and Santa Clara and the East Bay Rancherias: A Brief Historic Overview 1777 to 1906

The region comprising the City and County of San Francisco was controlled by the Yelamu tribal group of Ohlone Indians. According to the comprehensive mission record and ethnogeographic studies conducted by anthropologist Randall Milliken, it appears that the first four people from Yelamu were baptized by Father Cambon and the others were baptized by Fathers Palou and Santa Maria between 1777 - 1779. Apparently the first converts from the "rancheria de Yalam" into Mission Dolores also had relations who lived in the neighboring rancherias (villages) of Sitlintac (located about 2.6 miles northeast of Mission Dolores), Chutchui, Amuctac, Tubsinte, and Petlenuc all located within the present boundaries of San Francisco. Sitlintac and Chutchui were located in the valley of Mission Creek. Amuctac and Tubsinte were established in the Visitation Valley area to the south. The village of Petlenuc may have been near the location of the Presidio. The Ohlone people from these as well as other villages to the south, and across the East Bay, were missionized into Mission Dolores between 1777 to 1787. According to Fathers Palou and Cambon the Ssalsones (the Ohlone tribal group located on the San Mateo Peninsula to the south) were intermarried with the Yelamu and called them Aguazios which means "Northerners".

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Based upon genealogical information derived from the Mission Dolores records, the Yelamu Ohlone people of San Francisco were intermarried with Ohlone groups to the south and across the East Bay, prior to contact with the Spaniards. For example, Fathers Palou, Cambon and Noriega over a period of time baptized the family of a Yelamu chief named Xigmacse (a.k.a. Guimas) who was identified by Palou as the "Captain of the village of this place of the Mission". Two of Xigmacse's wives, Huitanac and Uittanaca (who were sisters) were recorded by Cambon as coming "from the other shore to the east at the place known as Cosopo".

Recently some scholars have suggested that the ending "-cse" on a man's name was served as an appellation of distinction or preeminence, thus identifying that person as a chief or one of distinguished status and lineage. In another case of cross-Bay intermarriage between tribal groups involved a Yelamu woman named Tociom. Tociom had a daughter named Jojcote who according to Father Cambon was "born in the mountains to the east on the other side of the bay in the place called by the natives Halchis". The place called "Halchis" is the land of the Jalquin Ohlone Tribe.

It was into this complex and rapidly changing world that a young Jalquin Ohlone man named Liberato Culpecse at the age of 14 years old (born 1787) was baptized at Mission Dolores along with other members of his tribe on November 18, 1801. Seven years later in 1808 Liberato Culpecse married his first wife and she died before 1818. Presumably, after the death of his wife, Liberato was allowed to move to the Mission San Jose region, where he met his second wife, Efrena Quennatole. Efrena who was Napian/Karquin Ohlone was baptized at Mission San Jose on January 1, 1815. She and Liberato were married on July 13, 1818 by Father Fortuny.

Liberato Culpecse and Efrena Quennatole had a son named Dionisio (Nonessa) Liberato and a daughter, Maria Efrena. Both Dionisio and Maria Efrena married other Mission San Jose Indians and they had children who later became the Elders (including the Guzmans and Marine lineages) of the historic Federally Recognized Verona Band (Muwekma) community residing at the following East Bay rancherias: San Lorenzo, Alisal, Del Mocho, Niles, Sunol, and Newark. These Elders also enrolled along with their families with

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the Bureau of Indian Affairs under the 1928 California Indian Jurisdictional Act.

The world of all of the Ohlone tribes was drastically changed within the first 25 years after contact due to the establishment of Missions San Carlos, Soledad, Santa Cruz, San Juan Bautista, Santa Clara, San Jose and Dolores (San Francisco), and with the military Presidios at Monterey and San Francisco. Of the approximately over twenty thousand Ohlonean speaking people who inhabited the San Francisco/Monterey Bay regions in 1769, less than 2000 were left by 1810.

Their numbers continually declined throughout the remaining Spanish/Mexican/California regimes, and the surviving Muwekma families eventually sought refuge, especially after the American conquest of California (1846-1848), on some formal land grants and especially the six East Bay rancherias located within their ancestral homelands. During the mid-19th century, as the rest of the central California Indians were displaced and, at times, hunted down, Alisal (located near Pleasanton) as well as the other rancherias, became safe-havens for the Muwekma Ohlone Indians and members from the interior tribes who had intermarried with them at the missions. The Alisal rancheria was established on a 1839 land grant belonging to a California named Agustin Bernal.

Years later, in the 1880s, the Hearst family purchased part of the rancho containing the rancheria and they permitted the 125 Muwekmas living at Alisal to remain on the land. During the early part of this century, the Muwekma Ohlone Indians (later known as the Verona Band) became Federally Recognized as a result of the Special Indian census conducted by Agent C. E. Kelsey in 1905-1906 and the ensuing Congressional appropriation bills of 1906 and 1908 addressing the purchase of homesites for landless California Indians.

Also, independently, during this period of time, Mrs. Phoebe Hearst was responsible for funding the fledgling Department of Anthropology at U.C. Berkeley. Concurrently, A. L. Kroeber, one of the early pioneering anthropologists, helped develop the Anthropology Department at Berkeley and later became known as "the Father of California Anthropology". During the early part of this century, there were approximately 20,000 Indians left in California, a devastating decline from the



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estimated population of 1.5 million people at the time of Hispano-European contact in 1769. Realizing such a state of devastation, Kroeber and his students embarked upon the task to try to "salvage" as much memory culture from the surviving communities and elders, in order to record detailed aspects about their culture before their passing.

This effort culminated in the monumental publication by Kroeber in 1925, entitled "The Handbook of California Indians". In this Bureau of American Ethnology's (Smithsonian Institution) publication, Kroeber wrote of the Costanoans (Ohlones):

The Costanoan group is extinct so far as all practical purposes are concerned. A few scattered individuals survive, whose parents were attached to the missions San Jose, San Juan Bautista and San Carlos; but they are of mixed tribal ancestry and live almost lost among other Indians or obscure Mexicans.

For the surviving Costanoan/Ohlone people of the 1920s, they never read of this sentence of "extinction", nor did they embrace it. Instead, the Muwekma Ohlone continued to maintain their Indian culture, although by this time completely landless, they like the other Ohlone/Costanoan tribal communities (the Amah-Mutsun from Mission San Juan Bautista) and the Esselen/Costanoans from Mission San Carlos/Carmel/ Monterey region), continued to survive as distinct Indian communities and speak their respective languages as late as the 1930s.

It is from the work of linguist-cultural anthropologist J. P. Harrington from the Bureau of American Ethnology, who worked in the Ohlone region from 1921-1939 with the last fluent elderly speakers of the Ohlone languages that we know much about the culture and changing world of the Costanoan/Ohlone people. Presently, the grandchildren of Harrington's linguistic and cultural consultants, comprise the Elders and leadership of the Muwekma Ohlone Indian Tribe of the San Francisco Bay.

On the Government side, in 1927, although landless, the Muwekma were administratively dropped or "no longer dealt with" (along with approximately 135 other Acknowledged California Indian communities) from their Federally Recognized status by L.A. Dorrington,



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Superintendent of the Bureau of Indians Affairs in Sacramento. This unilateral administrative termination was enacted contrary to BIA policy and without any notification or due process for the tribe. Although, the Muwekma Ohlone families had enrolled with the Bureau of Indian Affairs since the 1928 California Jurisdictional Act and have organized themselves according to the Bureau's directives, they still have no right to be recognized as an Indian Tribe under federal law without first being federally reaffirmed and formally Acknowledged by the Secretary of the Interior.

Indians of All Tribes: Alcatraz 1969

In the early morning hours on November 20, 1969, exactly two hundred years after the Portola/Crespi Expedition of 1769, representatives from different Indian tribes throughout the U.S. calling themselves Indians of All Tribes crossed the San Francisco Bay and claimed Alcatraz Island for the Native People of the Americas. This major event, ignited by both the indignities inflicted upon Native Americans for almost 500 years and further fanned by America's consciousness during the Viet-Nam War and Civil Rights movements of the 1960s, served notice to the dominant society that, although rendered invisible to most of America, that something was still wrong, very wrong in Indian Country.

The Alcatraz takeover was a major wake up call to America, to its government and to its citizens. In a publication entitled Alcatraz Is Not An Island (1972), Native American anthropologist/historian Dr. Jack Forbes from UC Davis penned the following: *In the 1870's Natchez Winnemucca, respected chief of the Pyramid Lake Paiutes, was arrested and sent as a prisoner to Alcatraz. His crime: Attempting to resist and expose the corruption of the government's agents on his reservation. Natchez did not stay on "The Rock" very long, but other Indians, guilty of the "crime" of resisting white conquest, were frequent visitors to the prison. Now in 1969 modern-day Native Americans are attempting to claim Alcatraz Island in order to both obtain facilities for educational programs and to publicize the desperate circumstances under which Indian people live..... There is little question but that the Muwekma Indian people of San Francisco and the Hulueko [Coast Miwok people] of Marin County were, in the old days, frequent visitors to all of the islands in the San Francisco Bay. ...*

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...The Native Americans on Alcatraz are saying that they want to have a place where they can control programs which will benefit both Indians and non-Indians. Those who can see into the future will agree, I think that an Indian museum, memorial, and educational center on Alcatraz will be of great benefit and value to all California, regardless of race.

The Muwekma Ohlone Tribe of the San Francisco Bay: Shattering the Myth that the Ohlones were Never Federally Recognized

Ironically, sometime either before or after the closure of Alcatraz, one of the Muwekma elders, Ernest George Thompson, Jr., became a security guard on Alcatraz. Ernest Thompson, Jr., as with his Muwekma ancestors, was baptized at Mission San Jose in 1912. His lineal ancestry has been directly traced to the Chupcan Tribe (southern Carquinez Straits to Mt. Diablo region), the Alson Ohlone Tribe of the Fremont/Alviso coastal plain, and the Seunen Ohlone Tribe of the Livermore Valley/Dublin region. When Ernest Thompson, Jr. passed away on September 17, 1984, his death certificate identified him as a Security Guard for the Alcatraz Federal Prison.

The Ohlone people have left a record of approximately 13,000 of human history, and today they are still trying to overcome the onus of their sentence of "extinction" placed upon them by scholars and politicians by continuing to educate the general public, academic institutions and the Federal Government. After eight years of being in the petitioning process, and after the submittal of several thousand pages of documentation, on May 24, 1996 the Bureau of Indian Affairs' Branch of Acknowledgment and Research (BAR) made a positive determination, but reluctantly acknowledged that:

Based upon the documentation provided, and the BIA's background study on Federal acknowledgment in California between 1887 and 1933, we have concluded on a preliminary basis that the Pleasanton or Verona Band of Alameda County was previous acknowledged between 1914 and 1927. The band was among the groups, identified as bands, under the jurisdiction of the Indian agency at Sacramento, California. The agency dealt with the Verona Band as a group and identified it as a distinct social and political entity.

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Over the past 18 years, the Muwekma have politically, spiritually and culturally revitalized themselves and formed a formal tribal government in compliance with Congressional and the Department of the Interior's criteria. Presently, the Muwekma Tribe is seeking reinstatement and reaffirmation as a Federally Acknowledged Indian Tribe. The Muwekmas have spent these past 18 years conducting research and submitted to the Branch of Acknowledgment (BAR) over several thousand pages of historical and anthropological documentation as part of the petitioning process.

As Muwekma Elders are passing, the Muwekma Tribe has yet to advance through the "Recognition Process" for complete reaffirmation of its Acknowledged status. For other tribes it has been a long and difficult ordeal as well. For example, it took the Cowlitz Tribe of Washington 22 years to go through the Recognition Process and the Samish Tribe of Washington waited 25 years, including litigation in Federal Court for 8 years, before they won their Federal Recognition. As a result of their litigation, the Federal Courts decided that the Samish Tribe were denied "Due Process" by the Department of the Interior, BIA and BAR.

Presently, there are approximately over 200 tribes in the United States petitioning for recognition. After coming "back from extinction", the Muwekmas now face, along with approximately 40 other California Indian Tribes, BIA bureaucratic inaction and obstruction. The Muwekmas, who have never left their ancestral homelands, have been waiting for a response from the United States Government since 1906. In 1972, as a result of the 1926 California Indian Jurisdictional Act, the U.S. Government made a token payment of \$668.51 (this is with interest back to 1852) as just compensation for the illegal acquisition (theft) of California land, minerals and resources. This payment was issued to help California Indians build their future upon.

More recently, another major decision was made by the Interior Department, on March 26, 1998, Deborah Maddox, Director of the Office of Tribal Operations issued the following decision on behalf of the Department of the Interior: A review of the Muwekma submissions shows that there is sufficient evidence to review the petition on all seven mandatory criteria. The Bureau of Indian Affairs (BIA) is placing the Muwekma petition on the ready for active consideration list on

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March 26, 1998.

Now the Muwekma will wait perhaps another 20 years or so in a bureaucratic limbo and holding cell, before the Branch of Acknowledgment and Research decides to review and process their petition. As a result, it is fitting that the tribal representative of the Muwekma Ohlone Tribe of the San Francisco Bay, stand this day on Alcatraz Island along with their Native American cousins, on this rock - a bleak beacon to the world - to bring attention once again to the injustices confronting not only the Muwekma, but all of the other tribes in the Western Hemisphere who hope and pray that one day they will attain some semblance of justice and obtain their due recognition once again as a Federally Acknowledged Tribe.

Aho!

by Alan Leventhal

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■ Letter 38: Da Costa, Francisco (1/11/10)

Response to Comment 38-1

Refer to Master Response 1 (SB 18) for a discussion of consultation with the Native American community under SB 18.

Response to Comment 38-2

Refer to Master Response 1 (SB 18) for a discussion of consultation with the Native American community under SB 18.

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■ Letter 39: City and County of San Francisco, Historic Preservation Commission (1/12/10)

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SAN FRANCISCO PLANNING DEPARTMENT

Letter 39

January 12, 2010

Mr. Bill Wycko
Environmental Review Officer
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Dear Mr. Wycko,

On December 16, 2009, the Historic Preservation Commission (HPC) held a public hearing and took public comment on the Draft Environmental Impact Report (DEIR) for the proposed Project at Candlestick Point/Hunters Point Shipyard Phase II. The HPC continued the item to January 6, 2010. After discussion, the HPC arrived at the comments below:

- HPC does not agree with the logic of the Historic Resource Evaluation Report (HRER). Given the national significance of the Hunters Point Shipyard during the WWII era and its Post War Era significance, there are very few resources identified and associated with the site's history.

The conclusions drawn from the HRER are inconsistent with the Context Statement. The context statement states the site is of National significance during the WWII period for its role as a Naval Shipyard and during the post war period as one of the only research facilities of its kind. The Context Statement states that these areas of importance are reflected in the built environment. Yet the HRER reaches the conclusion that few buildings are eligible for the California or National Register. While we agree with the conclusions in the Context statement regarding the site's significance, we feel the HRER does not adequately acknowledge the way the site's history is reflected in the built environment and dismisses many potential historic resources with inadequate analysis and documentation. In both the Context Statement and the HRER the significance of the architecture is not fully analyzed in terms of the history of modern architecture and the acceptance by the government of modern architecture as an appropriate style. The fact that some of this work represents some of the earliest modern work in San Francisco with glass curtain wall systems is not explored. Many of the architects are not identified, buildings are insufficiently examined, and the boundary of the Potential Historic District is too narrowly drawn. Many of the buildings are considered to be ineligible for the National Register because it is stated that the building type and architectural expression was common on military bases around the country, but there is no documentation or examination of whether these types of buildings are now as common nationally as they once might have been at the time they were built.

The Context Statement considered the area a significant historic district. However, the HRER does not set forth a methodology which measures existing site features (buildings, objects and structures) against the importance and value of the Hunters Point Shipyard identified in the Context Statement. Nor does the HRER provide sufficient information on the extant resources to support its conclusions about contributing/non-contributing resources nor the validity of the boundaries established for a potential historic district.

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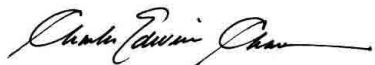
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- Given the historic significance of the site, Alternative 4 is not an adequate Preservation Alternative. There should be a preservation alternative that meets most or all of the project objectives. Alternative 4 is not sufficient as a Preservation Alternative because most of its focus is not directed to the retention of historic resources. There should be an alternative where preservation is its principle focus and other goals are secondary. This preservation alternative should attempt to achieve the development's (square footage) goals through retention and adaptive use of contributing resources. If all of the larger potentially historic buildings cannot be reused, attempts might be made to save at least a few of the larger ones and more of the smaller ones over a wider area.
- Retaining, celebrating and promoting the history of the site should be among the project objectives. In addition, the story of the site should be integrated throughout the project site as interpretation and public art. Incorporation of the site's history is important for San Francisco history, would significantly enrich the proposed new development, and would be an important marketing tool.
- The DEIR states that the Candlestick Park Stadium (proposed for demolition) is not historically significant, yet it has not been evaluated under the California Register of Historic Places (CRHR). It was found not eligible for the National Register. The CRHR is called out in CEQA as the measure for historic resource evaluations. However the HRER does not evaluate the resource against this criterion. This is a significant flaw in the document. Evaluation of the eligibility should be made not only per the National Register, but also the California Register.
- The Hazardous Waste section of the DEIR assumes demolition of all buildings, making it difficult to evaluate hazardous materials issues in the event of preservation.
- The Feasibility Study prepared by Page & Turnbull and CBRE examining the reuse of buildings 211, 231 and 253 should identify other ways to meet the project objectives. More thought and alternative potential uses should be studied for the existing buildings. The feasibility study should address and re-study and potentially re-program a larger area of the site in examining how the existing buildings could be accommodated in the project and not just this area in isolation. This could add value to the project site by keeping the existing character and adding to the market value.
- More diagrams should be provided to show what individual buildings are kept and removed for the various alternatives. The existing graphics as they relate to Cultural Resources are not very clear.

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The HPC appreciates the opportunity to participate in review of this environmental document.

Sincerely,



Charles Edwin Chase, President
Historic Preservation Commission

■ Letter 39: City and County of San Francisco, Historic Preservation Commission (1/12/10)

All of the comments provided in this letter are substantially similar to the comments provided in Letter 77; however, where this letter was submitted as a “final” letter by the Historic Preservation Commission, Letter 77 represents their “draft” letter. For that reason, full responses are provided in this letter.

Response to Comment 39-1

Draft EIR Section III.J (Cultural Resources and Paleontological Resources), pages III.J-8 through III.J-15 describes the historic context of the HPS from nineteenth century development of private shipyards, Navy involvement in the early twentieth century, the World War II period of Navy control and expansion, to the post-World War II activities of nuclear testing support and the Naval Radiological Defense Laboratory (NRDL). The Draft EIR context and analysis is based on Circa: Historic Property Development *Bayview Waterfront Project Historic Resources Evaluation: Volume II, Historic Resource Survey and Technical Report*, October 2009, as cited on p. III.J-1 (“Circa Report”). The CIRCA Report is also included as Appendix J2 (CIRCA, Historic Resources Survey, October 2009) of this C&R document.

Citing the Circa Report, Draft EIR pages III.J-21 through III.J-25 evaluate the buildings and structures at HPS. The Draft EIR notes that some structures at HPS have been previously identified as significant historic resources as part of the NRHP-eligible Hunters Point Commercial Drydock Historic District (refer to Draft EIR page III.J-21). Additionally, Drydock 4 was previously identified as individually eligible for the NRHP. On pages III.J-22 through III.J-25, the Draft states that the Circa Report identified the CRHR-eligible Hunters Point Commercial Drydock and Naval Shipyard Historic District. As stated in the Circa Report and on Draft EIR pages III.J-24 through III.J-25, the proposed Hunters Point Commercial Drydock and Naval Shipyard Historic District represents the broad history of HPS. The potential Hunters Point Commercial Drydock and Naval Shipyard Historic District is comprised of a collection of buildings, structures, and objects associated with the area’s transition from early commercial drydock operation through its period of radiological research. The district encompasses a range of buildings from each of the three primary periods of significance for HPS: early drydocks, Navy use in World War II, and radiological research in the World War II and post-war periods. Related site features associated with the district include light standards, rail spurs, crane tracks, drydock perimeter fencing, bollards, and cleats.

The potential Hunters Point Commercial Drydock and Naval Shipyard Historic District encompasses a cross section of buildings, structures and objects, varying in age and function from the early commercial drydock operations (1903), through the Shipyard’s function as a high tech naval ship repair and decontamination facility in World War II, and as a ship repair and radiological research facility in the post-war period (1946-1969). The industrial buildings (140, 204, 205, 207, 208, 211, 231, 224, and 253), Drydocks 2 and 3, and other related site features represent a microcosm of the historical development and context of HPS. The potential district contains the previously determined National Register eligible buildings (automatically listed as a district on the CRHR) as well as recommended contributors to an expanded, potential CRHR historic district (including Drydock 2, Drydock 3, and Buildings 140, 204, 205, 207, 208, 211, 224, 231, and 253). The proposed contributors to the CRHR-eligible district include the previously eligible NRHP district contributors plus Buildings 208, 211, 224, 231, and 253. Though the condition of the buildings ranges from good to fair, the Circa Report found that the potential CRHR

district as a whole retains a high degree of integrity of location, design, setting, workmanship, materials, association, and feeling.

A district can comprise both features that lack individual distinction and individually distinctive features that serve as focal points. While Buildings 208, 211, 224, 231, and 253 may not be individually eligible for listing on the CRHR, when combined with the historic drydocks and associated buildings, the district is a physical representation of the broad history of HPS. Draft EIR Figure III.J-3 (Potential Historic Structures), page III.J-26, illustrates views of buildings 211, 231, and 253. Figure III.J-3 has been revised in Section F (Draft EIR Revisions) to include a photograph of building 224. Draft EIR Figure III.J-2, page III.J-23, depicts the boundaries and location of structure in the CRHR-eligible district.

Among the structures identified as part of CRHR-eligible district, Circa found, as stated on Draft EIR pages III.J-9 to -10:

The first building built by the Navy in World War II was Building 321 (1942-1945), the Inside Machine Shop. Constructed in 1942 by the San Francisco-based firm of Barret & Hilp and situated adjacent to Drydock 2, the curtain-wall building was for a brief period the only major functional shop at the Shipyard as the United States headed into the war. Building 211 was also one of the first erected by the Navy. The building was the original Shipfitters Shop and is a good representation of the typical semi-permanent, monitor-room shop building constructed throughout the Shipyard during the World War II era. Building 224, a concrete air raid/bomb shelter building built in 1944, and later used as an annex for the NRDL, is a unique representative of its type at the Shipyard. The only building within the district completed after World War II is the Optical, Electronics and Ordinance Building, Building 253, finished in 1947 and attached to the west elevation of Building 211. This concrete frame curtain-wall building, designed for the Navy by local architect Ernest J. Kump, was a highly specific repair and research facility.

Buildings 208, 211, 231, 224, and 253 thus represent important range of structures from the World War II and post-war era in terms of Navy history at HPS (Building 231), design (Building 211), uniqueness (Building 224), and a specific research and repair facility by a noted architect (Building 253).

The Circa Report evaluated other World War II– and post-war-era structures at HPS, and concluded that those structures would not meet criteria for eligibility for the CRHR or NRHP as individual resources, or as part of an historic district. The Circa Report includes individual discussions of World War II–era buildings and structures, Buildings 101, 110, 134, 214, 215, 351/351A, 400, 404, 405, 406, 407, 505, and 809, and Drydocks 5, 6, and 7 (Circa Report, pages 77–84). The Circa Report discusses the design historic associations, condition, and, if known, the architect of each of these structures. The Circa Report provides conclusions on lack of eligibility for National, California, or local historic registers. The Circa Report also describes the design, historic associations and, if known, the architect of four post-war era buildings, Building 411, 521, 707, and 709 (Circa Report, pages 84–88). The report provides conclusions as to their lack of eligibility for National, California, or local registers. In addition, the Circa Report includes Table 1 (Remaining World War II Buildings Not Found to Be Significant) and Table 2 (Remaining Post World War II Buildings Not Found to be Significant) (Circa Report, pages 91–93).

Overall, the Circa Report evaluates every structure extant at the HPS as of 2008, with regard to eligibility for National, California, and local historic registers. Information on each structure was compiled in a CDP Primary Naval Forms (DPR 523a). The forms provide the basis for initial screening of the potential significance of each structure. As presented in the Circa Report and the Draft EIR, the Hunters Point Shipyard, while a

large site, currently includes only a limited number of structures that meet criteria for listing on the NRHP or the CRHR, and does not contain resources that would meet criteria for a larger historic district.

The Circa Report found that the extant buildings located outside of the proposed Hunters Point Commercial Drydock and Shipyard Historic District do not qualify as contributors to a larger historic district because (1) better examples of these types of buildings are found within the proposed district, within the Bay Area, and on military bases throughout the United States; (2) inclusion of these Shipyard buildings within the proposed historic district would not expand or augment the historic context or architectural value of the proposed historic district; and (3) the site does not retain enough integrity as a whole to justify an expansion of the proposed district. The Circa Report, as cited in the Draft EIR and as discussed above, includes substantial information to support those conclusions.

In addition, with regard to the “rarity” of the World War II–era military/industrial buildings at Hunters Point Shipyard, Circa conducted additional research and site visits of such buildings at other military bases in the Bay Area (“Circa Memo,” also provided as Appendix J3 [CIRCA, Historic Resources Evaluation for Candlestick, April 2010] of this C&R document).¹⁰⁸ The Circa Memo reported on research and site visits for bases that had (1) proximity, (2) reasonably similar historic context, and (3) similar building typologies. The site visits were conducted at Mare Island Naval Shipyard, Richmond Shipyards, Alameda Naval Air Station, and Oakland Army. The Circa Memo noted that selected former military sites with similar World-War-II shipyard context were compared to identify the extent to which a “common” building typology was represented. The general building types at HPS outside the CRHR-eligible Hunters Point Commercial Drydock and Naval Shipyard Historic District once considered common with the potential to now be considered rare due to the extent of base closures and redevelopment are (1) warehousing, supply and industry support, (2) shops, shipbuilding and repair (large machine/assembly shops, wood clad shops and metal-clad shops), and (3) residential/personnel services.

The Circa Memo found that, in most cases, the HPS buildings (for example, Buildings 117, 251, 274, 400, 404, and 810) were inferior to similar buildings at other bases in regard to physical integrity and condition. Most, if not all, of the similar buildings at the other bases retain their original cladding materials and windows, among other character defining features. Many of these similar buildings types are being retained and are planned for reuse. Portions of many of these former bases have been found eligible for the NRHP or are listed as NRHP historic districts. Circa reported that Mare Island Naval Yard has a superior and more comprehensive collection of similar shop, storehouse, and residential and related building types from the World War II period, and that these buildings have a higher level of physical integrity than those at Hunters Point Shipyard. The Circa Memo includes an appendix with comparative photographs of buildings at HPS, Mare Island, Oakland Army Base, and Alameda Naval Air Station. The appendix documents the occurrence and general condition of similar buildings at those other bases.

The Circa Memo therefore concluded that the boundaries of the CRHR-eligible Hunters Point Commercial Drydock and Naval Shipyard Historic District encompass a district that is contiguous, with buildings, structures, and objects that are representative of all phases of historic development at Hunters Point Shipyard (through the period of significance) and retain a high level of integrity. The same cannot be said

¹⁰⁸ Circa: Historic Property Development, *Memorandum on Comparative Rarity of World-War-II Era Buildings at Hunters Point Shipyard*, April 2010 (refer to Appendix J4 [CIRCA, Draft HPS Rarity Memorandum (April 2010)]).

of the remaining portions of HPS given the extent of loss of integrity and lack of rarity compared to other intact military installations in the Bay Area.

With regard to architects associated with HPS buildings, the Circa Report includes information where available. Most structures dating from the pre-World War II, and later periods, at HPS cannot be attributed to an individual architect or firm. Many World War II-era structures are noted, as based on standard plans of the Navy Bureau of Yards and Docks:

Though the buildings were constructed as part of a vast support facility built to assist with the activities carried out at Mare Island and at Hunters Point through 1974, simple association with historic events or trends is not enough, in and of itself, to qualify under Criterion A/1. Each property's specific association must be considered important. Since none of the buildings appear to have made particularly significant contributions to the Navy's war effort or to the operations of the NRDL during that time, they don't exhibit a level of associative significance necessary for listing on the NRHP, CRHR or for local listing. From a design standpoint, the majorities of these buildings were built using standard Bureau of Yards & Docks plans or variations thereof and are similar to other WW II-era military installations located through the Nation. While some notable architects, engineers and contractors were involved in the design and construction of a number of buildings at the shipyard, this owes more to the fact that civilian architectural contracts were scarce during the WWII-era and military contracts abundant. Even in cases where noted architectural firms were involved in the design/construction process, it was common practice to use the many standardized Bureau of Yards & Docks plans available, adapting them to specific conditions at each base. As none of the buildings appear to be distinguished examples of their type, period or method of construction, do not represent the work of a master or possess high artistic value, they do not appear to be eligible for the NRHP, CRHR or for local listing under Criterion C/3. Further, many exhibit diminished integrity due to additions, alterations and exposure to the elements.

In general, the buildings do not qualify as contributors to a larger historic district because 1) better examples of these types of buildings are found within the proposed district, within the Bay Area, and on military bases through the United States; 2) inclusion of these buildings within the proposed historic district would not expand or augment the historic context or architectural value of the proposed historic district; and 3) the buildings do not retain enough integrity as a whole to justify an expansion of the proposed district. (Circa Report, pages 88-89)

Building 253, the Optical, Electronics and Ordnance Building, was, as noted on Draft EIR p. III.J-10, designed by San Francisco architect Ernest J. Kump. Building 253, identified as a contributory structure in the potential CRHR Hunters Point Commercial Drydock and Naval Shipyard Historic District is the only World War II or post-war era structure at HPS directly attributed to a specific notable architect. Ernest J. Kump, Jr. (1911–1999), achieved recognition among American modernist architects of the late 1930s and early 1940s. His work is primarily for known for educational facilities, including in the Bay Area, for example, Acalanes High School, in Lafayette, 1939–55; Encinal High School, in Alameda, 1951–52; and Foothill College, in Los Altos, 1961.

The Circa Report notes that for Building 505, the Navy Exchange/Gymnasium, "Navy records also indicate Timothy Pflueger designed the barber shop and chaplain's office portions of this otherwise standard plan building." (Building 505 was not accessible at the time of the Circa Report for review of the condition of the interior spaces attributed to Pflueger.) Timothy Pflueger was a prominent architect, but the Circa Report, page 83, concludes:

The involvement of notable architects and engineers in the design of military buildings during wartime was not uncommon and the portions of Building 505 designed by the firm of Timothy

Pflueger are not distinguished examples of his work. Therefore, the building does not appear to qualify for individual listing on the National, California or local registers.

Among post-war structures, for Building 411, the Shipfitters, Welders, & Boilermaker Building, Circa, pages 85–86, notes:

Austin Willmot Earl, a San Francisco Structural Engineer designed Building 411 for the Navy and Albert Kahn & Associates Architects & Engineers, Inc. appears to have been contracted as for additional design consultation. Retained as the consulting structural engineer for a number of projects at Hunters Point Shipyard, Austin W. Earl received the Civilian Merit Award for his work during World War II for the Navy's Bureau of Yards and Docks. Earl became a recognized authority on waterfront construction and was responsible for the engineering of many industrial structures at Mare Island, Hunters Point and Port Chicago. It is unclear to what extent the firm of Albert Kahn & Associates was involved in the design of this building; however, Albert Kahn himself was not involved in the design or construction for Building 411 as he died in 1942. The architectural plans are dated 1945 and the building was not completed until 1947. Barret & Hilp constructed the building.

Austin Earl was involved with engineering design for tunnels, wharves and other facilities, but Building 411 is not considered the work of a master. Therefore, the Circa Report evaluation of historic resources at HPS presented in the Draft EIR provides a sufficient basis for the identification of the significance of contributory structures and boundaries of the CRHR-eligible Hunters Point Commercial Drydock and Naval Shipyard Historic District. The Circa report appropriately evaluated other buildings and structures at HPS and provides sufficient basis for concluding that those structures would not meet criteria as individual historic resources or as contributors to a larger historic district.

Response to Comment 39-2

Refer to Response to Comment 28-1 with regard to Alternative 4 (Reduced CP-HPS Phase II Development, Historic Preservation) and Subalternative 4A (CP-HPS Phase II Development Plan with Historic Preservation) as preservation alternatives that would retain the structures in the CRHR-eligible Hunters Point Commercial Drydock and Naval Shipyard Historic District and would avoid significant adverse effects on historic resources.

Response to Comment 39-3

The Project would retain and interpret historic features of Hunters Point Shipyard, including Heritage Park (essentially the NRHP-eligible Hunters Point Commercial Drydock Historic District), as described in Draft EIR Chapter II (Project Description), Hunter Point Shipyard Piers, Drydocks and Waterside Uses, page II-23, and Section III.J, pages III.J-33 to -34. Draft EIR Section III.P (Recreation), page III.P-27 identifies other features that would reference the history of the site. Near Northside Park, the open-air African Marketplace would form an east-west promenade crossing the park, and would relate to the African-American community history in the Bayview-Hunters Point neighborhood. The Waterfront Promenade would provide evidence of the historic qualities of the industrial waterfront, which would be incorporated into tree bosques, seating areas, lawn panels, artworks, and interpretive gardens. Grasslands Ecology Park at Parcel E would contain a visitor/interpretive center. Figure III.P-2 (Proposed parks and Open Space), Draft EIR page III.P-14, illustrates the location of these Project features.

Mitigation measures MM CP-1b.1 and MM CP-1b.2 would provide for documentation of the Shipyard consistent with Historic American Building Survey (HABS)/Historic American Engineering Record

(HAER) Historical Report Guidelines, under HABS/HAER Level II and Level III standards and for interpretive displays at the Shipyard of a number and type subject to the approval of the Historic Preservation Commission.

Response to Comment 39-4

Draft EIR page III.J-21, Historic Resources—Candlestick Point, discusses Candlestick Park stadium under NRHP and CRHR criteria. On the basis of documents cited, the Draft EIR found that Candlestick Park stadium, built in 1960, would not meet NRHP or CRHR criteria as an historic resource. Draft EIR page III.J-33, Impact CP-1a: Change in Significance of Historic Architectural Resources at Candlestick Point, therefore concluded that demolition of Candlestick Park stadium with the Project would be a less than significant effect on historic resources.

Because Candlestick Park stadium will be 50 years old in 2010, an additional Historic Resource Evaluation (HRE) for Candlestick Park stadium was completed (refer to Appendix J3 [CIRCA, Historic Resources Evaluation for Candlestick, April 2010] of this C&R document).¹⁰⁹ The HRE reviews the history of Candlestick Park stadium, and evaluates the structure under NRHP and CRHR criteria. The NRHP criteria are summarized on Draft EIR pages III.J-27 and III.J-28:

[E]ligible resources comprise districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and any of the following:

- a) Are associated with events that have made a significant contribution to the broad patterns of our history
- b) Are associated with the lives of persons significant in our past
- c) Embody the distinctive characteristics of a type, period, or method of construction, or that possess high artistic values, or that represent a significant distinguishable entity whose components may lack individual distinction
- d) Have yielded or may be likely to yield, information important to history or prehistory

CRHR criteria are similar, as presented on Draft EIR page III.J-29:

In general, an historical resource is defined as any object, building, structure, site, area, place, record, or manuscript that:

- (a) Is historically or archaeologically significant, or is significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political or cultural annals of California; and
- (b) Meets any of the following criteria:
 - 1) Is associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage;
 - 2) Is associated with the lives of persons important in our past;
 - 3) Embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values; or
 - 4) Has yielded, or may be likely to yield, information important in prehistory or history.

¹⁰⁹ Circa: Historic Property Development, *Historic Resource Evaluation for Candlestick Park Sports Stadium, San Francisco, CA*, April 2010.

The HRE presents the history of development of Candlestick Park stadium as part of the expansion of Major League Baseball to the West Coast in the late 1950s, with the New York Giants moving to San Francisco and the Brooklyn Dodgers moving to Los Angeles. The newly renamed San Francisco Giants played their first two seasons at the existing Seals Stadium (since demolished). Candlestick Point stadium opened in the 1960 season. The site was owned by Charles Harney, one of San Francisco's most well known contractors, who sold the property to the City for \$2.7 million. Harney was also the contractor for the stadium. The stadium and the site are owned by the San Francisco Recreation and Park Department. The original stadium was a 43,765-seat baseball park, with a two-level grandstand around the infield, and bleacher seating around the outfield. Extensive surface parking was provided around the stadium. As discussed below, the stadium has been altered since 1960 and now serves as football stadium for the San Francisco 49ers.

The HRE analyzes each of the NRHP and CRHR criteria noted above and concludes that Candlestick Park stadium meets certain of the criteria for association with events or persons, but does not possess sufficient integrity to qualify for listing on the NRHP or CRHR. The HRE also notes that Candlestick Park stadium would not appear to meet criteria as a San Francisco landmark under *Planning Code* Article 10. The HRE cites and concurs with earlier evaluations of the stadium that similarly found significant associations with events or persons, but that the property does not possess integrity as an historic resource.

Therefore, Candlestick Park stadium is not an historic resource, and the Draft EIR correctly concludes that demolition of Candlestick Park stadium with the Project would be a less than significant effect on historic resources.

For information, key findings of the HRE are summarized below:

Association with Events

Candlestick Park stadium meets criteria for association with significant events, the expansion of Major League Baseball to the West Coast in the late 1950s, While the HRE notes other events associated with the stadium, such as important baseball and football games, and the San Francisco Giants – Oakland Athletics World Series game during the October 1989 Loma Prieta earthquake, the HRE concludes that those other events would not meet NRHP and CRHR associative criteria.

Association with Persons

Candlestick Park stadium meets criteria for association with significant persons, the baseball career of Willie Mays, regarded as one the greatest baseball players of all time. Mays joined the New York Giants in 1951, and played with the San Francisco Giants at Candlestick Park from 1960 to 1972. As stated in the HRE, “he is the one player in San Francisco Giants history whose achievements could be considered to be of exceptional significance in the history of baseball. In addition, enough time has passed to accurately evaluate the significance of Mays' career, and his stature among the greatest players of all time will not diminish in the future, even as later players surpass his accomplishments.”

The HRE discussed other persons associated with the stadium, including prominent baseball players such as Orlando Cepeda, Juan Marichal, Willie McCovey, Gaylord Perry, and Barry Bonds, and prominent San Francisco 49ers football players, including Joe Montana and Jerry Rice, and concluded that those persons would not meet NRHP or CRHR associative criteria.

Design/Construction

The HRE found that the structure does not meet criteria for design and construction.

John S. Bolles (1905–1983) was the architect of Candlestick Park stadium and some of the later alterations.” Bolles was responsible for other buildings in the Bay Area, including residential structures, including Ping Yuen public housing in Chinatown, the Anna Waden branch public library in Bayview, and other commercial buildings in Northern California. His IBM campus in San Jose includes Building 25, found eligible for the NRHP and CRHR. Bolles considered Candlestick Park stadium his most important project. However, the HRE found that Bolles would not be considered a “master” architect. Candlestick Park stadium is not the work of a master.

Candlestick Park stadium is a transitional design between baseball parks before the 1950s and dual-use stadiums developed in the 1970s. While Candlestick Park stadium includes features such as concrete construction and a set-back grandstand that reduced impaired sightlines compared to older stadiums, the HRE found that it does not represent an example of contemporary stadium design form the 1960s and 1970s as was found in Los Angeles, Oakland, St. Louis, or New York.

The original design as a 43,765-seat baseball stadium was eventually altered to dual baseball- football use in 1971, and by 1994 had 71,000-seats. Since 2000, when the Giants opened the baseball park at China Basin, now known as AT&T Park, Candlestick Park stadium is football only. Many other modifications have compromised the integrity of the original design. Extensive alterations include (but are not limited to): an increase of the seating capacity from the original 43,765 to 58,000 in 1993 and 71,000 in 1994, major reconfiguration of the grandstand, enclosure of the baseball outfield and installation of retractable seating in right field, replacement of 30,000 original wood seats with plastic seats, eight new ticket booths, enlarged and rehabbed press box, new lights, and the replacement of bluegrass field with Astroturf. These and other alterations have resulted in the stadium’s current primary football-use design.

The HRE found that the structure does not possess distinctive or unique design or construction features of those periods.

Information Value

The HRE found that demolition of Candlestick Park stadium would not have a significant effect on the information value of archaeological resources at the site. The Draft EIR found that archaeological resources expected to be found on the Candlestick Point site could have important research value and would, therefore, be legally significant under CEQA. Any potential archeological resources that are covered by existing development would remain covered and unavailable unless the site is redeveloped. Adverse effects of construction-related activities to archaeological resources at Candlestick Point would be less-than-significant through implementation of the CP-HPS Phase II ARDTP, as discussed on Draft EIR pages III.J-36 through 39.

Integrity

The HRE evaluates the integrity of Candlestick Park stadium according to NRHP and CRHR criteria. To retain integrity a property must have most of the seven aspects of integrity as defined by the NRHR. The property has been evaluated for integrity by Caltrans, the State Office of Historic Preservation, Jones &

Stokes, and Circa, all of whom have found that Candlestick Park has a significantly diminished level of integrity due to 30 years of ongoing alterations resulting in cumulative degradation of the historic significance of the property. These alterations, both major and minor, diminished the stadium's integrity of design, setting, materials, workmanship, feeling, and association.

Design. The stadium has been extensively altered over the course of thirty-years since the early 1970s, especially with the enclosure of the stadium seating and removal of the baseball diamond for football use. The property does not retain integrity of design.

Setting. The stadium is on an 81-acre site and is surrounded by a paved parking lot with a chain link fence. Landscaping is minimal and consists primarily of clusters of trees around both the north and south (main) gates; a succession of trees defines the outside border of the main access road immediately surrounding the stadium. The setting has been somewhat altered due to the modification of the stadium envelope. The property retains some integrity for setting.

Materials. The stadium is primarily comprised of reinforced concrete and steel that has been enlarged, altered, repaired and painted over the course of 30-years. A majority of character defining elements of a baseball field (diamond field layout, bases, pitcher's mound, catcher's box, home plate, in-field, out-field and foul lines) and stadium (score board, original seating, original press boxes, hospitality suites, concession stands, offices, entrances/exits turnstiles, ticket booths, stairwells, elevators) have been removed or significantly altered. The property does not retain integrity of materials.

Workmanship. The stadium has been extensively altered over as noted in the HRE; therefore, it has lost much evidence of craft. The property does not retain integrity of workmanship.

Feeling. Candlestick Park was designed and constructed as a baseball stadium. The enclosure of the stadium seating around the original outfield, reconfiguring of the seating and alteration of the diamond configuration eliminated the feeling of a baseball field. While it reflects the feeling of a stadium, it does not reflect that of a baseball stadium. The property does not retain integrity of feeling.

Association. Candlestick Park's historic association was once that of the first Major League Baseball park on the West Coast. Its change to a dual purpose, and then to primarily a football stadium have removed the baseball association. The property's association with the introduction of Major League Baseball on the West Coast would not extend to the 1970s. By that time, there were Major League Baseball teams in Anaheim, Oakland, and San Diego, in addition to San Francisco and Los Angeles. The property's association with the career of Willie Mays would extend only to 1972, before Mays was traded to the New York Mets. Almost all of the home games that Mays played during his Candlestick Park years were in the pre-expansion stadium, with its open outfield and upper deck seating only in the infield areas. The property does not retain integrity of association.

To clarify the evaluation of Candlestick Park stadium, the following text is revised on Draft EIR page III.J-21, under Historic Resources—Candlestick Point, first paragraph, replacing sentence four, and adding footnote 251a:

The Candlestick Point site does not contain historic resources. In 2007, Jones & Stokes completed a review of Candlestick Park stadium, built in 1960, for potential eligibility in the NRHP.²⁵¹ The evaluation determined that the stadium did not meet the criteria to qualify as an exceptional property less than 50 years old. The report noted extensive alterations since its construction, including the expansion and enclosure in 1970 and more recent modifications to convert the stadium into a football-only facility. ~~The stadium, if reviewed at the 50 year mark, would not meet criteria for listing on the NRHP or CRHR due to lack of physical integrity resulting from the extensive alterations discussed above.~~ A recent Historic Resource Evaluation (HRE) reviewed the stadium as a 50-year-old structure and the HRE concluded that, while the stadium would meet certain NRHP and CRHR criteria for association with events and persons, specifically the expansion of Major League Baseball

to the West Coast and the career of Willie Mays with the San Francisco Giants, the stadium does not retain sufficient integrity to qualify as an historic resource under NRHP or CRHR criteria.^{251a} ...

^{251a} Circa: Historic Property Development, *Historic Resource Evaluation for Candlestick Park Stadium, San Francisco, CA*, April 2010 (refer to Appendix J3 [CIRCA, Historic Resources Evaluation for Candlestick, April 2010]).

The following text is revised on Draft EIR page III.J-33 under Impact CP-1a (Change in Significance of Historic Architectural Resources at Candlestick Point), first paragraph:

The Project would demolish Candlestick Park stadium, and would demolish and redevelop the Alice Griffith public housing site. Neither Candlestick Park stadium, nor the Alice Griffith public housing sites are considered eligible for listing on the NRHP, CRHR, or City landmark registers. As discussed above, ~~Jones & Stokes completed a review of Candlestick Park stadium in 2007 and determined that the stadium did not meet the eligibility criteria for the NRHP while the stadium would meet certain NRHP and CRHR criteria for association with events and persons, the stadium does not retain sufficient integrity to qualify as a historic resource.~~ ...

Response to Comment 39-5

Draft EIR Section III.K (Hazards and Hazardous Materials) presents complete information on existing conditions, potential hazards, remediation measures, and legal and administrative procedures that would address hazardous conditions. Section III.K concludes that all Project hazardous material impacts related to site conditions would be less than significant with implementation of mitigation measures. (Refer to Draft EIR pages III.K-53 to -109.) For many areas of HPS Phase II, remediation activities already are underway as part Navy responsibilities under CERCLA. Remediation activities for groundwater contamination would in general assume that existing buildings would be demolished prior to soil remediation. As discussed in the Draft EIR and in Response to Comment 39-1 above, removal of most buildings at HPS Phase II would not affect significant historic resources, and, therefore, remediation activities would not have an adverse effect on such resources. Section F (Draft EIR Revisions) of this document discusses Subalternative 4A (CP-HPS Phase II Development Plan with Historic Preservation), which would retain the structures in the CRHR-eligible Hunters Point Commercial Drydock and Naval Shipyard Historic District and would avoid significant adverse effects on historic resources identified in the Draft EIR. Refer also to Response to Comment 28-1.

Subalternative 4A would retain and rehabilitate identified historic buildings in the Historic District using the Secretary of the Interior Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (Secretary's Standards). As with the Project, Subalternative 4A would also retain the buildings and structures in the potential NRHP Hunters Point Commercial Drydock District. Subalternative 4A assumes that the Navy would transfer the identified historic buildings to the Agency and would not demolish them before transfer.

As part of Subalternative 4A, the retained buildings would require abatement of existing hazardous materials such as asbestos, PCBs from electric fixtures, and lead-based paint. Those abatement activities would be a typical step in a reuse and rehabilitation plan. The Navy is responsible for identifying the required extent of soil and groundwater remediation needed through the CERCLA process, as explained in Draft EIR Section III.K. The Navy will also clear all transferred buildings of any radiological hazards. Whether remediation activities would preclude rehabilitation or reuse of any of the buildings in the identified Hunters Point Commercial Drydock and Naval Shipyard Historic District is not known at this

time. Buildings 211 and 253 have been identified as radiologically impacted buildings. The Navy will not make a determination as to whether these buildings can be cleared for reuse until at the earliest fall 2010. As noted in Draft EIR Section III.K, pages III.K-27 to -28, Basewide Historical Radiological Assessment:

The overall conclusion of the [Historical Radiological Assessment] HRA was that although low levels of radioactive contamination exist at HPS, no imminent threat or substantial risk exists to tenants, the environment of HPS, or the local community. This conclusion has been reinforced by subsequent Finding of Suitability for Lease (FOSL) issued by the Navy for areas in Parcel B and Building 606 in Parcel D and approved by the regulatory agencies authorizing leases for various uses involving hundreds of employees, artists, and visitors in close proximity to various “impacted” sites each day. A Basewide Radiological Work Plan was subsequently prepared, describing survey and decontamination approaches to be implemented in support of radiological release of buildings and areas.

In sum, before the Navy transfers property to the Agency, it will address all radiologically impacted buildings, and will either complete all remediation or complete a plan for remediation and transfer implementation to the Agency (early transfer). The extent to which Navy remedial work or remedial plans will impact the ability to reuse the historic buildings has not been definitely determined by the Navy at this time.

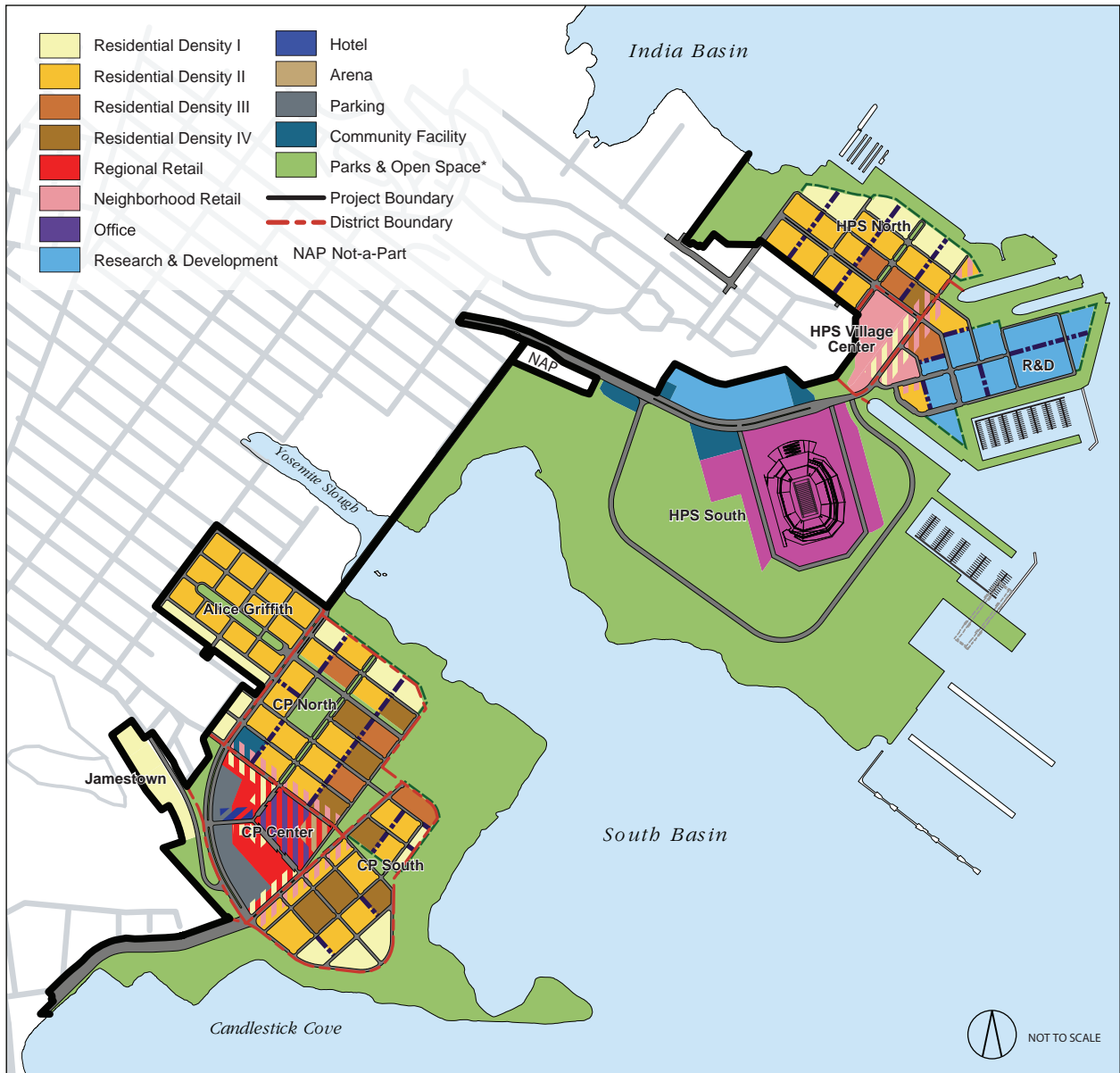
Response to Comment 39-6

Refer to Response to Comment 28-1 and Section F (Draft EIR Revisions) of this document, which discuss Subalternative 4A (CP-HPS Phase II Development Plan with Historic Preservation), which would retain the structures in the CRHR-eligible Hunters Point Commercial Drydock and Naval Shipyard Historic District. Subalternative 4A would reuse structures in the CRHR-eligible Hunters Point Commercial Drydock and Naval Shipyard Historic District with a mix of R&D and parking uses, as presented in the Page & Turnbull and CBRE feasibility studies cited in the Draft EIR (Appendices VI and V2, respectively). Subalternative 4A, as discussed in Section F, would include a reconfigured site plan and building program at HPS such that all Project uses would be accommodated.

Response to Comment 39-7

Draft EIR Figure III.J-2, page III.J-23, Potential Historic District, illustrates historic resources identified in the Draft EIR. The legend indicates the boundary of the NRHP-eligible Hunters Point Commercial Drydock Historic District, and the location of Drydocks 2 and 3, and Buildings 140, 204, 205, and 207 that are contributory to that district. Figure III.J-2 also indicates the boundary of the CRHR-eligible Hunters Point Commercial Drydock and Naval Shipyard Historic District (which encompasses the smaller NRHP district), and the locations of Buildings 208, 224, 211, 231, and 253 that are contributory to that district. Additionally, Drydock 4 was previously identified as individually eligible for the NRHP. (It should be noted that Building 208 would now be retained as part of the Project and all variants and alternatives.)

New Figure VI-3a (Subalternative 4A Land Use Plan) illustrates the site plan for Subalternative 4A (CP-HPS Phase II Development Plan with Historic Preservation Alternative), which would retain the structures in the CRHR-eligible Hunters Point Commercial Drydock and Naval Shipyard Historic District and would avoid significant adverse effects on historic resources.



SOURCE: Lennar Urban, 2010.

PB5&J 04.19.10 02056 | JCS | 10

FIGURE VI-3a



**Candlestick Point — Hunters Point Shipyard Phase II EIR
SUBALTERNATIVE 4A LAND USE PLAN**

■ Letter 40: Gould, Corrina (1/12/10)

1 of 2

Letter 40

Mr. Wycko,

I am requesting a meaningful conversation between the City of San Francisco and the original peoples about the development at Hunters Point.

Corrina Gould
10926 Edes Ave
Oakland, CA 94603
510-575-8408

Indian People Organizing for Change
10926 Edes Ave
Oakland, CA 94603
510-575-8408
shellmoundwalk@yahoo.com

January 12, 2010

Mayor Gavin Newsom, SF
City Hall Rm 200
1 Dr. Carlton B. Goodlett Pl.
San Francisco Ca 94102

Re: Planning Department Case No. 2007-0946E
Candlestick Park/Hunters Point Shipyard

REQUEST FOR IMMEDIATE MEANINGFUL CONVERSATION

Dear Mayor Newsom,

I am writing to you to ask that the City of San Francisco follow the law set out by the State of California to have a “meaningful conversation”, with the original people of your city, the Ohlone, prior to development. Senate Bill 18 is intended to bring in the local American Indians to talk respectfully with the city and county planners to determine if sacred sites are or could possibly be disturbed during a project. It is the City and Counties responsibility to contact the list of people on the Native American Heritage Commissions roster if they are going to adopt or amend a general plan. As the law passed in 2005 and the general plan was amended in 2006, the Ohlone people should have been contacted at that point.

40-1

2 of 2

As an Ohlone woman that has been working on Shellmound and Sacred sites issues for over 10years, I am asking that the City of San Francisco work with my relatives in order for us to continue to treat our ancestors in a respectful manner. A Public Hearing is not “meaningful discussion”. Please allow for the time allotted in the SB 18 law and bring the Ohlone people in for a meeting to discuss what the next steps should be.

↑
40-1
cont'd.

Sincerely,

Corrina Gould, Ohlone/IPOC Organizer

■ Letter 40: Gould, Corrina (1/12/10)

Response to Comment 40-1

Refer to Master Response 1 (SB 18) for a discussion of consultation with the Native American community under Senate Bill 18 (SB 18).

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■ **Letter 41: Hamman, Michael (1/12/10)**

1 of 2

Letter 41

Michael Hamman, General Contractor
702 Earl Street
San Francisco, CA 94124

January 12, 2010

Mr. Stanley Muraoka
Environmental Review Officer
San Francisco Redevelopment Agency
One South Van Ness Avenue, 5th Floor
San Francisco, CA 94103

Mr. Bill Wycko
Environmental Review Officer
San Francisco Planning Department
1650 Mission Street
San Francisco, CA 94103

**RE: Candlestick Point–Hunters Point Shipyard Phase II Development Plan
DEIR.**

Dear Mr. Muraoka and Mr. Wycko:

I am writing to comment on Section: **III J Cultural Resources.**

1. The analysis of the historical resources is inadequate because it is all based on a study that was done over twenty years ago – The Bonnie L. Baumberg, *Descriptions of Properties... 1988*. This study was referred to in subsequent documents: Louis S. Wall, *Advisory Council on Historic Preservation*. And is the basis for this DEIR.
 - a. This document was not included in the available appendix and was unavailable for examination yet all the decisions as to what buildings are historic and which ones are not is based on this study. A new study should be done where the methodology can be reviewed by the community.
 - b. Whatever the merits of this survey it is woefully out of date. Buildings that were only thirty years old at the time are now over fifty years old

41-1

2 of 2

and may indeed qualify for listing now, when they didn't then. This survey must be updated. The assumption that there are only eleven buildings of historical interest today in 2010 is completely unsubstantiated with current research.

2. The decision to destroy five buildings that are contributory (and necessary) to the creation of the potential *Hunters Point Commercial Dry Dock Historic District* was not analyzed. There was no discussion as to why the buildings should be destroyed. The cost of preserving and reusing these buildings was not studied, nor was it compared to the cost of replacing them. Without such study the decision to destroy them can not be justified. **There is no preservation alternative analyzed!**
3. In the event adequate research justifies destroying these buildings the proposed mitigation is completely inadequate.
 - a. There is no analysis of the value of these buildings as buildings. And there is no mention of the value a Historic District might have. The preservation of each building has a value to the society at large and the creation of a Historic District has an ADDITIONAL value.
 - b. There is no attempt to explain how the documentation of the buildings with photographs is sufficient to mitigate the loss of both the buildings and the potential Historic District.
 - c. An appropriate mitigation for the destruction of the buildings and the potential Historic District would be to fund an endowment for the preservation of historic buildings in the Bayview. Such funding should be based on a portion of the value of that which is destroyed. Such a fee could be factored into the decision to preserve or destroy each building and an additional fee should be imposed should the number of buildings destroyed preclude the creation of the Historic District.



Sincerely,

Michael Hamman

■ Letter 41: Hamman, Michael (1/12/10)

Response to Comment 41-1

Draft EIR Section III.J (Cultural Resources and Paleontological Resources) recently evaluated all structures at Hunters Point Shipyard, as described on Draft EIR pages III.J-21 through -25, and cited in the Circa Historic Property Development, *Bayview Waterfront Plan Historic Resources Evaluation, Volume II: Draft Historic Resource Survey and Technical Report*, October 2009, on III.J-1. The reference to the Baumberg report in Draft EIR footnote 252, page III.J-21, is background information. That source did not come from the basis of conclusions about the significance of historic structures at the Shipyard.

Response to Comment 41-2

Refer to Response to Comment 39-1, for a discussion of the adequacy of the evaluation of historic resources at Hunters Point Shipyard Phase II. Refer to Responses to Comments 28-1 and 39-3, and to Section F (Draft EIR Revisions) of this document, with regard to Alternative 4 (Reduced CP-HPS Phase II Development, Historic Preservation) and Subalternative 4A (CP-HPS Phase II Development Plan with Historic Preservation) as preservation alternatives that would retain the structures in the CRHR-eligible Hunters Point Commercial Drydock and Naval Shipyard Historic District and would avoid significant adverse effects on historic resources.

Response to Comment 41-3

As noted in the comment, mitigation measure MM CP-1b.1, pages III.J-34 to -35, requiring documentation of the CRHR-eligible resources before demolition, would reduce, but not avoid, the significant effect on CRHR-eligible resources. Refer to Responses to Comments 28-1 and 39-3, and to Section F (Draft EIR Revisions) of this document, with regard to Alternative 4 (Reduced CP-HPS Phase II Development, Historic Preservation) and Subalternative 4A (CP-HPS Phase II Development Plan with Historic Preservation) as preservation alternatives that would retain the structures in the CRHR-eligible Hunters Point Commercial Drydock and Naval Shipyard Historic District and would avoid significant adverse effects on historic resources.

The comment regarding funding an endowment for preservation of historic buildings in the Bayview neighborhood as mitigation for loss of historic resources at Hunters Point Shipyard is noted. Such a funding mechanism would not fully mitigate the loss of those structures. In addition, there is no program in place to implement the funding measure proposed by the commenter, and there would be no assurance that such a program would be implemented.

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■ Letter 42: Californians for Renewable Energy, Inc. (1/12/10)

1 of 142

Letter 42

Dear Joy Navarrete,

I wish to file additional Comments on Case 2007.0946E: Candlestick Point-Hunters Point Shipyard Phase II Development Plan Project (formerly the "Bayview Waterfront Project") Draft Environmental Impact Report.

CALifornians for Renewable Energy, Inc. (CARE) provided comments at the San Francisco Planning Commission on December 17, 2008. During my comments I informed the Commission that I intended to bring the project EIR before the federal court.

This e-mail is to inform you that I have already done so in CARE comments on the consent decree in United States v. Pacific Gas & Electric Company, Civil Action No. 09-4503 (N.D. Cal.) and D.J. Ref. No. 90-5-2-1-09753. I have attached all my pleadings and exhibits before the federal court attached to this e-mail and ask you to incorporate them with CARE's December 17, 2008 comments to the Planning Commission.

For the record CARE strenuously objects to the Project EIR being certified while relevant matters are the subject to litigation before the US Department of Labor, and the federal court as a violation of CARE's due process rights. Additionally since the US Navy has failed to issue any Notice of Preperation of an EIS for the project this EIR violates the National Environmental Policy Act (NEPA). Exhibit 6 is an Order to Vacate just such an inadequate Decision in that case for the Peabody Black Mesa Complex located on the Hopi-Tewa and Navajo reservations in Arizona.

Respectfully,

Michael E. Boyd President

CALifornians for Renewable Energy, Inc. (CARE)

5439 Soquel Drive

Soquel, California 95073-2659

(408) 891-9677

E-mail: michaelboyd@sbcglobal.net

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(Please note that the following documents will appear as a subfolder)

-  Comment on United States v Pacific Gas & Electric Company.pdf
-  Exhibit 1 EPA report Shipyard project minimizing dust.pdf
-  Exhibit 2 USEPA deny Bay View Civil Rights 9-2-09.pdf
-  Exhibit 3 Order 4 Hearing in Mike Boyd v USEPA DCR.pdf

SFGate.com
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EPA report: Shipyard project minimizing dust

[John Coté, Chronicle Staff Writer](#)

Tuesday, January 5, 2010



For years, critics of the plan to redevelop the Hunters Point Naval Shipyard have said the project is kicking up toxic dust and causing residents to have nosebleeds, headaches and other health problems. But a draft of a federal report obtained by The Chronicle found the project has effective safeguards in place to minimize asbestos exposure.

The report by the Environmental Protection Agency is the latest in a string that have found the project to be safe, despite lawsuits, a record fine and more than three years of heated public hearings as activists seek to halt the work.

The draft report found that monitoring procedures are effectively minimizing "dust generation and limiting asbestos exposure." The EPA also saw "no reason to suspend or stop the construction project," which calls for 10,500 homes to be built over two decades in an ambitious effort to transform the city's southeastern waterfront.

The EPA's analysis is a vindication of sorts for Mayor Gavin Newsom, who has pushed the project. Newsom was hounded on the campaign trail during his failed gubernatorial bid by followers of Nation of Islam minister Christopher Muhammad who contend the project is sickening residents. The local Nation of Islam chapter has a school nearby.

"After more than three years, Minister Christopher Muhammad has still failed to generate a single shred of reputable scientific evidence that the construction on phase one of Hunters Point shipyard was harmful to the surrounding community," said Michael Cohen, head of the mayor's economic development office. "The fact that Barack Obama's EPA has joined the long list of federal, state and local agencies that agree there is no reason to stop this project is important because of the Obama administration's strong commitment to environmental justice."

Still skeptical

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Not everyone is convinced of the latest findings, saying that the project is spreading naturally occurring asbestos that is causing health problems among nearby residents. Asbestos, a fibrous mineral, is sent airborne when earth is broken and graded for construction. Long-term exposure can cause cancer.

Marie Harrison, a Bayview-Hunters Point resident and organizer with Greenaction, questioned the EPA's testing methods, especially since individual residents were not screened.

"I would love to believe that they did this, I really truly would. But if I'm going to believe anything, I've got to see it," Harrison said.

Leon Muhammad, dean at the local Nation of Islam school, refused to comment on the EPA report. Christopher Muhammad could not be reached.

The EPA's study looked at existing data from 10 monitors around the 75-acre first-phase site. The monitors work like vacuums, sucking air into a small canister, which contains a filter that is analyzed at a lab. The agency also reanalyzed 34 filters from "some of the worst-case situations" using a more detailed method.

It found that the "oversight of the project is appropriate" and that the standard local officials use actually resulted in a more conservative approach than the EPA method, the draft report said.

The city's public health chief, Mitch Katz, has repeatedly testified that the construction is safe, and the city's efforts have been backed by the state Department of Health Services and U.S. Centers for Disease Control and Prevention.

Fine and lawsuits

However, readying the site for construction hasn't come without problems.

The Bay Area Air Quality Management District fined Lennar Urban, the developer partnering with the city, \$515,000 in September 2008 - the largest fine in the district's history for a dust violation - for failing to properly monitor the air, maintain stations for washing dust off vehicles and contain dust from roadways out of the worksite.

According to air district officials, there was missing data from May through July 2006 after one of Lennar's consultants failed to properly calibrate monitoring equipment.

But the air district maintains that there was no evidence "of any kind of definitive health hazard," said spokeswoman Lisa Fasano.

Two former Lennar employees also sued the company in March 2007, alleging the company violated state law by retaliating against them for raising questions about the

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dust problems at the construction site. They also claim that they were victims of racial discrimination.

The lawsuit was settled out of court in January 2008 after Lennar failed to get it dismissed, records show. Representatives on both sides declined to comment on the amount.

A second lawsuit, filed in June on behalf of more than a dozen children who live or go to school in the neighborhood, contends Lennar "on many occasions" failed to stop work despite asbestos levels far exceeding the cut-off threshold. A trial is set for July.

Sam Singer, a Lennar spokesman, called the lawsuit "without merit."

E-mail John Coté at jcote@sfnchronicle.com.

<http://sfgate.com/cgi-bin/article.cgi?f=/c/a/2010/01/05/MNS91BDFIJ.DTL>

This article appeared on page **A - 1** of the San Francisco Chronicle

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 2 2009

OFFICE OF
CIVIL RIGHTS

Return Receipt Requested

In Reply Refer to:
EPA File No. 16R-07-R9

Certified Mail #7004-1160-0002-3622-5201
Lynne Brown, Vice-President
Californians for Renewable Energy (CARE)
24 Harbor Rd
San Francisco, CA 94124

Certified Mail #7004-1160-0002-3622-7120
Michael E. Boyd, President
Californians for Renewable Energy (CARE)
5439 Soquel Drive
Soquel, CA 95073

Re: Rejection of Administrative Complaint

Dear Mr. Brown and Mr. Boyd:

The U.S. Environmental Protection Agency (EPA) Office of Civil Rights (OCR) received the August 6, 2007, allegations that you requested be added to an earlier administrative complaint filed by Mr. Brown in 2004. Your 2007 complaint alleges that the Bay Area Air Quality Management District (BAAQMD) violated Title VI of the Civil Rights Act of 1964, as amended (Title VI), 42 U.S.C. § 2000d *et seq.*, and EPA's nondiscrimination regulations found at 40 C.F.R. Part 7. The 2004 complaint contained allegations concerning the City and County of San Francisco and the San Francisco Redevelopment Agency. Since the 2007 allegations occurred some time after the filing of the initial 2004 complaint and the allegations pertain to a different recipient, a new EPA File Number, 16R-07-R9, was assigned to the 2007 allegations. After careful review, OCR is rejecting this administrative complaint.

Pursuant to EPA's nondiscrimination regulations, OCR conducts a preliminary review of discrimination complaints to determine acceptance, rejection, or referral. 40 C.F.R. § 7.120(d)(1). To be accepted for investigation, a complaint must meet the jurisdictional requirements described in EPA's nondiscrimination regulations. First, it must be in writing. Second, it must describe an alleged discriminatory act that, if true, would violate EPA's nondiscrimination regulations (*i.e.*, an alleged discriminatory act based on race, color, national

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origin, sex, or disability). Third, it must be filed within 180 days of the alleged discriminatory act. Finally, the complaint must be filed against an applicant for, or recipient of, EPA assistance that allegedly committed the discriminatory act. (A copy of EPA's nondiscrimination regulations is enclosed for your convenience.)

OCR's jurisdictional review of the allegations in your complaint is discussed below.

Allegation I

BAAQMD failed to follow the California Environmental Quality Act (CEQA) public hearing procedures in reviewing and approving the Asbestos Dust Control Plan for construction activities on Parcel A of the former Hunters Point shipyard.

BAAQMD approved the Asbestos Dust Mitigation Plan prepared by the developer of the former Hunters Point shipyard on October 7, 2005. As stated earlier, a complaint must be filed within 180 days of the alleged discriminatory act. This event occurred almost two years prior to the filing of your complaint on August 6, 2007. Although you filed a complaint with BAAQMD in 2005 about this issue, EPA's regulations state that the filing of a grievance with the recipient does not satisfy the requirement that complaints be filed within 180 days of the alleged discriminatory act. 40 C.F.R. §7.120(b)(2). Therefore, since this allegation does not meet the timeliness requirement in EPA's nondiscrimination regulations, OCR cannot accept this allegation for investigation.

Allegation II

BAAQMD failed to protect the health and welfare of the workers at the former Hunters Point shipyard from exposure to asbestos dust.

Worker safety, including asbestos worksite monitoring procedures and exposure controls, are regulated by the Occupational Safety and Health Administration (OSHA). OSHA may delegate its enforcement authority to states. Concerns about worker safety in this context should be directed to OSHA or to the California Division of Occupational Safety and Health. This allegation does not describe an alleged discriminatory act, that if true, would violate EPA's nondiscrimination regulations. It, therefore, does not meet the jurisdictional requirements in EPA's nondiscrimination regulations and OCR cannot accept it for investigation.

Allegation III

BAAQMD failed to protect the health and welfare of the community surrounding the former Hunters Point shipyard from exposure to asbestos dust.

The final allegation examined concerns the health and welfare of the community surrounding the former Hunters Point shipyard. Your complaint states that "action limits" have been "exceeded on a repeated basis." In a letter dated June 30, 2009, OCR sought clarification about this allegation because it does not describe the specific alleged discriminatory acts committed by BAAQMD. EPA's nondiscrimination regulations require that complaints describe

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an alleged discriminatory act, that if true, would violate EPA's nondiscrimination regulations, 40 C.F.R. § 7.120(b)(1). Additionally, complaints must be filed within 180 days of the alleged discriminatory act(s). 40 C.F.R. § 7.120(b)(2). Therefore, in its clarification letter, OCR requested a description of the "specific action(s) you believe that BAAQMD did or did not do that 'failed to protect' nearby residents."

OCR received your clarification response on July 29, 2009. After carefully reviewing your submission, OCR has determined that it cannot accept the third allegation in your complaint for investigation. While your response includes a variety of information, it does not describe an alleged discriminatory act committed by BAAQMD within 180 days prior to the submission of your complaint.

If you have any questions, please contact Loren Hall of OCR's External Compliance Program by telephone at (202) 343-9675, by e-mail at hall.loren@epa.gov, or by mail at the U.S. EPA, Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Avenue NW, Washington, DC 20460.

Sincerely,



Karen D. Higginbotham
Director

Enclosure

cc: Bridget Coyle
EPA Region 9

Stephen G. Pressman, Associate General Counsel
Civil Rights and Finance Law Office (MC 2399A)

Jack Broadbent
Air Pollution Control Officer
Bay Area Air Quality Management District

U.S. Department of Labor

Office of Administrative Law Judges
20 Seventh Street, Suite 4-800
San Francisco, CA 94103-1516

(415) 625-2200
(415) 625-2201 (FAX)



Issue Date: 15 December 2009

CASE NO. 2009-SDW-00005

In the Matter of:

MICHAEL E. BOYD,

Complainant,

vs.

U.S. ENVIRONMENTAL PROTECTION AGENCY (EPA),

Respondent.

**ORDER DENYING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT,
COMPLAINANT'S MOTION TO AMEND HIS COMPLAINT,
COMPLAINANT'S REQUEST FOR SUMMARY JUDGMENT, AND
COMPLAINANT'S REQUEST FOR REMAND**

This matter arises under the whistleblower protection provisions (collectively "whistleblower provisions") of the following statutes:

- The Safe Drinking Water Act of 1974 (SDWA), 42 U.S.C. § 300j-9(i);
- The Federal Water Pollution Control Act of 1972 (FWPCA), 33 U.S.C. § 1367;
- The Toxic Substances Control Act of 1976 (TSCA), 15 U.S.C. § 2622;
- The Solid Waste Disposal Act of 1976 (SWDA), 42 U.S.C. § 6971;
- The Clean Air Act of 1977 (CAA), 42 U.S.C. § 7622; and
- The Comprehensive Environmental Response, Compensation & Liability Act of 1980 (CERCLA), 42 U.S.C. § 9610.

On June 8, 2009, I ordered discovery and briefing on the threshold issues of timeliness, Complainant's status as an employee, and the sufficiency of the allegations in the complaint. The schedule was amended by an order dated June 19, 2009.

On August 14, 2009, I issued an Order Denying Respondent's Motion to Dismiss and Denying Complainant's Motion to Amend his Complaint (Aug. 14, 2009 Order). Respondent's motion asserted that because Complainant is neither an employee of respondent, as all the whistleblower provisions require, or a representative of employees, as three of the whistleblower provisions require, Complainant is not protected by any of the whistleblower provisions. Complainant's opposition argued that Title VI of the Civil Rights Act of 1964 (Civil Rights Act), the Occupational Safety and Health Act (OSH Act) of 1970, and CERCLA provide that OALJ

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has jurisdiction over Claimant's whistleblower claims. I denied Respondent's motion to dismiss, which I construed as a motion for summary decision, because Respondent did not meet its burden to demonstrate the absence of a triable issue of material fact and that it is entitled to judgment as a matter of law. Aug. 14, 2009 Order, pp. 5-6 (citing Fed. R. Civ. P. 56, 29 C.F.R. § 18.40(d)). Respondent failed to address significant aspects of how the term "employee" is understood within the environmental whistleblower statutes under which this matter arises. Aug. 14, 2009 Order, pp. 5-6. Thus, it could not demonstrate its entitlement to summary decision. I also treated Complainant's claims of protection under the Civil Rights Act and the OSH Act as a motion to amend his complaint, which I denied because neither statute provides for hearings before the OALJ. Aug. 14, 2009 Order, p. 6.

On August 31, 2009, Respondent filed a Motion for Summary Judgment (Resp. Motion). On September, 16, 2009 Complainant filed a timely response opposing Respondent's motion (Comp. Opp.). Respondent's motion argues that Claimant has failed to state a claim upon which relief can be granted because Claimant does not qualify as an "employee" within the meaning of the whistleblower statutes. Resp. Motion, pp. 5-6. Complainant argues that Respondent directed one of its grantees to terminate its employment of Complainant. Comp. Opp., p. 4. In so doing, Complainant argues, Respondent acted in the "capacity of an employer," which renders Complainant an "employee" entitled to whistleblower protection. *Id.* at 1.

Complainant adds that Respondent is "liable under 42 U.S.C. § 7413(c)(3) of the [Clean Air Act] for its [a]ctions." *Id.* at 5. He explains that Respondent's violations include "delaying and sitting on Title VI complaints [and] missing their statutory deadlines for accepting and investigating these administrative complaints . . ." *Id.*

Complainant also argues that he should be granted summary judgment and this matter should be remanded to the Occupational Safety and Health Administration (OSHA) because Respondent has allegedly failed to provide timely responses to interrogatories. *Id.* at 10.

ANALYSIS

The employee protection provisions of the various environmental statutes prohibit an employer from taking adverse employment action against an employee because the employee has engaged in protected activity. *See, e.g., Jenkins v. United States Environmental Protection Agency*, ARB No. 98-146, 1988-SWD-00002, Slip op. at 15 (ARB Feb. 28, 2003). Each of the six whistleblower provisions under which Complainant filed his original complaint protects "employees." 42 U.S.C. § 300j-9(i)(1); 33 U.S.C. § 1367(a); 15 U.S.C. § 2622(a); 42 U.S.C. § 6971(a); 42 U.S.C. § 7622(a); 42 U.S.C. § 9610(a). In addition, the FWPCA, the SWDA, and CERCLA extend their whistleblower protections to "authorized representatives of employees." 33 U.S.C. § 1367(a); 42 U.S.C. § 6971(a); 42 U.S.C. § 9610(a). Thus, if Complainant is neither an "employee" nor a "representative of employees" within the meanings of the statutes, he is not covered by the whistleblower provisions and has failed to state a claim under which relief can be granted.

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I. RESPONDENT'S MOTION FOR SUMMARY DECISION

Respondent argues that “even under the broadest interpretation . . . the facts [here] do not permit [Complainant] to qualify as an *employee* under the whistleblower protection provisions of the environmental statutes.”¹ Resp. Aug. 31, 2009 Motion, p. 5. Therefore, Respondent argues, Complainant’s case should be dismissed for failure to state a claim upon which relief can be granted. *Id.* at 6.

Complainant argues that he is protected by the whistleblower provisions as an employee. He maintains that Respondent directed his employer, the Community First Coalition (CFC), to terminate Complainant’s employment in retaliation for Complainant’s distribution of information regarding the alleged presence of asbestos dust in the Bay View Hunters Point community in San Francisco, California. Comp. Opp., p. 4.

I find that there remain genuine issues of material fact as to whether Complainant meets the whistleblower provisions’ definition of “employee” and “representative of employees.” Respondent’s motion does not discuss whether Complainant meets the definition of “representative of employees.” Additionally, it fails to establish that there is no genuine issue of material fact on the question that it as at the core of whether Complainant is an “employee”: the extent of Respondent’s control over Complainant’s employment.

A. Standard for Summary Decision

An administrative law judge may grant summary decision when a moving party demonstrates that there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. 29 C.F.R. § 18.40(d). The moving party bears the initial burden of showing that there is no genuine issue of material fact. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). By moving for summary decision, a party asserts that based on the present record and without the need for further exploration of the facts and conceding all unfavorable inferences in favor of the non-moving party, there is no genuine issue of material fact to be decided and the moving party is entitled to a decision as a matter of law. Fed. R. Civ. P. 56, 29 C.F.R. § 18.40(d). When a motion is properly supported, the nonmoving party must go beyond the pleadings to overcome the motion. He may not merely rest upon allegations, but must set out specific facts showing a genuine issue for trial. *Anderson v. Liberty Lobby*, 477 U.S. 242, 248 (1986).

Respondent, as the moving party, bears the burden of showing (1) that there is no genuine issue of material fact as to whether Complainant is an “employee” or “representative of employees” as understood under the whistleblower provisions, and (2) as a matter of law, Respondent is entitled to judgment that Complainant is neither an “employee” nor a “representative of employees.” See 42 U.S.C. § 300j-9(i)(1); 33 U.S.C. § 1367(a); 15 U.S.C. § 2622(a); 42 U.S.C. § 6971(a); 42 U.S.C. § 7622(a); 42 U.S.C. § 9610(a); 29 C.F.R. § 18.40(d); *Celotex*, 477 U.S. at 325. Respondent has failed to meet this burden.

¹ Emphasis in original.

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B. Respondent's Entitlement to Summary Decision

Employees of contractors of a respondent are protected by a whistleblower provision when the respondent has acted "in the capacity of an employer." *Stephenson v. Nat'l Aeronautics & Space Adm.*, ARB No. 96-080, ALJ No. 1994-TSC-5, Dec. & Ord. of Rem., slip. op. at 3 (ARB Feb. 13, 1997); *see also Hill v. Tenn. Valley Auth.*, ALJ No. 87-ERA-23,24, Dec. & Ord. of Remand, slip. op. at 1-2 (Sec'y May 24, 1989) (disagreeing with an administrative law judge's conclusion that the Energy Reorganization Act's whistleblower protection clearly requires an employer-employee relationship). In *Stephenson v. Nat'l Aeronautics & Space Adm.*, the ARB explained that:

An employer that *acts* in the capacity of an employer with regard to a particular employee may be subject to liability under the environmental whistleblower provisions, notwithstanding the fact that that employer does not directly compensate or immediately supervise the employee. A parent company or contracting agency acts in the capacity of an employer by establishing, modifying, or otherwise interfering with an employee of a subordinate company regarding the employee's compensation, terms, conditions or privileges of employment. For example, the president of a parent company who hires, fires or disciplines an employee of one of its subsidiaries may be deemed an "employer" for purposes of the whistleblower provisions. A contracting agency which exercises similar control over the employees of its contractors or subcontractors may be a covered employer.

Dec. & Ord. of Remand, slip. op. at 3.

Respondent argues that it "exercises no control over technical assistance grant recipients' employment of expert outside consultants or internal personnel." Resp. Motion, p.2. Respondent further states that it "exercised no dominion over CFC or Complainant, and whatever decision the grantee made concerning Complainant's retention as a consultant was within the grantee's exclusive control." *Id.* at 3.

Respondent's motion was accompanied by a declaration by Ms. Jacqueline Lane (Lane Dec.), an EPA project officer who was responsible for overseeing the Hunters Point Naval Shipyard Superfund site Technical Assistance Grant (TAG). Lane Dec., p. 1. Ms. Lane's declaration explains that Respondent funded a grant to the Community First Coalition (CFC) to allow "the grantee to acquire independent technical advice in connection with the Hunters Point . . . Superfund site." *Id.* Ms. Lane further explains that CFC contracted with a company called Environmental Mitigation Unlimited (EMU) to serve as technical advisor to CFC. *Id.* According to Ms. Lane, EMU was a "non-profit public benefit association of Clifton J. Smith and Michael E. Boyd, Associates." *Id.* She further states that CFC terminated the contract with EMU because EMU failed to fulfill the terms of its technical assistance contract. *Id.*

Ms. Lane's declaration states that Respondent "does not dictate or even involve itself in the grantee's selection or retention of its employees or contractors/independent consultants." Lane Dec., p. 1. She adds that "the contracting, payment, and termination of contracts under the grant agreement is the sole responsibility of the [grantee]." *Id.* at 2. Ms. Lane further declares

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that Respondent took no action regarding Complainant's work as a technical consultant to CFC and did not provide any advice to CFC regarding Complainant's retention, termination, or terms of employment. *Id.* at 2.

According to Complainant, Respondent directed his termination in retaliation for "providing the . . . Bay View Hunters Point San Francisco community information regarding the disturbance of asbestos dust . . ." Comp. Opp., p. 4. A declaration by Lynne Brown, CFC Co-Chair, avers that Complainant "completed the May 15, 2005 newsletter including co-authoring the article titled Serpentine Soils in Shipyards Possible Source of Naturally Occurring Asbestos . . ." Comp. Opp., Ex. 9, p. 59. Complainant's opposition includes the text of what appears to be an electronic mail message dated May 16, 2005, from Ms. Lane of the EPA apparently to Maurice Campbell of CFC. *Id.* at 3, Ex. 2, pp. 15, 20. The message states that the CFC newsletter "is supposed to talk to the community about Shipyard cleanup issues." *Id.* It then questions whether there was ever a problem with asbestos on the base property and anticipates that the issue "will be brought up at the next RAB [Restoration Advisory Board] meeting." *Id.*; *see also* Comp. Opp., Ex. 2, p. 14.

Complainant's opposition is also accompanied by the minutes of a July 28, 2005 Restoration Advisory Board meeting. Comp. Opp., Ex. 3. They record that Mr. Campbell, a member of CFC and the RAB, stated that a document, which Complainant asserts is his newsletter, would be "reviewed by the CFC and then sent to Jackie Lane at the EPA; then it is submitted so the TAG contractor can be paid." *Id.* at 24.

Respondent's reply does not dispute that the document discussed in the RAB minutes is the newsletter containing an article prepared by Complainant related to asbestos. *See* Resp. Reply, pp. 2-3. Respondent argues that the intent of Ms. Lane's May 16, 2005, electronic mail message was to explain the "general limitation on CFC's expenditure of TAG grant funds" and to instruct "CFC as to what nature of work product EPA had committed itself to fund through the TAG grant." *Id.* at 2-3.

Respondent has not met its burden to show that there is no genuine issue of material fact regarding its control over Complainant's employment with CFC. As Respondent's Reply states, "it was incumbent upon Ms. Lane to ensure that Agency's grant funds were spent in furtherance of the purposes of the grant." Resp. Reply, p. 2. An obvious corollary is that activities not in furtherance of the purposes of the grant are not funded. Thus, Respondent appears to have the power of the purse strings over CFC's execution of the technical assistance grant. The discretion to pay or not pay a grantee represents some degree of control over the grantee's employment of contractors. Whether Respondent exercised enough control to act in the capacity of an employer is unclear, which is precisely the point. Further fact-finding on this issue is required. When additional fact-finding is required, summary decision should not be granted. Therefore, Respondent's motion for summary decision is **DENIED**.

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II. COMPLAINANT'S MOTION TO AMEND COMPLAINT

In his Opposition, Complainant asserts that Respondent has engaged in a pattern of failing to accept and investigate "Title VI" complaints, including one filed by Complainant. Comp. Opp., p. 5. Therefore, Complainant asserts, Respondent is "liable under 42 U.S.C. § 741(c)(3) of the [Clean Air Act]." *Id.* As Complainant did not previously claim protection under this statute, I treat Complainant's assertion of Respondent's liability under 42 U.S.C. § 741(c)(3) as a motion to amend Complainant's complaint.

The Office of Administrative Law Judges (OALJ) does not have jurisdiction to adjudicate complaints arising under 42 U.S.C. § 741(c)(3). That provision provides for criminal punishment of persons convicted of violating certain provisions of the Clean Air Act. It does not provide for a hearing before an administrative law judge. As I do not have jurisdiction to adjudicate alleged violations of 42 U.S.C. § 741(c)(3), Complainant's motion to amend his complaint is hereby **DENIED**.

III. COMPLAINANT'S REQUEST FOR SUMMARY JUDGMENT AND REMAND

Complainant argues that "Summary Judgment should be issued for Complainant" and this matter remanded to OSHA because Respondent failed to respond to interrogatories propounded by Complainant on June 24, 2009. Comp. Opp., p. 10. According to Complainant he propounded interrogatories to Respondent and OSHA on June 24, 2009. *Id.* On July 14, 2009, an order issued staying discovery on the threshold issues pending a decision on Respondent's motion for dismissal, which was denied on August 14, 2009. Complainant asserts that the thirty days to respond to the interrogatories elapsed on August 25, 2009 without response.

The OALJ Rules of Practice and procedure authorize an administrative law judge to impose discovery sanctions when a party fails to comply with an order regarding discovery. 29 C.F.R. § 18.6(d)(2). While granting summary judgment is not among the sanctions authorized, an ALJ may order that an issue is established adversely to a non-complying party. 29 C.F.R. § 18.6(d)(2)(ii). A necessary pre-requisite for an order imposing discovery sanctions is that the party to be sanctioned must be in non-compliance with an order. 29 C.F.R. § 18.6(d)(2). Nothing in the record, however, indicates that Complainant filed a motion seeking an order to compel responses to his interrogatories. Absent a party's non-compliance with an order, a request for discovery sanctions is premature. Therefore, Complainant's request for summary judgment, which I treat as a request for discovery sanctions, is **DENIED**.

In addition, Complainant has failed to articulate a reason for remanding this matter to OSHA. Therefore, Complainant's request for remand to OSHA is hereby **DENIED**.

ORDER

Respondent's motion for summary decision is **DENIED**.

Complainant's motion to amend his complaint is **DENIED**.

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Complainant's request for summary judgment is treated as a request for discovery sanctions and is **DENIED**.

Complainant's request that this matter be remanded to the Occupational Safety and Health Administration is **DENIED**.

The parties are directed to participate in a **telephone status conference call on Tuesday, December 22, 2009 at 11:00 a.m. Pacific Standard Time**. The topics to be covered will include:

- 1) The location and length of the trial;
- 2) The date of the trial;
- 3) The date for a meeting of the parties to develop a discovery plan, of the type described in Standard 1 of the ABA Civil Discovery standards,² which will permit the trial to begin on the date scheduled;
- 4) Whether alterations to the rules for service of documents should be made to permit service by facsimile or by e-mail attachments in WordPerfect or MS-Word format, and whether the time for responding to motions and discovery requests should be shortened;
- 5) Whether the meeting to develop the plan shall be in person, by telephone, conducted through electronic correspondence, or in some other manner;
- 6) Whether the initial disclosures required by Rule 26(a)(1), Federal Rules of Civil Procedure, shall be made before, or at the meeting of the parties to develop the discovery plan,
- 7) The dates for serving Pre-Trial Statements, described in the accompanying draft pre-trial order; filings fully conforming to that order ultimately entered are essential;
- 8) Whether an appointment of a settlement judge, under the procedure set out in 29 C.F.R. § 18.9 (e)(1), would be useful and should be made.



ANNE BEYTIN TORKINGTON
Administrative Law Judge

² <http://www.abanet.org/litigation/discoverystandards/>

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SERVICE SHEET

Case Name: **BOYD_MICHAEL_v_US_ENVIRONMENTAL_PRO_**

Case Number: **2009SDW00005**

Document Title: **Order Denying Resp's Mtn for Summary Judgment, Compl's Mtn to Amend His Complaint, etc.**

I hereby certify that a copy of the above-referenced document was sent to the following this 15th day of December, 2009:


VIVIAN CHAN
LEGAL ASSISTANT

Michael Boyd
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 30 2009

OFFICE OF
CIVIL RIGHTS

Return Receipt Requested

Certified Mail #7004-2510-0004-2241-5599

In Reply Refer To

EPA File No.13R-04-R9

Mr. Michael Boyd
Californians For Renewable Energy
5439 Soquel Drive
Soquel, CA 95073

Re: Request for Extension

Dear Mr. Boyd:

The U.S. Environmental Protection Agency (EPA) Office of Civil Rights (OCR) received your e-mail requesting a second (2nd) extension on December 21, 2009. You specifically requested that OCR reconsider extending the response period until after the ALJ has issued her final ruling on the attached Order for Hearings. Although OCR appreciates your request, we cannot grant you an extension related to the above-mentioned hearing. However, OCR will grant you a extension for an additional 10 days. Therefore, please provide a response to OCR by February 1, 2010.

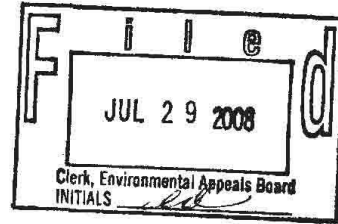
If you have any questions, or encounter any difficulty in gathering this information, please feel free to contact Ericka Farrell, the Case Manager for this investigation, at (202) 343-9224 or via e-mail at Farrell.ericka@epa.gov. Thank you in advance for your cooperation and attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Helena Wooden-Aguilar".

Helena Wooden-Aguilar
Acting Assistant Director
External Compliance and Complaints Program

Internet Address (URL) • <http://www.epa.gov>
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(Slip Opinion)

NOTICE: This opinion is subject to formal revision before publication in the Environmental Administrative Decisions (E.A.D.). Readers are requested to notify the Environmental Appeals Board, U.S. Environmental Protection Agency, Washington, D.C. 20460, of any typographical or other formal errors, in order that corrections may be made before publication.

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

In re:)
)
)
Russell City Energy Center) PSD Appeal No. 08-01
)
Permit No. 15487)
)
)
)
)
)
)

[Decided July 29, 2008]

REMAND ORDER

*Before Environmental Appeals Judges Edward E. Reich,
Charles J. Sheehan, and Anna L. Wolgast.*

IN RE RUSSELL CITY ENERGY CENTER

PSD Appeal No. 08-01

REMAND ORDER

Decided July 29, 2008

Syllabus

Petitioner Rob Simpson (“Mr. Simpson”) petitioned the Environmental Appeals Board (“Board”) to review a federal Prevention of Significant Deterioration (“PSD”) permit (“Permit”) issued by the Bay Area Air Quality Management District (“the District”) to Russell City Energy Center (“RCEC”), on November 1, 2007, for operation of a 600-megawatt natural gas-fired facility. The District processes PSD permit applications under the Clean Air Act (“CAA”) and issues permits under the federal PSD program, pursuant to a delegation agreement with the U.S. Environmental Protection Agency.

The PSD proceedings that are the subject of this case are embedded in a larger California “certification” or licensing process for power plants conducted by the California Energy Commission (“CEC”), which is responsible for the siting of most power plants in the state. Pursuant to procedures for coordination of District and CEC proceedings, the District delegated to CEC the bulk of its 40 C.F.R. part 124 notice and outreach responsibilities with respect to the draft PSD permit for RCEC.

In his Petition, Mr. Simpson challenges issuance of the Permit as clearly erroneous on both procedural and substantive grounds. Among the procedural grounds for challenging the permit, Mr. Simpson contends that the District, in issuing the draft permit and Permit, failed to carry out certain forms of public notice, and to notify specific entities entitled to notice as required by 40 C.F.R. § 124.10. On substantive grounds, Mr. Simpson challenges the Permit as not complying with Best Available Control Technology (“BACT”) as well as numerous other federal and state law requirements.

In response, the District seeks summary dismissal of the Petition on the basis that Mr. Simpson failed to meet jurisdictional thresholds for Board review, including standing, preservation of issues for review, and timeliness. The District argues further that any alleged failure to comply strictly with the regulatory requirements was harmless since Mr. Simpson would not have participated in the PSD proceedings in any event.

Mr. Simpson counters that the District’s failure to comply with part 124 notice requirements thwarted his ability to participate in these proceedings and thus satisfy jurisdictional thresholds.

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Held: The Board remands the Permit so that the District can renotice the draft permit in accordance with the notice provisions of 40 C.F.R. § 124.10.

- (1) Mr. Simpson may raise his notice claims for Board consideration despite Mr. Simpson's "failure" to meet the ordinary threshold for standing under 40 C.F.R. § 124.19(a), which limits standing to those who participate in a permit proceeding by filing comments on the draft permit or participating in a public hearing on a draft permit. Denying Board consideration of fundamental notice claims would deny parties the opportunity to vindicate before the Board potentially meritorious claims of notice violations and preclude the Board from remedying the harm to participation rights resulting from lack of notice. Such denial would be contrary to the CAA statutory directive emphasizing the importance of public participation in PSD permitting and section 124.10's expansive provision of notice and participation rights to the public.
- (2) Mr. Simpson has not demonstrated that his affiliation with the Hayward Area Planning Association ("HAPA") entitled him to particularized notice of the draft permit because HAPA, as a private organization, does not qualify as a "comprehensive regional land use planning agency" entitled to such notice during PSD permitting pursuant to section 124.10(c)(1)(vii) and, even if it were, that does not mean Mr. Simpson was entitled to such notice.
- (3) While the Board generally will not consider notice allegations in a petition where the sole deficiency alleged is failure to give notice to a particular person other than the petitioner, it nevertheless regards it as appropriate to consider claims of failure of notice to other persons within the scope of allegations of fundamental defects in the integrity of the notice process as a whole that may be prejudicial to the notice rights of the petitioner and others.
- (4) While a delegated state agency may redelegate notice and comment functions to another state agency to the extent the federal delegation so permits, in all cases it is incumbent upon the delegated state agency to ensure strict compliance with federal PSD requirements.
- (5) Mr. Simpson has demonstrated that the District, in redelegating outreach to CEC, failed to ensure compliance with the notice and outreach obligations of the PSD regulations, thereby narrowing the scope of public notice to which Mr. Simpson and other members of the public were entitled. In particular, the District failed to ensure compliance with the specific obligation at section 124.10(c)(1)(ix) to inform the public of the opportunity to be placed on a "mailing

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list” for notification of permitting actions through “periodic publication in the public press and in such publications as Regional and State funded newsletters, environmental bulletins, or State Law Journals.”

- (6) The District’s almost complete reliance upon CEC’s certification-related outreach procedures to satisfy the District’s notice obligations regarding the draft permit resulted in a fundamentally flawed notice process. By “piggybacking” upon the CEC’s outreach, the District failed to exercise sufficient supervision over the CEC to ensure that the latter adapted its outreach activities to meet specific section 124.10 mandates. The inadequacy of the notice lists used by the CEC, the handling of public comments by the CEC, and the conduct of a public workshop by CEC with likely District participation during the PSD comment period at which air quality issues were discussed but no record of public comments made all demonstrate that the CEC merely folded the PSD notice proceeding into its ongoing process without attempting to ensure that the part 124 requirements for public participation were met.
- (7) Contrary to the District’s statements, the District’s notice omissions do not constitute “harmless error.” Such omissions affected more persons than Mr. Simpson, and even as to Mr. Simpson, the District’s assumption that, even with the proper notice, he would not have participated, is purely speculative.
- (8) The District’s notice deficiencies require remand of the Permit to the District to ensure that the District fully complies with the public notice and comment provisions at section 124.10. Because the District’s renoticing of the draft permit will allow Mr. Simpson and other members of the public the opportunity to submit comments on PSD-related issues during the comment period, the Board refrains at this time from opining on such issues raised by Mr. Simpson in his appeal.
- (9) Several of the issues raised in Mr. Simpson’s Petition concern matters of California or federal law that are not governed by PSD regulations and, as such, are beyond the Board’s jurisdiction during the PSD review process. The Board will not consider these issues if raised following remand.

***Before Environmental Appeals Judges Edward E. Reich,
Charles J. Sheehan, and Anna L. Wolgast.***

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Opinion of the Board by Judge Reich:

I. INTRODUCTION

On January 3, 2008, Mr. Rob Simpson filed a petition for review (“Petition or Pet.”) challenging a federal Prevention of Significant Deterioration (“PSD”) permit issued by the Bay Area Air Quality Management District (“the District”)¹ to Russell City Energy Center (“RCEC”) on November 1, 2007, for operation of a 600-megawatt (MW) natural gas-fired facility. Mr. Simpson, who resides in the City of Hayward, located in Alameda County (within the District’s boundaries), opposes issuance of the permit on several grounds, including the alleged failure by the District to provide adequate public notice of the permit as well as the District’s allegedly inadequate Best Available Control Technology determination, and several California state issues.

Upon review of the parties’ briefs and the information obtained by the Board during a teleconference hearing held on April 3, 2008, we remand the Final Permit Decision (“Permit”) to the District because we find that the District, in issuing its decision, did not comply with the public notice provisions in the 40 C.F.R. part 124 rules that govern this proceeding. In particular, the District redelegated a substantial portion of its public notice obligations to another state agency, the California

¹ The District is one of thirty-five California air districts charged with regulating stationary sources of air pollution in the state. See Cal. Health & Safety Code §§ 40000, 40200; <http://www.arb.ca.gov/drdb/dismap.htm>. The U.S. EPA delegated authority to the District to administer the federal PSD program in 2006. See U.S. EPA-[District], Agreement for Limited Delegation of Authority to Issue and Modify Prevention of Significant Deterioration Permits Subject to 40 C.F.R. [§] 52.21, Jan. 24, 2006. The permits that the District issues pursuant to that delegation are considered federal permits subject to federal permitting procedures, including the potential for review by the Environmental Appeals Board under 40 C.F.R. § 124.19. See *In re Christian County Generation, LLC*, PSD Appeal No. 07-01, slip op. at 2-3 n.1 (EAB Jan. 28, 2008), 13 E.A.D. ___; *In re RockGen Energy Ctr.*, 8 E.A.D. 536, 537 n.1 (EAB 1999); *In re SEI Birchwood, Inc.*, 5 E.A.D. 25, 26 (EAB 1994). Among the various issues raised in his Petition, Mr. Simpson contends that the Permit is not within the scope of the U.S. EPA’s delegation to the District. See *infra* Part III.

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Energy Commission, but failed to ensure that the latter adhered to the mandatory requirements of 40 C.F.R. part 124.

II. BACKGROUND

A. Legal and Regulatory Background

1. Delegated Federal PSD Proceedings and the Relationship to California Energy Commission Proceedings

Congress enacted the PSD provisions of the Clean Air Act (“CAA”) in 1977 for the purpose of, among other things, “insu[ring] that economic growth will occur in a manner consistent with the preservation of existing clean air resources.” CAA § 160(3), 42 U.S.C. § 7470(3). The statute requires preconstruction approval in the form of a PSD permit before anyone may build a new major stationary source or make a major modification to an existing source² if the source is located in either an “attainment” or “unclassifiable” area with respect to federal air quality standards called “national ambient air quality standards” (“NAAQS”).³ See CAA §§ 107, 161, 165, 42 U.S.C. §§ 7407, 7471,

² The PSD provisions that are the subject of the instant appeal are part of the CAA’s New Source Review (“NSR”) program, which requires that persons planning a new major emitting facility or a new major modification to a major emitting facility obtain an air pollution permit before commencing construction. In addition to the PSD provisions, explained *infra*, the NSR program includes separate “nonattainment” provisions for facilities located in areas that are classified as being in nonattainment with the EPA’s national Ambient Air Quality Standards. See *infra*; CAA §§ 171-193, 42 U.S.C. §§ 7501-7515. These nonattainment provisions are not relevant to the instant case.

³ See CAA §§ 107, 160-169B, 42 U.S.C. §§ 7407, 7470-7492. NAAQS are “maximum concentration ceilings” for pollutants, “measured in terms of the total concentration of a pollutant in the atmosphere.” See U.S. EPA Office of Air Quality Standards, *New Source Review Workshop Manual* at C.3 (Draft Oct. 1990). The EPA has established NAAQS on a pollutant-by-pollutant basis at levels the EPA has determined are requisite to protect public health and welfare. See CAA § 109, 42 U.S.C. § 7409. NAAQS are in effect for the following six air contaminants (known as “criteria (continued...)”)

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7475. EPA designates an area as “attainment” with respect to a given NAAQS if the concentration of the relevant pollutant in the ambient air within the area meets the limits prescribed in the applicable NAAQS. CAA § 107(d)(1)(A), 42 U.S.C. § 7407(d)(1)(A). A “nonattainment” area is one with ambient concentrations of a criteria pollutant that do not meet the requirements of the applicable NAAQS. *Id.* Areas “that cannot be classified on the basis of available information as meeting or not meeting the [NAAQS]” are designated as “unclassifiable” areas. *Id.*

The PSD Regulations provide, among other things, that the proposed facility be required to meet a “best available control technology” (“BACT”)⁴ emissions limit for each pollutant subject to regulation under the Clean Air Act that the source would have the potential to emit in significant amounts. CAA § 165(a)(4), 42 U.S.C. § 7475(a)(4); *see also* 40 C.F.R. § 52.21(b)(5).

As previously noted, the District processes PSD permit applications and issues permits under the federal PSD program, pursuant to a delegation agreement with the U.S. EPA. The District’s regulations,

³(...continued)

pollutants”): sulfur oxides (measured as sulfur dioxide (“SO₂”), particulate matter (“PM”), carbon monoxide (“CO”), ozone (measured as volatile organic compounds (“VOCs”)), nitrogen dioxide (“NO₂”) (measured as NO_x), and lead. 40 C.F.R. § 50.4-.12.

⁴ BACT is defined by the CAA, in relevant part, as follows:

The term “best available control technology” means an emissions limitation based on the maximum degree of reduction of each pollutant subject to regulation under this chapter emitted from or which results from any major emitting facility, which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such facility through application of production processes and available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of such pollutant.

CAA § 169(3), 42 U.S.C. § 7479(3); *see also* 40 C.F.R. § 52.21(b)(12).

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among other things, prescribe the federal and State of California standards that new and modified sources of air pollution in the District must meet in order to obtain an “authority to construct” from the District. *See Bay Area Air Quality Management District Regulation (“DR”) New Source Review Regulation 2 Rule 2, 2-2-100 to 2-2-608 (Amended June 15, 2005), available at <http://www.baaqmd.gov/dst/regulations/rg0202.pdf>.*

In addition to the substantive provisions for EPA-issued PSD permits, found primarily at 40 C.F.R. § 52.21, PSD permits are subject to the procedural requirements of Part 124 of Title 40 of the Code of Federal Regulations (Procedures for Decisionmaking), which apply to most EPA-issued permits. *See* 40 C.F.R. pt. 124.⁵ These requirements also apply to permits issued by state or local governments pursuant to a delegation of federal authority, as is the case here.

Among other things, Part 124 prescribes procedures for permit applications, preparing draft permits, and issuing final permits, as well as filing petitions for review of final permit decisions. *Id.* Also, of particular relevance to this proceeding, part 124 contains provisions for public notice of and public participation in EPA permitting actions. *See* 40 C.F.R. § 124.10 (Public notice of permit actions and public comment period); *id.* § 124.11 (Public comments and requests for public hearings); *id.* § 124.12 (Public hearings).⁶

⁵ Part 124 sets forth procedures that affect permit decisions issued under the PSD program, the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901-6992k; the National Pollution Discharge Elimination System (“NPDES”) program under the Clean Water Act, 33 U.S.C. § 1342; and the Underground Injection Control program under the Safe Drinking Water Act, 42 U.S.C. § 300h to 300h-7. 40 C.F.R. § 124.1(a).

⁶ The requirement for EPA to provide a public comment period when issuing a draft permit is the primary vehicle for public participation under Part 124. Section 124.10 states that “[p]ublic notice of the preparation of a draft permit * * * shall allow at least 30 days for public comment.” 40 C.F.R. § 124.10(b). Part 124 further provides that “any interested person may submit written comments on the draft permit * * * and may request a public hearing, if no public hearing has already been scheduled.” *Id.* § 124.11. (continued...)

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As explained by the parties in their briefs and amplified upon in the April 3, 2008 teleconference hearing held by the Board,⁷ the PSD proceedings that are the subject of the instant case are embedded in a larger California certification process for power plants prescribed by California law. Pursuant to California's Warren-Alquist State Energy Resources Conservation and Development Act ("Warren-Alquist Act"), *see* Cal. Pub. Res. Code §§ 25000 *et seq.*, the California Energy Commission ("CEC") has exclusive jurisdiction to "certify" or license the siting of all thermal power plants of 50 MW or greater (such as the proposed RCEC), *see id.* §§ 25119, 25120, 25502. In certifying thermal energy projects, the CEC has a broad mandate, which is to "ensure that any sites and related facilities certified provide a reliable supply of electrical energy at a level consistent with the need for such energy, and in a manner consistent with public health and safety, promotion of the general welfare, and protection of environmental quality." Cal. Code Regs. tit. 20, § 1741.

The Warren-Alquist Act and its implementing regulations prescribe the CEC certification procedures, including the required content of the applications for certification submitted for proposed energy projects, the issuance of proposed and final certification decisions, preparation by CEC staff of reports assessing the environmental impact of the proposed power plants, as well as provisions

⁶(...continued)

In addition, EPA is required to hold a public hearing "whenever [it] * * * finds, on the basis of requests, a significant degree of public interest in a draft permit(s)." *Id.* § 124.12(a)(1). EPA also has the discretion to hold a hearing whenever "a hearing might clarify one or more issues involved in the permit decision." *Id.* § 124.12(a)(2).

⁷ On April 3, 2008, the Board convened a teleconference hearing attended by representatives of the District, the California Energy Commission, petitioner Rob Simpson, and permittee RCEC to discuss factual matters in this case. The primary objective of the teleconference hearing was to clarify the interplay between the delegated federal PSD proceedings and the California Energy Commission proceedings.

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for public notice and participation during the certification process.⁸ *See* Cal. Pub. Res. Code §§ 25500-25543; *see also* Cal. Code Regs. tit. 20, §§ 1703-1709.8, 1741-1770, 2027.

Pursuant to its broad mandate, the CEC must make a specific finding that a proposed facility conforms with relevant federal and local law. *See* Cal. Pub. Res. Code § 25523(d)(1). As the Warren-Alquist Act states, “the [CEC] may not certify a facility * * * when it finds * * * that the facility does not conform with any applicable federal, local, or regional standards, ordinances, or laws” and “[CEC] may not make a finding in conflict with applicable federal law or regulation.” *Id.* § 25525. As such, the certification process serves as a procedural umbrella under which the CEC coordinates and consults with multiple agencies in charge of enforcing relevant laws and standards to ensure that a facility, as proposed, will satisfy such mandates. *See* Cal. Code Regs. tit. 20, § 1744.

With respect to CEC’s conformity finding, the Warren-Alquist Act imposes, as a condition for certification, that the local air pollution control officer of the relevant air quality district (in this case, the District) makes a specific determination that the proposed power facility complies with state and federal air quality requirements, including NSR.

⁸ The CEC certification process provides the following forms of public participation and notice: holding of hearings on the application for CEC certification (Cal. Code Regs. tit. 20 §§ 1748, 1754); convening workshops to discuss an application for certification (Cal. Code Regs. tit. 20, § 1709.5); holding “informational presentations and site visits” on an application for CEC certification with notice of such mailed to “adjacent landowners” (*id.* §1709.7); mailing notice of an initial public hearing fourteen (14) days prior to the first such hearing to the “applicant, intervenors, and to all persons who have requested notice in writing,” (*id.* § 1710); the right to intervene as a party in the certification proceedings; (*id.* § 1712); mailing a “summary of notice or application” for certification to public libraries in communities near the proposed sites and to “any persons who requests such mailing or delivery, and to all parties to the proceeding” and publishing the summary “in a newspaper of general circulation in each county in which a site and related facility * * * are proposed to be located” (*id.* § 1713); and providing notice of an application for certification to relevant local, regional, state, federal, and Tribal agencies (*id.* § 1714).

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See id. tit. 20, § 1744.5. In particular, the Warren-Alquist Act's implementing regulations provide that "[t]he local air pollution control officer shall conduct, for the [CEC's] certification process, a determination of compliance review of the application [for certification] in order to determine whether the proposed facility meets the requirements of the applicable [NSR] rule and all other applicable district regulations. If the proposed facility complies, the determination shall specify the conditions, including BACT and other mitigation measures, that are necessary for compliance." *Id.*

The District process for permitting power plants is integrated with the CEC's certification process to support the latter's conformity findings, as reflected in the District's regulations specific to power plant permitting. *See* DR, Power Plants Regulation 2 Rule 3 §§ 2-3-100 to 2-3-405, available at <http://www.baaqmd.gov/dst/regulations/rg0202.pdf>. These regulations state that "[w]ithin 180 days of [the District's] accepting an [application for certification] as complete [for purposes of compliance review], the [District Air Pollution Control Officer] shall conduct a * * * review [of the application] and make a "preliminary decision" as to "whether the proposed power plant meets the requirements of District regulations." *Id.* § 2-3-403. If the preliminary decision is affirmative, the District's regulations provide that the District issue a preliminary determination of compliance ("PDOC") with District regulations, including "specific BACT requirements and a description of mitigation measures to be required." *Id.* The District's regulations further require that "[w]ithin 240 days of the [District's] acceptance of an [application for certification] as complete," the District must issue a final Determination of Compliance ("FDOC") or otherwise inform the CEC that the FDOC cannot be issued. *Id.* § 2-3-405.⁹

⁹ CEC's statements during the teleconference hearing make clear that CEC's role in determining legal conformity with respect to federal PSD issues is a ministerial one. In response to the question of whether the CEC has authority to "change what was in the FDOC as it would impact PSD requirements," Mr. Ratliff, CEC's representative, responded that the CEC "would have to yield to the District" on PSD conditions because the "District stands in the role of EPA." Transcript of April 3, 2008 Teleconference (continued...)

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The District's issuance of an authority to construct ("ATC") for a power plant is predicated upon the District issuing a FDOC and ensuring that the CEC's certification incorporates the conditions contained in the FDOC. *See id.* 2-3-301. As explained by the District's counsel, the District's ordinary practice is to issue a PSD permit together with an ATC after CEC certification. District Response to Petition for Review at 4.

2. Notice and Comment Provisions in 40 C.F.R. part 124.10

The parties devote considerable attention in their briefs to the provisions in 40 C.F.R. § 124.10, which instruct EPA (and its delegates) how to provide notice of permitting actions such as draft permits (including public comment periods and any public hearings), and final permits. *See* 40 C.F.R. § 124.10(a). Section 124.10 provides instruction on both the method and content of notice.

With regard to the method of notice, the section 124.10 regulations require that EPA notify by mail designated governmental agencies and officials. *See* § 124.10(c). More particularly, notice is required to be given to the following governmental agencies and officials:

[A]ffected State and local air pollution control agencies, the chief executives of the city and county where the major stationary source or major modification would be located, any comprehensive regional land use planning agency and any State, Federal Land Manager, or Indian Governing Body whose lands may be affected by emissions from the regulated activity[.]

²(...continued)

Hearing at 14. Accordingly, Mr. Ratliff further explained that the CEC "could not overwrite or change the nature" of a District-issued permit regarding PSD issues because these are "determined by the [District] acting for * * * EPA." *Id.* at 17.

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40 C.F.R. § 124.10(c)(1)(vii).

As to general outreach efforts, 40 C.F.R. § 124.10 directs the EPA to proactively assemble a “mailing list” of persons to whom PSD notices should be sent. *See* 40 C.F.R. § 124.10(c)(1)(ix). The mailing list must be developed by:

(A) Including those who request in writing to be on the list;

(B) Soliciting persons for “area lists” from participants in past permit proceedings in that area; and

(C) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as Regional and State funded newsletters, environmental bulletins, or State law journals.

40 C.F.R. § 124.10(c)(1)(ix).¹⁰

¹⁰ The part 124 rules, moreover, prescribe the particular content of public notice of permitting actions. For example, the rules require a “brief description of the comment procedures required by [sections] 124.11 and 124.12 and the time and place of any hearing that will be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision.” 40 C.F.R. § 124.10(d)(1)(v). Part 124 further requires that the EPA or its delegate provide the “[n]ame, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or draft general permit, as the case may be, statement of basis or fact sheet, and the application[.]” *See* 40 C.F.R. § 124.10(d)(1)(iv). As discussed below, *see infra* Part III, Mr. Simpson challenges the adequacy of the content of the notice in addition to arguing that notice was not provided to everyone entitled to notice.

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B. Factual and Procedural Background

The PSD permitting procedures at the heart of this dispute were triggered by RCEC's application to the CEC, on November 17, 2006, to amend the CEC's original 2002 certification¹¹ of RCEC's proposal to build a 600-MW natural gas-fired, combined cycle power plant in Hayward, California. *See* Declaration of J. Mike Monasmith ("Monasmith Decl.") ¶ 2, Att. A. According to the District Air Quality Engineer who oversaw the RCEC's PSD permitting, the District, after conducting an air quality analysis, issued its PDOC/draft PSD permit, notice of which it published in the Oakland Tribune on April 12, 2007. Declaration of Wyman Lee, P.E. ("Lee Decl.") ¶ 2. In the notice, the District established a thirty-day public comment period ending on May 12, 2007. Lee Decl. ¶ 3.

According to the District, the District mailed out copies of the notice of the PDOC/draft PSD permit issuance, along with the draft permit itself, to the CEC, EPA Region 9, project applicant RCEC, the Point Reyes National Seashore, and four local air quality regulatory agencies bordering the District's jurisdiction. *Id.* ¶ 2.¹² Otherwise, the District essentially delegated the bulk of its outreach efforts to CEC, as

¹¹ RCEC originally filed for certification by the CEC in early or mid-2001, and was initially certified by the CEC on Sept. 11, 2002, pursuant to the Warren-Alquist Act, *see supra*. During the initial CEC certification process, which also incorporated the District permitting, the District issued a PDOC/Draft PSD Permit to RCEC in November 2001. However, the District did not proceed to issue a final PSD permit because RCEC withdrew plans to construct the project in the spring of 2003. *See* Letter from Gerardo C. Rios, Chief, Permits Office, U.S. EPA Region 9, to Ryan Olah, Chief Endangered Species Division, U.S. Fish and Wildlife Service (Jun. 11, 2007). The amended CEC certification and PSD permitting were required because RCEC afterwards proposed relocating the project 1,500 feet to the north of its original location. *See* Final PSD Permit, Application No. 15487 ("Final Permit") at 3.

¹² The District's Air Quality Engineer identified the following four neighboring air quality regulatory agencies as having received notice of the draft PSD Permit/PDOC: Sacramento Metropolitan, San Joaquin Valley, Yolo-Solano, and Monterey Bay. Lee Decl. ¶ 2.

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recounted by District and CEC officials. These officials assert that the District's mailing of the PDOC/draft PSD permit and accompanying notice caused copies of these materials to be sent "to all persons included on [CEC's] service list for the proceedings" based on the officials' understanding that CEC's "practice" was to mail copies of all material filed in its docket to those on CEC's "service list." Lee Decl. ¶ 2; Monasmith Decl. ¶¶ 3,4. Apparently, no documentation of this mailing exists, *see* Transcript of April 3, 2008 Teleconference Hearing ("Teleconf. Hr'g") at 25, though the District cites the Declaration of J. Mike Monasmith, a CEC siting officer in the present matter, to the effect that he was "informed and believed" that such notice was given "per the normal procedures" of CEC staff. Monasmith Decl. ¶ 4.

In a declaration filed in this proceeding and during the teleconference hearing, Mr. Richard Ratliff of the CEC described CEC's outreach activities in the parallel CEC certification proceedings. In particular, Mr. Ratliff stated that CEC had compiled three lists of agencies and persons for purposes of outreach. These lists consisted of an "interested agency" list of "30 regional, state, and federal agencies"; a "Property Owner" list of "130 individuals and business[es] that own property adjacent to or near the site of proposed [RCEC]"; and a "General List" of "140 other people, businesses, and other entities to whom the Energy Commission sent information." *See* Declaration of Richard C. Ratliff ("Ratliff Decl.") ¶ 2. Mr. Ratliff described the third "general list" as "comprised of those agencies and persons who had participated in the earlier proceeding and had not requested to have their names removed * * * and comprised of other people who had expressed interest or had attended any event or commented in writing on the project." *See* Teleconf. Hr'g at 27.

The District received only one comment during the public comment period on the draft PSD permit (from the applicant RCEC) and one letter from CEC after the PSD comment period closed. Lee Decl. ¶¶

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4, 5. The District did not hold a public hearing for the RCEC PSD facility.¹³

With regard to the parallel CEC certification process, the CEC did not receive written comments regarding air quality issues or hold hearings during the time frame of the PDOC/draft PSD comment period. *See* Monasmith Decl. ¶ 7. A CEC official noted, however, that the CEC docket received public comments on air quality issues outside the time frame of the PSD comment period. *See id.*; Monasmith Decl. (Ex. A). The record does not indicate whether any of these comments related to PSD issues. During the teleconference hearing, Mr. Ratliff indicated that the CEC staff “don’t really attempt to determine whether these are PSD comments or not.” Teleconf. Hr’g at 14.

Also, on April 25, 2007, during the PSD comment period which ran from April 12 to May 12, the CEC held a public workshop, during which various issues related to the RCEC project, including air quality, were discussed. *See* Teleconf. Hr’g at 20-22. It appears likely that the District was represented during this workshop. *Id.* at 19-20.

On June 19, 2007, the District issued an Amended FDOC for RCEC. *Lee* Decl. ¶ 6. The CEC certified RCEC on September 26, 2007. *Monasmith* Decl. at 2. On Nov. 1, 2007, the District issued its Permit/ATC to RCEC.¹⁴ On the same date, the District mailed notice of the Permit, along with the Permit itself, to the CEC, Region 9, RCEC, the

¹³ 40 C.F.R. part 124 directs a permit issuer to hold a hearing only when it “finds, on the basis of requests, a significant degree of public interest in a draft permit(s).” 40 C.F.R. § 124.12(a). There is no record of the District having made such a finding in this case, and Mr. Simpson has not alleged that the District should have held a hearing based on the degree of public interest in this proceeding. *See In re Sunoco Partners Mktg. & Terminals, L.P.*, UIC Appeal No. 05-01, at 12 (EAB June 1, 2006) (Order Denying Review in Part and Remanding in Part) (holding that the EPA’s decision to conduct a public hearing is “largely discretionary”); *accord In re Avery Lake Property Owners Assoc.*, 4 E.A.D. 251, 252 (EAB 1992).

¹⁴ As explained by the District’s Air Quality Engineer, the Permit also serves as the ATC under California Law. *See Lee* Decl.

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Point Reyes National Seashore, and the four neighboring air quality management districts noted above. Lee Decl. ¶ 7. On December 7, 2007, the District published notice of the issuance of the Permit in the Oakland Tribune. Id. ¶ 9.

On January 3, 2008, Mr. Simpson filed a petition for review challenging the issuance of the Permit for RCEC. In his Petition, Mr. Simpson challenges issuance of the draft permit and Permit on the basis that the District failed to provide adequate notice of the issuance of the draft permit and Permit in accordance with 40 C.F.R. part 124 and failed to satisfy BACT and other federal and state requirements. *See* Pet. at 1-5. At the Board's request, the District, on January 18, 2008, filed a response to the Petition. The District sought summary dismissal of the Petition on the grounds that Mr. Simpson failed to meet jurisdictional thresholds for Board review, including standing, preservation of issues for review, and timeliness. *See* Response to Petition for Review Requesting Summary Dismissal ("District's Response").

With the Board's leave, Mr. Simpson, on February 11, 2008, filed a brief opposing the District's request for summary dismissal of the Petition, in which he further developed his arguments. *See* Opposition to Request for Summary Disposal ("Pet'r Opposition"). As requested by the Board, the District, on March 7, 2008, filed a response to Mr. Simpson's opposition brief. *See* Response to [Pet'r Opposition], ("District's Response to Opposition").

On April 3, 2008, the Board held the above-mentioned teleconference hearing at which Mr. Simpson and counsel for the District, CEC, and RCEC participated.¹⁵ At the teleconference hearing, the Board granted leave to Mr. Simpson to submit the brief that Mr. Simpson had filed with the Board on March 31, 2008, as well as to

¹⁵ At the teleconference hearing, the Board obtained information from the participants on CEC's and the District's public notice and outreach activities in this proceeding pursuant to 40 C.F.R. §124.10 as well as Mr. Simpson's participation in these activities.

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the District to file a responsive brief submitted by the District on April 3, 2008. *See* Teleconf. Hr'g at 7-8; Opening Statement of Rob Simpson; [District's] Response to Petitioner's "Opening Statement."¹⁶

III. SUMMARY OF MR. SIMPSON'S APPEAL AND THE DISTRICT'S RESPONSE

As noted previously, in his Petition and subsequent briefs, Mr. Simpson challenges the Permit on the basis of improper notice under 40 C.F.R. part 124, BACT issues, and other issues of federal and state law. Following is a summary of Mr. Simpson's objections to the Permit, divided into notice and non-notice issues:

Notice Issues (40 C.F.R. § 124.10 and California state law):

- (1) The District failed to provide adequate notice of the issuance of the draft PSD permit and public comment period by not carrying out certain forms of notice and contacting specific entities entitled to notice;
- (2) The content of the notice of the draft permit was deficient in that the notice did not disclose the identity of the applicant, facility location, procedures for requesting a hearing, the phone number of the contact person, and the amount of PSD increment consumed; and
- (3) The District's publication of notice of the issuance of the Permit in the *Oakland Tribune* was inadequate

¹⁶ Although Mr. Simpson had not sought the Board's permission to file his "Opening Statement," the Board nevertheless admitted Mr. Simpson's "Opening Statement" and the District's response brief because the two briefs touched upon matters for which the Board sought clarification during the teleconference hearing. Teleconf. Hr'g at 7-8.

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because the *Oakland Tribune* is not a newspaper of general circulation “within the District” as required by Cal. Code Regs. tit. 20 § 1713(c).

Non-notice Issues:

- (1) The District’s BACT analysis is erroneous because the District failed to adopt a demonstrated technology, “OpFlex,” that was recommended by CEC staff;
- (2) The Emission Reduction Credits (“ERCs”) in the Permit are not sufficient to offset the RCEC’s emissions of NOx and Precursor Organic Compounds;
- (3) The Permit incorporated major changes in the use of ERCs from an already approved project, the East Altamont Energy Center, without appropriate opportunity for public comment;
- (4) The District failed to consider important environmental justice issues in issuing the Permit;
- (5) EPA failed to consider “impacts of air, noise, light and water pollution” when seeking an informal opinion from the FWS;
- (6) The District failed to consider RCEC’s generation of greenhouse gases;
- (7) The District failed to discuss cumulative impacts, including a nearby highway, and the nearby Eastshore Energy Center Proposal;
- (8) The District failed to include “acrolein” in its “Toxic Air Contaminant (TAC) Health Risk Screening”; and

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(9) The District lacked authority to issue the Permit because the Permit issuance is outside the scope of its delegation agreement with the EPA.

See Pet. at 2-6; Pet'r Opposition at 1-21.¹⁷

In response, the District avers that Simpson failed to demonstrate that he satisfied the threshold requirements for standing and other jurisdictional thresholds prerequisite to granting review of his petition. *See* District's Response at 10-20. The District states further, that, "[t]o the extent that the Environmental Appeals Board does not dismiss the Petition summarily because of the threshold defects outlined above, it should at least strike portions of the Petition raising non-PSD issues outside of the Board's jurisdiction." *Id.* at 19.¹⁸

IV. DISCUSSION

A. Threshold Procedural Requirements for Board Review

The parties' arguments on appeal revolve initially around the significance of certain threshold conditions that 40 C.F.R. part 124 imposes on parties seeking Board review. One threshold requirement is contained in the following provision:

[W]ithin 30 days after a * * * PSD final permit decision * * * has been issued * * * , any person who filed comments on that draft permit or participated in the public hearing may petition the Environmental Appeals Board to review any condition of the permit decision.

¹⁷ Because the Board is remanding the Permit on procedural grounds, the Board's decision will not address most of the above-listed substantive arguments raised in Mr. Simpson's Petition. *See infra* Part IV.B.3.

¹⁸ Consistent with the Board's procedures, the District did not file a response addressing the nonprocedural issues raised by Mr. Simpson pending disposition of the response seeking summary disposition.

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40 C.F.R. § 124.19(a) (emphasis added).

The Board has described meeting this procedural threshold for Board jurisdiction as demonstrating “standing” to petition for review. *See, e.g., In re Knauf Fiber Glass, GMBH*, 9 E.A.D. 1, 5 (EAB 2000); *In re Sutter Power Plant*, 8 E.A.D. 680, 686 (EAB 1999).¹⁹ In effect, section 124.19(a) confers an automatic standing entitlement on all those who participate during the public comment period, thereby making such persons “proper” petitioners before the Board.²⁰

Also, the regulations governing PSD permitting provide that the petition for review shall include “a demonstration that any issues being raised were raised during the public comment period (including any public hearing) to the extent required by these regulations.” 40 C.F.R. § 124.19(a). The regulations include the following requirement for raising issues during the public comment period:

All persons, including applicants, who believe any condition of a draft permit is inappropriate * * * must raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their position by the close of the public comment period (including any public hearing) * * *.

40 C.F.R. § 124.13. In applying these regulations, the Board has routinely denied review where the issue “was reasonably ascertainable but was not raised during the comment period on the draft permit.” *In*

¹⁹ As noted above, petitioners seeking Board review of a PSD permit must also meet the threshold timeliness requirement of filing petitions for review within “30 days after a * * * PSD final permit decision * * * has been issued.” 40 C.F.R. § 124.19(a).

²⁰ “‘Standing to sue’ means that party has sufficient stake in an otherwise justifiable controversy to obtain judicial resolution of that controversy” and “focuses on the question of whether the litigant is the proper party to fight the lawsuit, not whether the issue itself is justiciable.” *Black’s Law Dictionary* 1405 (6th Ed. 1990) (citations omitted).

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re Christian County Generation, LLC, PSD Appeal No. 07-01, slip op. at 12 (EAB Jan. 28, 2008), 13 E.A.D. ____; *In re Shell Offshore, Inc.*, OCS Appeal Nos. 07-01 & 02, slip op. at 52-53 (EAB Sept. 14, 2007), 13 E.A.D. ____; *In re Kendall New Century Develop.*, 11 E.A.D. 40, 55 (EAB 2003).

With respect to these foregoing threshold procedural requirements, the District asserts, in seeking summary dismissal of Mr. Simpson's appeal, that "the Petition must be summarily dismissed because it does not satisfy the threshold requirements for [EAB] review in that (i) the Petitioner lacks standing; (ii) the issues raised in the Petition were not preserved for review; and (iii) the Petition is untimely." District's Response at 1. Mr. Simpson counters that to the extent that he failed to meet threshold requirements for Board review, it was because the District's failure to comply with notice requirements under 40 C.F.R. § 124.10 prevented Mr. Simpson from commenting on the draft PSD Permit. Pet'r Opposition at 1. As Mr. Simpson contends, "[i]t is disingenuous of the District to violate public notice requirements and then argue that my appeal is precluded as a result." *Id.* at 2.

B. The Framework for the Board's Analysis

1. The Importance of the Notice Provisions of the Regulations

Mr. Simpson's appeal raises before the Board the issue of whether a permitting authority's failure to comply with notice obligations can be so substantial that it precludes the public participation upon which procedural "standing" is based. Thus, Mr. Simpson seeks to direct the Board's attention from the question of whether he complied with the procedural threshold requirements at § 124.19 to the antecedent one of whether the District complied with its initial outreach and notice obligations at 40 C.F.R. § 124.10. Inherent in Mr. Simpson's argument is the proposition that the District's notice and outreach under § 124.10 were so defective that these defects "rippled through" the permitting process, handicapping the participation necessary for standing and, by consequence, precluding satisfaction of the other procedural thresholds

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for Board review, such as preserving issues for review and the timely filing of a petition for review. *See* 40 C.F.R. § 124.19(a).

In theory, it is not difficult for the Board to accept the pivotal role of initial notice depicted by Mr. Simpson and examine this issue as the starting point for our analysis. Initial outreach and notice activities under § 124.10 are clearly intended to generate the public participation upon which standing to challenge permit decisions is predicated. *See In re MCN Oil & Gas Co.*, UIC Appeal No. 02-03, at 11 (EAB Sept. 4, 2002) (Order Denying Review) (“Standing to appeal a final permit determination is limited under [40 C.F.R. §] 124.19 to those persons who *participated* in the permit process leading up to the permit decision * * *.”) (emphasis added). Obviously, a person who does not receive notice of a draft permit (and is otherwise unaware of its issuance) will not be able to participate to the extent of filing comments on the draft permit, and thereby satisfy the procedural threshold imposed by section 124.19(a), entitling that person to standing before the Board. If a person is entitled to such notice, failure to receive it is clearly prejudicial. For that reason, part 124 contains very specific requirements in section 124.10 as to whom notice must be given and as to the contents of the notice.

The Board has consistently acted to ensure that permitting authorities rigorously adhere to procedural requirements that facilitate public participation and input during EPA permitting. *See In re Weber*, #4-8, 11 E.A.D. 241, 245 (EAB 2003); *In re Rockgen Energy Center*, 8 E.A.D. 536, 557 (EAB 1999). In *Weber* and *Rockgen*, while the public had been properly notified via § 124.10, we nonetheless remanded final permits to the respective permitting agencies for an equally critical procedural reason. In those cases, the agencies failed to comply with the requirement that “[a]t the time a final permit decision is issued,” the permitting authority must issue a “response to comments” document responding to “all significant comments” received during the public comment period, *see* 40 C.F.R. § 124.17, as well as to make public comments and the EPA’s response thereto part of the administrative record upon which a final permit decision is based. *See* 40 C.F.R.

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§ 124.18(a),(b)(1); *see, e.g., Weber*, # 4-8, 11 E.A.D. at 245; *Rockgen*, 8 E.A.D. at 557; *see also In re Antochem N. Am., Inc.*, 3 E.A.D. 498-99 (Adm'r 1991).²¹ In remanding in *Weber*, we explained that the purpose of 40 C.F.R. § 124.17 requirement to issue a response to comments document at the time of permit issuance was to ensure that the permitting authority “have the benefit of the comments and the response thereto to inform his or her permit decision.” *Weber*, 11 E.A.D. at 245; *see also Rockgen*, 8 E.A.D. at 557 (explaining that adherence to 40 C.F.R. § 124.17 was necessary to give “thoughtful and full consideration to all public comments before making the final permit determination.”).

Also, in *Rockgen*, we described a remand as necessary to validate a key statutory objective of the Clean Air Act’s PSD program, namely to “assure that any decision to permit increased air pollution * * * is made only after consideration of all the consequences of such a decision and after adequate procedural opportunities for informed public participation in the decisionmaking process.” *See Rockgen*, 8 E.A.D. at 557 (*quoting* CAA § 160(5), 42 U.S.C. § 7470(5)). In *Rockgen*, recognizing the CAA’s stress on the central role of public participation in PSD permitting and the need for Board intervention to safeguard that role, we observed the following:

The failure of [the permitting authority] to comply fully with the public participation requirements of the [PSD] regulations implementing this statutory requirement, combined with a reasonable perception from the record that [the permitting authority] may not in fact have given consideration to the public’s comments

²¹ Part 124 provides, in relevant part, that the “administrative record for any final permit shall consist of the administrative record for the draft permit and * * * [a]ll comments received during the public comment period provided under [40 C.F.R.] § 124.10 [and] * * *[t]he response to comments required by [40 C.F.R.] § 124.17.” 40 C.F.R. § 124.18(b)(1), (4).

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beforehand, undermines the statutory objective and should be rectified.

Rockgen, 8 E.A.D. at 557; *see also Antochem N. Am.*, 1 E.A.D. at 498.

In remanding in *Weber*, *supra*, we rejected the Region's argument that the subject procedural errors were a merely "bureaucratic in nature." *Weber*, 11 E.A.D. at 245. Characterizing these violations of § 124.17 violations as "neither harmless, inconsequential, nor trivial," we noted that accepting Region 5's arguments to the contrary would "short circuit the permit process." *Id.* In the above procedural cases, the Board acknowledged that remanding the proceedings to correct the subject procedural violations might not result in any alteration of the final permit decisions. *See Rockgen*, 8 E.A.D. at 557; *Weber*, 11 E.A.D. at 246. Instead, we viewed the Board's remedial intervention as necessary to safeguard the integrity of EPA's procedural regime for assuring public participation in Agency permitting. *See id.*

This concern for protecting the integrity of EPA's public participation procedures, as expressed in *Weber* and *Rockgen*, forms the context for considering the District's repeated suggestions in its briefs that any supposed violation of § 124.10 by it was essentially "harmless." Clearly, any violation of § 124.10 that would deny the public its rightful opportunity to comment and therefore have its views considered by the permitting agency could cause a "harm" or "prejudice" similar to that which prompted our corrective action in *Weber* and *Rockgen*. This is clear since initial notice of permitting actions – along with soliciting public comments, incorporating comments and EPA responses thereto in the administrative record, and providing proper notice of final permitting actions – constitute a set of related procedures that together support the statutory directive to foster effective public participation in PSD permitting. *See* CAA § 160(5), 42 U.S.C. § 7470(5). The only difference between the allegations in the instant case and *Weber* and *Rockgen* is that the violations alleged in this case – initial notice of permitting actions – occurred at an earlier stage of this chain of procedures. Yet the resulting harm or "short circuiting" of the permitting

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process in this case would be similar. As we noted in *Weber* and *Rockgen*, the essence of the alleged “harm” from the procedural violation is not simply its potential impact on the final permit decision, but rather the deprivation of the public’s opportunity to have its views considered by the permitting agency. See §124.17.

2. Whether the Board Can Consider Mr. Simpson’s Claims

Analyzing Mr. Simpson’s claim of defective notice and request for remand poses the initial question of whether the Board has the power to adjudicate Mr. Simpson’s claim despite his not being able to qualify for the standing entitlement set forth at § 124.19(a), *supra*. Thus, the Board must determine whether Mr. Simpson is nevertheless a “proper” litigant before the Board— i.e. whether Mr. Simpson indeed has “standing” to claim exercise of the Board’s jurisdiction, making him eligible for a ruling on the merits and access to the Board’s remedial powers. See *Weiner v. Bank of King of Prussia*, 358 F.Supp. 684, 695 (E.D. Pa., 1973) (“Standing is a jurisdictional issue which concerns power of * * * courts to hear and decide cases * * * [and] does not concern the ultimate merits of substantive claims involved in the action.”).

We note initially a certain circularity in addressing Mr. Simpson’s claim of defective notice. If, despite Mr Simpson’s claims, all the procedural requirements of part 124 were complied with, then Mr. Simpson would not have standing to have his Petition considered. However, as discussed below, if the procedural requirements were not fully complied with, then it is possible that Mr. Simpson’s Petition warrants consideration even though, under normal circumstances, failure to participate in the proceedings below would lead to denial of a petition on standing grounds.

But there is no way to know if part 124 requirements were met without considering the Petition at least to that extent. Indeed, it would be incongruous for the Board to categorically deny standing, and possibility of redress, to a petitioner who presents facts purporting to

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show that EPA (or one of its delegates) has violated § 124.10 and thereby prejudiced the petitioner's participation rights. Denying standing outright in such cases would deny parties the opportunity to vindicate before the Board potentially meritorious claims of notice violations under part 124 and would be at odds with the Board's obligation to "decide each matter before it in accordance with applicable statutes and regulations." *See* 40 C.F.R. § 1.25(e)(1). Furthermore, conferring standing in a restrictive manner would be at odds with clear Congressional direction for "informed public participation," *see* CAA § 160(5), 42 U.S.C. § 7470(5), and § 124.10's expansive provision of notice and participation rights to members of the public. This is illustrated by the requirement for permitting agencies to implement general outreach by compiling mailing lists of persons interested in permitting actions, *see* 40 C.F.R. § 124.10(c)(1)(ix)(A)-(C), and the statement elsewhere in part 124 that "*any* interested person may submit written comments on the draft permit." *Id.* § 124.11 (emphasis added).

For the reasons stated above, we conclude that Mr. Simpson's claim of inadequate notice warrants consideration by the Board. As such, we must determine whether the District indeed violated 40 C.F.R. § 124.10 in issuing the Permit. Accordingly, the Board must examine whether Mr. Simpson meets part 124's demanding standard for Board review of PSD final permit decisions, which here requires Mr. Simpson to demonstrate that a condition of the Permit²² is based upon "a finding of fact or conclusion of law which is clearly erroneous" or "an exercise of discretion or an important policy consideration which the Environmental Appeals Board should, in its discretion, review." *See* 40 C.F.R. § 124.19.

²² As applied to the notice violation, the allegation of error is considered to be the Permit in its entirety. *See In re Chem. Waste Mgmt. of Ind.*, 6 E.A.D. 66, 76 (EAB 1995) (holding that the Board, in accordance with its review powers under 40 C.F.R. § 124.19, is "authorize[d] * * * to review any condition of a permit decision (or as here, the permit decision in its entirety).")

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3. The Board's Conclusion That Public Notice Was Inadequate and the Permit Must Be Remanded

Based upon our review of the arguments and facts presented by the parties in their briefs and at the teleconference hearing, as summarized below, we determine that Mr. Simpson has demonstrated that the District clearly erred by issuing the Permit without providing adequate notice of the issuance of the draft permit and opportunity to comment as required by § 124.10. To redress this harm, the appropriate remedy is to remand the Permit so that a draft permit can be “renoticed” pursuant to § 124.10. Because issuance of the draft permit will reopen the public comment period and allow new opportunity for filing public comment, the Board, for reasons of judicial economy, refrains from opining on the substantive arguments raised in Mr. Simpson’s appeal, except to the limited extent noted below.²³

C. Summary of the Parties’ Arguments Regarding Public Notice of the Draft PSD Permit

In his three briefs and a declaration filed with the Board, Mr. Simpson claims that the District failed to accord him and others not before the Board adequate notice of the Draft Permit in accordance with 40 C.F.R. part 124.10.

First, Mr. Simpson states that the District did not comply with the specific methods prescribed in part 124 for public outreach and notice of PSD permitting activities. For example, Mr. Simpson alleges that in his capacity as an “appointed” representative of the “Hayward Area Planning Association” (“HAPA”), he should have received notice

²³ Because we determine that the District’s initial outreach of the RCEC draft permit was defective and thus justifies a remand, we need not consider the parties’ dispute over the content of the notice of the draft permit and whether Mr. Simpson received adequate notice of issuance of the Permit. Similarly, the Board need not consider whether Mr. Simpson filed his Petition in a timely manner because failure to provide the legally required notice also prejudices the ability to file a timely petition for review.

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of the RCEC permitting since HAPA is a “comprehensive regional land use agency” for the Hayward area, and as such is entitled to notice of permitting actions in accordance with part 124. *See* Pet’r Opposition at 3 (citing 40 C.F.R. § 124.10(c)(1)(vii)); Simpson Decl. at 1. Moreover, Mr. Simpson maintains that the District contravened the same provision by not providing notice to a local county government body, the Alameda County Board of Supervisors. *Id.* In support of this claim, Mr. Simpson has attached the declaration of Gail Steele, of the Alameda County Board of Supervisors, District 2, who represents that she did not receive notice of the District’s process with regard to RCEC and Eastshore Energy Center.²⁴ *See* Declaration of Gail Steele (“Steele Decl.”).

Moreover, Mr. Simpson contends that the District, contrary to the requirements in 40 C.F.R. § 124.10(c)(1)(ix), failed to “solicit persons for ‘area lists’ from participants in past permit proceedings in [the] area” as part of its outreach effort. *Id.* Mr. Simpson explains that many persons who participated in prior permitting proceedings did not receive notice of the RCEC draft permit. In particular, he identifies “Communities for a Better Environment” as an entity that participated in the “original application [for RCEC]” but did not receive notice of the draft RCEC permit at issue here. Pet’r Opposition at 3. In support of this contention, Mr. Simpson attaches a declaration by Shana Lazerow, attorney with Communities for a Better Environment (“CBE”), Declaration of Shana Lazerow (“Lazerow Decl.”). In her declaration, Ms. Lazerow relates that in 2001, at the time of the original RCEC PSD permitting procedures, *see supra* note 11, a CBE colleague sent an e-mail to the District expressing CBE’s interest in obtaining a copy of the PDOC for the RCEC proposal when issued. *See id.* Attached to the

²⁴ The proposed Eastshore Energy Center (“Eastshore”), located in Alameda County, near RCEC, obtained a PDOC and then a FDOC from the District although it apparently did not qualify as a “major source” of pollutants subject to PSD permitting. *See* Pet’r Opposition (Ex. 3). In addition, Eastshore’s permitting appears to have overlapped, in part, with that for the proposed RCEC. *See* Teleconf. Hr’g at 33. However, in a curious contrast with RCEC, which received only one comment during its comment period, *see supra*, Eastshore generated “approximately 605 comments,” according to the District’s Air Quality Engineer. Pet’r Opposition (Ex. 3).

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declaration is a copy of an e-mail dated September 14, 2001, requesting the original PDOC. *Id.*

Mr. Simpson also faults the District for limiting press notice of the draft permit to “one notice in the English newspaper,” *see* Pet. at 3, and also claims that the District violated its own regulations by failing to provide notice of the draft permit in a newspaper of “general circulation within the District.” Pet’r Opposition at 8. In particular, Mr. Simpson asserts that the *Oakland Tribune* only serves as a newspaper of general circulation “within the City of Oakland and within the County of Alameda” but does not cover the entire District, “which is comprised of seven counties and portions of two additional counties.” *Id.* Mr. Simpson further states that “notice in a newspaper of general circulation must be interpreted to mean newspapers of general circulation covering the District.” *Id.*

Mr. Simpson, in his Opening Statement filed just before the teleconference hearing, also contends that during the comment period for the RCEC draft permit, CEC and the District conducted a workshop on April 25, 2007, but that neither entity recorded the comments made by the public. Opening Statement at 2. Simpson faults the CEC for not recording the comments despite what he says was the public’s belief that “this was a hearing and [the public] made ‘comments’ believing that they would be considered.” *Id.*

Based on this catalogue of alleged violations of § 124.10, Mr. Simpson asserts that the violations resulted in his and the community’s inability to participate in the RCEC permitting process. As Mr. Simpson states, “the District is tasked with providing accurate information to the public so that it may participate in a meaningful manner.” Pet’r Opposition at 5. He contends that the District’s deficiencies in providing notice of PSD permitting actions “thwarted” the notice regulation’s purpose of abetting public participation and ensuring “meaningful” public participation and “open government.” *Id.* On this topic, the thirteen declarants’ statements (including Mr. Simpson’s) attached to Mr. Simpson’s opposition memo all

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represent that, had the declarants received notice of the RCEC PSD permit proceedings, they would have participated in the public comment period. *See* Pet'r Opposition (attached declarations).

In response to Mr. Simpson's arguments, the District emphasizes the CEC outreach efforts upon which the District admittedly "piggybacked" were so thorough and extensive that the CEC's outreach was essentially equivalent to what the District would have provided on its own. *See* District's Response to Opposition at 3-4, 5 n.4, *supra* Part II.B. On this point, the District recounts CEC's compiling of three mailing lists during the RCEC certification process and notes that even after the close of the comment period, CEC "h[e]ld extensive hearings and received a number of letters from the public on air quality issues." District Response at 7; *see* District's Response to Pet'r Opposition at 3-4. When asked by the Board during the teleconference hearing whether the District generated its own lists and provided those to the CEC, the District explained that it did not develop its own lists or provide input to CEC's list but rather relied on the CEC not only for physical mailing but also for determining the scope of outreach activities. Teleconf. Hr'g at 29.

The District uses CEC's allegedly comprehensive outreach process as a way to discount any "injury or harm" Mr. Simpson may have suffered and to discount the significance of any variance from the part 124 rules. In particular, the District claims that CEC's outreach was so extensive that even if CEC's notice had failed technically to comply with 40 C.F.R. § 124.10, any difference between CEC's efforts and what was required by § 124.10 was too trivial to have resulted in prejudice to Mr. Simpson. The District explains that since Mr. Simpson only responded to CEC's extensive outreach very late in the permitting process, Mr. Simpson's lack of participation can be taken as barometer of his fundamental lack of interest in the PSD permitting process. The District suggests that even if the District had performed the outreach itself in full compliance with 40 C.F.R. § 124.10, it would have accomplished the same result as CEC. *See* District's Response to Pet'r Opposition at 5 n.4, 6-7. Such was Mr. Simpson's lack of response,

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asserts the District, that Mr. Simpson would not have participated in the RCEC proceedings in a manner sufficient to give him standing “no matter what level of notice was given.” District’s Response to Pet’r Opposition at 8. The District also maintains that even if it did not achieve technical compliance “in every detail” with these notice requirements, it nevertheless “substantially complied,” and furthermore, “such minor defects cannot have prejudiced [Mr. Simpson] such as to excuse his failure to participate.” District’s Response to Pet’r Opposition at 6; Teleconf. Hr’g at 28.

The District also offers as an example of Mr. Simpson’s alleged indifference his lack of participation in an April 25, 2007 workshop (which took place during the PSD comment period) carried out by CEC. As the District states, “[Mr. Simpson’s] lack of participation * * * is simply further evidence” of the fact that [Mr. Simpson’s] concerns about this project have developed only at the very end of the permitting process, and as a result [he] was not in a position to have commented on the draft PSD permit last summer even if the District had done everything as he claims it should have done.” [District’s] Response to Petitioner’s “Opening Statement” at 2-3.

In the District’s view, the examples above confirm that Mr. Simpson cannot demonstrate that he was “prejudiced” by any ostensible lack of notice by the District. District Response to Opposition at 7. Quoting the Board’s decision in *In re J&L Speciality Prods. Corp.*, 5 E.A.D. 31, 79 (EAB 1994), the District avers that “because petitioner has failed to demonstrate how the Region’s alleged technical violations of 124.10 affected these proceedings, or that it was in any way prejudiced by these alleged violations, we conclude that such violations, even if they occurred, were harmless, and do not invalidate the permit issuance.” District Response to Opposition at 8 (quoting *J&L Speciality Prods.*, 5 E.A.D. at 79).

From another perspective, the District argues that CEC’s outreach efforts were essentially identical to § 124.10 notice mandates. In other words, the District suggests that CEC’s outreach efforts so

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coincided with § 124.10 that Mr. Simpson’s failure to be included in the scope of CEC’s outreach meant that Mr. Simpson was not qualified for notice under § 124.10 in the first place. As the District explains, since CEC compiled its lists of contacts “as part of comprehensive public outreach * * * undertaken for [RCEC],” Mr. Simpson’s non-appearance on the CEC’s outreach lists proves that Mr. Simpson “cannot be someone who was entitled to direct mail notice under 40 C.F.R. § 124.10(c).” District Response to Pet’r Opposition at 3, 5.

Finally, the District disputes Mr. Simpson’s contention that his affiliation with HAPA entitled him to notice of the draft permit. On this point, the District avers that the declaration of HAPA’s own president, Sherman Lewis, submitted with Mr. Simpson’s opposition memo, indicates that HAPA is not a government agency such as would be entitled to notice under § 124.10(c)(1)(vii), but rather a private citizens organization. *See* District’s Response to Pet’r Opposition at 3 n.2; Pet’r Opposition (Ex. 25) (Declaration of Sherman Lewis).²⁵

D. The Board’s Analysis of Mr. Simpson’s Allegations of Inadequate Notice

In addressing Mr. Simpson’s notice-based claims under 40 C.F.R. § 124.10 below, we observe that his claims consist both of allegations that the District failed to provide him with notice to which he was specifically entitled and allegations that the District failed to give particularized notice to third persons not before the Board (*e.g.*, CBE). In previous cases involving § 124.10, the Board has held that petitioners cannot ordinarily raise for Board consideration claims of the latter type. *See J&L Specialty Prods.*, 5 E.A.D. at 79 (stating that “absent any alleged harm to [petitioner], we fail to see how [petitioner] has standing

²⁵ The District also rejects Mr. Simpson’s argument that a HAPA attorney’s participation in a CEC proceeding entitled Mr. Simpson to notice in the PSD proceeding. The District maintains that HAPA’s attorney never claimed to represent Mr. Simpson during the CEC proceeding. District’s Response to Pet’r Opposition at 3 n.2. During the teleconference hearing, Mr. Simpson acknowledged that he had filed the Petition on his own behalf, not as a representative of HAPA. *See infra* note 26.

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to complain about someone else allegedly not being mailed notice of the draft permit”); *accord MCN Oil & Gas Co.*, UIC Appeal No. 02-03, at 11 (EAB Sept. 4, 2002) (Order Denying Review). While these cases indicate that the Board generally will not consider notice allegations where the sole deficiency is failure to give notice to a particular person other than the petitioner, we nevertheless regard it as appropriate to consider claims of failure of notice to other persons within the scope of allegations of fundamental defects in the integrity of the notice process as a whole that may be prejudicial to the notice rights of the petitioner and others and thus may require Board remedy.

In the Board’s view, based upon a preponderance of evidence in the record, Mr. Simpson has demonstrated that the District clearly erred in issuing the Permit without fully complying with the initial notice provisions for draft permits in 40 C.F.R. § 124.10. In this respect, Mr. Simpson has shown that the District failed to provide adequate notice of the RCEC draft permit to which he, as a member of the general public, was entitled. Moreover, Mr. Simpson has produced additional evidence, substantiated by information adduced by the Board at the teleconference hearing, showing that the District’s system for providing public notice of the draft permit was fundamentally flawed and excluded far more members of the public than just Mr. Simpson. As we describe below, the evidence in the record demonstrates that these defects were substantial and thus warrant remand and renoticing of the Permit.

1. Whether Mr. Simpson Has Proven that He Was Entitled to Receive, But Did Not Receive, Particularized Notice

To evaluate allegations of lack of notice to Mr. Simpson himself, we first inquire whether Mr. Simpson was entitled to notice as being among those types of entities entitled to particularized notice under section 124.10. The Board concludes that Mr. Simpson was not entitled to notice on this basis. Mr. Simpson claims a right to receive notice as the “appointed representative” of HAPA, which he asserts is a “comprehensive regional land use planning agency” entitled to notice under 40 C.F.R. § 124.10(c)(1)(vii). We reject this assertion. First, we

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agree with the District that as indicated in the declaration filed by HAPA's own president, HAPA is not an "agency" with governing authority, but rather a private citizens group and thus does not qualify as a "comprehensive regional land use agency." *See supra* Part IV.C.²⁶ Second, even if HAPA were entitled to notice, that does not mean that Mr. Simpson was personally entitled to notice.²⁷

2. Whether Mr. Simpson Has Proven that the District Failed to Assure Compliance With Notice Requirements of Part 124

With regard to its general notice and outreach obligations, the District emphasizes that it satisfied such requirements by relying upon the ostensibly "comprehensive" nature of the CEC's outreach. Indeed, the Board recognizes the extensive outreach that CEC conducted as part of the certification process for the proposed RCEC and does not doubt the sincerity of the CEC's efforts. Furthermore, we note that a delegated state agency, such as the District, may redelegate PSD public notice and outreach to another state agency to the extent the federal delegation so allows.

The Board, however, concludes that the District fell conspicuously short of its general outreach obligations by failing to adhere to the provision requiring a permitting agency to compile "mailing lists" of persons potentially interested in receiving information about permitting activities. *See* 40 C.F.R. § 124.10(c)(1)(ix). In this regard, Mr. Simpson has persuaded us that the District did not comply with the obligation to "notify [] the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as Regional and State funded newsletters,

²⁶ As the District correctly observes, the declaration of HAPA's president, submitted with Mr. Simpson's opposition memo, indicates that HAPA is a private citizens organization. *See* District's Response to Pet'r Opposition at 3 n.2; Pet'r Opposition (Exh. 25).

²⁷ We note that Mr. Simpson filed the Petition in his own name and not on behalf of HAPA. Teleconf. Hr'g at 37-38.

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environmental bulletins, or State Law Journals.” Pet’r Opposition at 3 (quoting 40 C.F.R. § 124.10(c)(1)(ix)(C)). The District’s notice of the draft permit and public comment period in a single publication in the *Oakland Tribune*, undertaken to satisfy State requirements, *see* Pet. at 3; Pet’r Opposition (Exh. 1), does not, in our view, satisfy the requirement that a permitting authority solicit interest and participation in permitting activities among members of the public via *periodic* publication in *multiple* print media. *See* 40 C.F.R. § 124.10(c)(1)(ix)(C). In fact, during the teleconference hearing, the District’s representative admitted that he was not aware of “anything the District or the CEC has explicitly done in an attempt to comply” with this requirement. Teleconf. Hr’g at 31-32.²⁸ By falling short of this requirement, we find that the District narrowed the scope of public notice to which Mr. Simpson and other members of the public were entitled under part 124.

In a larger sense, statements by the District’s and CEC’s representatives illuminate the fact that complying with section 124.10’s specific notice mandates was not the object of the CEC’s outreach strategy for the RCEC draft permit. Indeed, the three CEC-generated outreach “lists” upon which the District piggybacked were not tailored in any way to criteria for proper notice of PSD permitting specified at section 124.10, but rather were designed to support the CEC’s parallel

²⁸ Significantly, the Board notes that the three CEC lists upon which the District relied for the bulk of its outreach efforts do not reflect that the District complied with its obligation to actively solicit *new* participation in the PSD permitting process via publication in print media. *See supra* Part II.B. As described by CEC’s counsel, the three lists consisted of interested agencies, adjacent residents and businesses, and agencies and persons who had participated in *previous* proceedings and persons who had expressed interest in or commented on the RCEC project. *See supra id.* In sum, the composition of those lists does not indicate that CEC carried out on the District’s behalf the requirement to broadly inform the general public of the “opportunity” to be notified of permitting actions through “periodic” publication in multiple print media. *See* 40 C.F.R. § 124.10(c)(1)(ix)(C).

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certification process. *See supra* Part II.B.²⁹ As the District’s counsel acknowledged at the teleconference hearing, these CEC outreach efforts did not provide a “perfect match” with section 124.10. Teleconf. Hr’g at 30. In fact, the District conceded that its own reliance on the CEC’s outreach was so great that the District had no role in shaping the content of the CEC’s mailing lists. *See id.* at 28. As the District’s counsel summarized, “[w]e don’t provide a list[;] we rely on the outreach the [CEC] does.” *Id.* at 29. What the District appears to have done is turn over the public notice and outreach activities to the CEC without making any effort to assure that the CEC made any necessary modifications to its procedures to reflect the requirements of part 124.

Additional evidence offered by Mr. Simpson regarding the District’s notice to third persons fortifies our view that the District’s reliance upon CEC’s certification procedures resulted in a flawed notice process. For example, it appears that CEC’s outreach efforts did not satisfy the obligation to “inform the chief executive[] of the * * * county where the major stationary source is located” with respect to the RCEC project. *See supra* Part IV.C.; 40 C.F.R. § 124.10(c)(1)(vii); Pet. for Review at 2. In this regard, the District has not disputed the assertion by Gail Steele, of the Alameda County Board of Supervisors (whose jurisdiction includes Hayward), that she did not receive notice of the PSD permitting for the RCEC project. *See Steele Dec 1.*

Moreover, the District has not disputed the statement of Shana Lazerow of CBE that she did not receive notice of the draft PSD Permit for RCEC even though CBE had requested from the District material related to the original RCEC PSD permitting in 2001. *See Lazerow Decl.* This reflects that the District had created no mechanism for relaying to the CEC the names of persons in the locality who had

²⁹ During the teleconference hearing, CEC’s representative made clear that CEC’s certification process, not section 124.10 requirements, determined the scope of public outreach for the draft permit. *See Teleconf. Hr’g* at 28. As he explained, CEC developed its outreach “lists” (on which the District relied) “for our own [certification] proceeding.” *Id.* at 28.

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participated in past PSD proceedings in order to ensure compliance with the requirement that permitting authorities develop “area lists,” for notification purposes, of such persons. *See* 40 C.F.R. § 124.10(c)(1)(ix)(B). In sum, the foregoing examples confirm the District’s failure to institute a system of accountability whereby CEC, in implementing public notice of the draft permit, would have to adapt its own outreach lists to section 124.10 mandates. *See, e.g.*, Teleconf. Hr’g at 28-29.

Another issue that raises serious doubts about the adequacy of the District’s procedures for public participation in this case is the District’s role with respect to a CEC-conducted public workshop regarding the proposed RCEC. As noted previously, the workshop, in which the District apparently participated, was held on April 25, 2007, during the public comment period for the draft permit, and air quality issues appeared on the agenda. *See supra* Part II.B; Opening Statement of Rob Simpson at 2. During the teleconference hearing, CEC’s counsel stated his “belief” that the District was present at the workshop along with members of the public. *See* Teleconf. Hr’g at 21. As noted previously, Mr. Simpson represents that the “public attended this workshop believing that this was a hearing and made ‘comments’ believing that they would be considered.” Opening Statement of Rob Simpson at 2. While there is no independent verification of this representation, it is certainly plausible. In any event, the fact that the workshop occurred during the time frame of the draft permit comment period with likely District participation and that no recording was made of any public comments (including air quality issues) raises legitimate concerns about whether the District showed sufficient diligence in addressing public input into the permitting process for RCEC.

This is just one illustration of the nature of the confusion between the District PSD and broader CEC processes. In response to questions during the teleconference hearing, the CEC representative indicated that the public was entitled to comment, during the CEC process, on any air quality issues, including those covered by the PSD permit. However, he noted that the CEC was powerless to make any

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changes to the permit based on these public comments. Adding further confusion, in response to a question about how the CEC staff handles comments that relate to PSD, the CEC representative went on to state that “our staff frequently comments on things without trying to discriminate between things that are PSD and non-PSD” and “[w]e don’t really attempt to determine * * * whether these are PSD comments or not.” Teleconf. Hr’g at 12-18. This reinforces the fact that the CEC merely folded the PSD notice proceeding into its ongoing process without an attempt to ensure that the part 124 requirements, including public input requirements, were met.

In sum, despite the significant scope of CEC’s outreach for the proposed RCEC, the evidence in the record supports Mr. Simpson’s allegations that these efforts fell significantly short of section 124.10’s requirements in numerous important respects. Most significantly, by relying almost completely on the CEC to determine the scope of public outreach regarding the draft permit, the District, as EPA’s delegate, failed to provide the necessary oversight of CEC’s outreach to ensure that it conformed with section 124.10. The District’s complacent compliance approach is encapsulated in the District’s stated assumption that “because [CEC’s] outreach efforts [were] so broad * * * all interested parties would be swept up” in that process. Teleconf. Hr’g at 32. Indeed, the record shows that in the absence of District supervision, the CEC simply carried out its own certification-related outreach process without adjusting it in any way to satisfy section 124.10’s specific notice requirements.

Furthermore, contrary to the District’s statements, one cannot dismiss the District’s omissions in this regard as “harmless error.” First, the kind of deficiencies we noted potentially affected more persons than Mr. Simpson. Second, even as to Mr. Simpson, the District’s assumption that, even with the proper notice, he would not have participated is purely speculative. Moreover, given the pivotal importance to Congress of providing adequate initial notice within EPA’s public participation regime under 40 C.F.R. part 124, *see supra* Part IV.B., we regard it as inappropriate to impose upon Mr. Simpson the burden of showing actual

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prejudice as the result of the District's notice violations here. *See, e.g., In re Dist. of Columbia Water and Sewer Auth.*, NPDES Appeal Nos. 05-02, 07-10, 07-11, and 07-12, slip op. at 67-68 (EAB Mar. 19, 2008), 13 E.A.D. ___ (refusing to impose upon petitioner the burden of showing prejudice where the Region, in issuing an NPDES permit, failed to provide adequate notice and opportunity to comment pursuant to part 124).

In order to correct serious and fundamental deficiencies in the District's public notice of the draft permit and to remedy the resulting harm to the PSD program's public participation process, the Board finds it necessary to remand the Permit to the District to ensure that the District fully complies with the public notice and comment provisions of section 124.10.³⁰ On remand, the District must scrupulously adhere to all relevant requirements in section 124.10 concerning the initial notice of draft PSD permits (including development of mailing lists), as well as the proper content of such notice. *See* 40 C.F.R. § 124.10(d). Because the Board's remand will allow Mr. Simpson and other members of the public the opportunity to submit comments to the District on PSD-related issues during the new comment period, the Board refrains at this time from opining on such issues raised by Mr. Simpson in his appeal.

E. Non-PSD Issues

Because the purpose of this remand order is to remedy the District's flawed public notice of the draft permit and thus allow the public to fully exercise its public participation rights under part 124, the Board has no intention of circumscribing the range of PSD-related issues the public may raise on remand. However, in order to promote administrative efficiency and prevent unnecessary expense of legal

³⁰ As noted above, while a delegated state agency may redelegate notice and comment functions to another state agency to the extent the federal delegation so permits, which in this case could include a delegation to the CEC, in all cases it is incumbent upon the delegated state agency to ensure strict compliance with federal PSD requirements.

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resources, the Board considers it advisable to alert potential parties of several issues raised in Mr. Simpson's appeal that are clearly beyond the Board's jurisdiction. As we have stated, "[t]he Board will deny review of issues that are not governed by the PSD regulations because it lacks jurisdiction over them." See *In re Sutter Power Plant*, 8 E.A.D. 680, 688 (EAB 1999); see also *Zion Energy, L.L.C.*, 9 E.A.D. 701, 706 (EAB 2001).³¹ Among such issues raised by Mr. Simpson, the following come to our attention:

(1) Contemporaneous Emissions Reduction Credits ("ERCs")

Mr. Simpson's allegations regarding the proposed RCEC's employment of "contemporaneous [ERCs]" to offset its emissions of NOx and precursor organic compounds ("POCs"), see Pet. at 1-2; Pet'r Opposition at 11-12; *supra* Part III, are outside the Board's jurisdiction because they emanate from State of California requirements, not the PSD regulations. As the District correctly observes, the ERCs are a product of District regulation 2-2-302, and thus a California state law, not a federal PSD requirement. See District Response at 14-15, 20; *In re Sutter Power Plant*, 8 E.A.D. at 690 (denying review of petitioner's objection to use of ERCs on grounds that requirement to offset emissions with ERCs was not a federal PSD mandate).

(2) Endangered Species Act Concurrence

The Board does not have jurisdiction over Mr. Simpson's arguments challenging the adequacy of FWS's concurrence with Region 9, following informal consultations between the two entities, that the proposed RCEC would not adversely effect any federal listed species under the administration of the FWS. See Pet'r Opposition at 16-20, (Ex. 20); *supra* Part II.B. The Board has previously declined to entertain

³¹ As the Board has held, "[t]he PSD review process is not an open forum for consideration of every environmental aspect of a proposed project, or even every issue that bears on air quality." See *In re Knaf Fiber Glass*, 8 E.A.D. 121, 126-27 (EAB 1999)

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substantive challenges to FWS actions pursuant to the ESA in keeping with the Board's longstanding principle of declining to hear substantive challenges to earlier, predicate determinations that are separately appealable under other statutes. *See Indeck-Elwood, LLC*, PSD Appeal No. 03-04, slip op. at 118-19 & nn.162-63 (EAB Sept. 27, 2006), 13 E.A.D. ___ (holding that the Board did not have jurisdiction over the petitioner's challenge to FWS's concurrence decision given the availability of judicial review through the Administrative Procedure Act).

(3) Various Non-PSD Statutes

Mr. Simpson's allegations that the District violated provisions of the Clean Water Act (including NPDES program), ESA, Migratory Bird Treaty Act, and Coastal Zone Management Act, as well as their implementing regulations, are outside the scope of this proceeding, as the allegations do not address violations of the CAA's PSD program. *See Pet'r Opposition* at 19-20.

(4) Toxic Air Contaminant Health Screening

Mr. Simpson's allegation regarding the District's alleged failure to include "Acrolein" as part of the District's "Toxic Air Contaminant health risk screening," *see Pet.* at 3, clearly refers to a California rather than a federal PSD requirement, and consequently is not reviewable by the Board.

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V. CONCLUSION

The Permit for RCEC is hereby remanded to the District. The District is directed to reopen the public comment period on the draft permit, providing public notice fully consistent with the requirements of 40 C.F.R. § 124.10.³²

So ordered.

³² The District is free, of course, to make any modifications to the draft permit it deems appropriate prior to noticing it for public comment.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Remand Order in the matter of *Russell City Energy Center*, PSD Appeal No.08-01, were sent to the following persons in the matter indicated:

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Annette Duncan
Secretary



United States Department of the Interior

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January 5, 2010

ORDER

In re Black Mesa Complex Permit) DV 2009-1-PR thru DV 2009-8-PR
Revision)
)
) Significant Permit Revision
) Permit No. AZ-0001D

NUTUMYA'S NEPA MOTION GRANTED

(Docket No. DV 2009-4-PR)

QSM DECISION VACATED

OTHER PENDING MOTIONS DENIED AS MOOT

OTHER REQUESTS FOR REVIEW DISMISSED AS MOOT

(Docket Nos. DV 2009-1-PR, DV 2009-2-PR, DV 2009-3-PR,
DV 2009-5-PR, DV 2009-6-PR, DV 2009-7-PR, DV 2009-8-PR)

HEARING CANCELLED

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I. Introduction

This matter involves the consolidated requests for review originally filed by ten applicants. They seek review of a revised permit allowing Peabody Western Coal Company (Peabody) to operate its Black Mesa and Kayenta mines jointly under a single permit. The mines are located in the northeastern corner of Arizona.

After an initial round of motions two applicants were dismissed and eight now remain. Additionally three parties were added as intervenor-respondents. The following tables summarize the identity of the current parties:

Applicants

Name	Docket No.	Abbreviation
Californians for Renewable Energy	DV 2009-1-PR	CARE
Victor Masayesva, Jr.	DV 2009-2-PR	Masayesva
Black Mesa Water Coalition, <i>et al.</i>	DV 2009-3-PR	BMWC
Kendall Nutumya, <i>et al.</i>	DV 2009-4-PR	Nutumya
The Forgotten People, Coal Mine Canyon Chapter, Tonalea Chapter, and Leupp Chapter	DV 2009-5-PR thru DV 2009-8-PR	Forgotten People

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Respondent and Intervenor-respondents

Name	Abbreviation
Office of Surface Mining Reclamation and Enforcement	OSM
Peabody Western Coal Company	Peabody
Salt River Project Agricultural Improvement and Power Project	Salt River
Hopi Tribe	Hopi Tribe
Navajo Nation	Navajo Nation

The applicants have alleged that the permit should be vacated because OSM has violated several statutes including:

Name	Citation	Abbreviation
Surface Mining Control and Reclamation Act of 1977	30 U.S.C. §§ 1201-1309b (2006)	SMCRA
National Environmental Policy Act	42 U.S.C. §§ 4321-47 (2006)	NEPA
Endangered Species Act	16 U.S.C. §§ 1531-44 (2006)	FSA
American Indian Religious Freedom Act	42 U.S.C. § 1996 (2006)	AIRFA
Religious Freedom Restoration Act of 1993	42 U.S.C. §§ 2000bb thru 2000bb-4) (2006)	RFRA
Clean Water Act	33 U.S.C. §§ 1251 1387 (2006)	CWA

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This matter is now before me on nineteen motions for dismissal or summary decision. The following table provides a summary:

Moving Party	Title	Abbreviated Title	Opposing Party
OSM	Respondent's Motion for Dismissal of Claims Raised Under the <u>American Indian Religious Freedom Act</u>	OSM's AIRFA Motion Against Nutumya	Nutumya 2009-4-PR
OSM	Motion for Summary Decision in DV 2009-1-PR on <u>American Indian Religious Freedom Act Claim</u>	OSM's AIRFA Motion Against CARE	CARE 2009-1-PR
OSM	Respondent's Motion for Dismissal of Claims Raised Under the <u>Religious Freedom Restoration Act</u>	OSM's RFRA Motion Against Nutumya	Nutumya 2009-4-PR
OSM	Respondent's Motion for Dismissal of Claims Raised Under the <u>Religious Freedom Restoration Act</u>	OSM's RFRA Motion Against BMWC	BMWC 2009-3-PR
OSM Peabody	Respondent's Motion for Dismissal of Claims Raised Under the <u>Clean Water Act</u>	OSM's CWA Motion	Masayesva 2009-2-PR
OSM	Motion for Summary Decision in DV 2009-5-PR Through DV 2009-8-PR on Claim that OSM Failed to Consider the Legal <u>Status of Existing Mining Authorizations</u>	OSM's Mining Authorization Motion	Forgotten People 2009-5-PR 2009-6-PR 2009-7-PR 2009-8-PR

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Moving Party	Title	Abbreviated Title	Opposing Party
OSM Peabody	Motion for Summary Decision in DV 2009-5 Through 2009-PR on Claim Related to <u>Greenhouse Gas Emissions</u>	OSM's Greenhouse Gas Motion Against the Forgotten People	Forgotten People 2009-5-PR 2009-6-PR 2009-7-PR 2009-8-PR
OSM	Motion for Summary Decision in DV 2009-5-PR Through DV 2009-8-PR on Claim That OSM Failed to Provide for Meaningful <u>Public Review and Comment</u>	OSM's Public Review Motion	Forgotten People 2009-5-PR 2009-6-PR 2009-7-PR 2009-8-PR
OSM	Respondent's Motion for Dismissal of <u>Public Participation</u> Claims	OSM's Public Participation Motion	BMWC 2009-3
OSM Peabody	Respondent's Motion for Dismissal of <u>Third-Party Contractor Claim</u>	OSM's Third-Party Contractor Motion	BMWC 2009-3-PR
OSM	Motion for Summary Decision in DV 2009-1-PR on <u>National Environmental Policy Act</u> Claims	OSM's NEPA Motion	CARE 2009-1-PR
OSM Peabody	Motion for Summary Decision in DV 2009-1-PR on the Claim that the Subject Permit Does Not Consider <u>Greenhouse Gas Emissions as Regulated Pollutants</u>	OSM's Greenhouse Gas Motion Against CARE	CARE 2009-1-PR

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Moving Party	Title	Abbreviated Title	Opposing Party
Peabody	Motion for Summary Decision: Material Damage to the <u>Navajo Aquifer</u>	Peabody's Navajo Aquifer Motion	BMWC 2009-3-PR Nutumya 2009-4-PR Forgotten People 2009-5-PR 2009-6-PR 2009-7-PR 2009-8-PR
Hopi Tribe	Hopi Tribe's Motion for Summary Decision on Claims Related to Alleged <u>Political Instability</u> within Hopi Tribal Government	Hopi Tribe's Political Instability Motion	BMWC 2009-3-PR Nutumya 2009-4-PR Forgotten People 2009-5-PR 2009-6-PR 2009-7-PR 2009-8-PR
Nutumya	Motion for Summary Decision that the Record of Decision Does Not Fully Consider <u>SMCRA § 510(a)</u> for Black Mesa Resources	Nutumya's Section 510(a) Motion	OSM 2009-4-PR
Nutumya	Motion for Summary Disposition Based on OSM's Violations of the <u>National Environmental Policy Act</u>	Nutumya's NEPA Motion	OSM 2009-4-PR

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Moving Party	Title	Abbreviated Title	Opposing Party
BMWC	Black Mesa Coalition, <i>et al.</i> Motion for Summary Decision for <u>Failure to Process</u> Peabody's Permit as Required by the Surface Mining Control and Reclamation Act ("SMCRA")	BMWC's SMCRA Processing Motion	OSM 2009-3-PR
BMWC	Black Mesa Water Coalition, <i>et al.</i> Motion for Summary Decision for Failure to Comply with the <u>National Environmental Policy Act</u> in Connection with the Black Mesa Project	BMWC's NEPA Motion	OSM 2009-3-PR
BMWC	Black Mesa Water Coalition, <i>et al.</i> Motion for Summary Decision for Failure to Comply with the <u>Endangered Species Act</u> in Connection with the Black Mesa Project	BMWC's ESA Motion	OSM 2009-3-PR

I have decided to grant Nutumya's NEPA Motion because it demonstrates that OSM violated NEPA by not preparing a supplemental draft environmental impact statement (EIS) when Peabody changed the proposed action. As a result the Final EIS did not consider a reasonable range of alternatives, described the wrong affected environment baseline, and did not achieve the informed decision-making and meaningful public comment required by NEPA. Because the Final EIS does not satisfy NEPA, the decision must be vacated and remanded to OSM for further action. Vacating the OSM decision necessarily renders the other motions moot or unnecessary to decide.

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The following sections will first describe the background necessary to understand the significance of Nutumya's motion, then state the burden and standard of proof, and conclude by analyzing the merits of the motion.

II. Background

A. Mine Operations

Peabody has operated the Kayenta and Black Mesa mines as two separate surface coal mining operations on Indian lands since the early 1970's. The Kayenta mining operation has supplied coal to the Navajo Generating Station, near Page, Arizona, since 1973. The coal is transported to the station via an 83-mile-long rail line.

The Black Mesa mining operation supplied coal to the separate Mohave Generating Station, near Laughlin, Nevada, from 1970 until December 2005, when the power plant suspended operations. The coal was transported to this generating station via a 273-mile-long coal-slurry pipeline.

According to OSM, SMCRA provides for a two-phase program to regulate surface coal mining operations on Indian lands: an initial regulatory program and a permanent regulatory program. The permanent program contains more comprehensive performance and reclamation standards than the initial program. The two mines operated under the initial program until 1990 when Peabody applied for a permanent program permit covering both operations.

OSM issued a permanent program permit for only the Kayenta mining operation and has subsequently renewed the permit in 1995, 2000, and 2005. Under the existing permit Peabody is authorized to mine coal through 2026.

At the direction of the Secretary of the Interior, OSM administratively delayed its decision on the Black Mesa mining operation because of concerns by the Hopi Tribe and the Navajo Nation regarding use of Navajo-aquifer (N-aquifer) water for coal-slurry purposes. Because of this administrative delay, Peabody mined coal at the Black Mesa operation under the initial regulatory program until December 2005 when the Mohave Generating Station ceased operations.

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From 1970 to December 2005, the Black Mesa and Kayenta mining operations used N-aquifer water at a rate of 4,400 acre-feet per year for coal-slurry, mine-related, and domestic purposes. Starting in 2006, after the Mohave Generating Station suspended operations, the combined mines have used considerably less water, about 1,200 acre-feet per year.

Before the Mohave Generating Station suspended operations, the combined mines produced 13.3 million tons of coal per year (4.8 from Black Mesa and 8.5 from Kayenta). When the Mohave Generating Station went off-line, production reduced to 8.5 million tons from just the Kayenta mining operation.

A.R. 1-02-01-000004 thru -000006 (Record of Decision); Final EIS at ES-3, 2-1 n.1, 2-6 thru 2-7.

B. The Revised Permit and the Draft EIS

Peabody first submitted a permit revision application in February 2004, which sought to revise its existing permanent permit for the Kayenta operations to add the Black Mesa operations under the permanent regulatory program and form the "Black Mesa Complex." It also sought approval of several other projects:

- a new coal-wash plant and associated coal-waste disposal facility; and
- construction, use, and maintenance of a new haul road between mine areas on the southern ends of Peabody's coal leases;
- rebuilding of the 273-mile-long coal-slurry pipeline to the Mohave Generating Station; and
- a new aquifer water-supply system, including a 108-mile long pipeline to convey the water to the mine complex.

As required by the NEPA regulations, OSM published in the Federal Register a notice of intent to prepare an EIS for the Black Mesa Project. OSM then conducted scoping meetings during January and February 2005. OSM advertised these meetings in local newspapers and on local radio stations and received 351 written submissions and recorded 237 speakers.

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OSM then issued a Draft EIS in November 2006 and held meetings in northern Arizona and southeast Nevada during January 2007 to receive comments. The Draft EIS identified three alternatives:

- A: approve Peabody's application with the construction projects;
- B: approve a combined permanent permit for the Kayenta and Black Mesa operations but without the constructions projects and with no coal mining from the Black Mesa operations; and,
- C: disapprove Peabody's application, leaving the operations in the status quo.

OSM identified Alternative A as its preferred alternative.

Subsequent to the Draft EIS, and before OSM issued the Final EIS, Peabody revised its application to remove the plans and activities that supported the Mohave Generating Station (i.e., production of coal at the Black Mesa mining operation, construction of a new coal wash plant, construction of a new haul road, rebuilding the coal-slurry pipeline, and development of a new aquifer water-supply system). Peabody also proposed reducing the amount of N-aquifer water usage to 1,236 acre-feet per year. Peabody made these revisions because the Mohave Generation Station suspended operations in December 2005 and it believed that the power plant would not likely reopen as a coal-fired facility.

Peabody's revised application added the 18,857-acre initial program area for the Black Mesa mining operation, including surface facilities and coal reserves, to the 44,073 acres in the existing permanent program area for the Kayenta mining operation, bringing the total acres of the permanent program permit area to 62,930 acres. The permit area would no longer distinguish between the Kayenta mining operation and the Black Mesa mining operation and OSM would consider them as one operation, known as the Black Mesa Complex. The revised application did not change the existing mining methods or the average annual coal production rate of 8.5 million tons for the Kayenta mining operation. The permit would continue to be renewable at 5-year intervals but would not authorize mining of unmined coal reserves in the Black Mesa mining operation area.

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OSM announced in the Federal Register that it had changed its preferred alternative from Alternative A, Peabody's original proposal, to Alternative B, Peabody's current proposal, and reopened the comment period on the Draft EIS to allow persons to comment on the change. It did not conduct any additional scoping meetings to supplement the scoping of the original proposal. It only extended the comment period for the Draft EIS. OSM then issued the Final EIS on November 7, 2008, and approved Peabody's revised application on December 22, 2008.

A.R. 1-02-01-000004 thru -000006 (Record of Decision); Final EIS at 2-1 n.1.

C. The Final EIS

1. Purpose and Need

The Final EIS stated that the project's purpose and need was to continue supplying coal from the Kayenta mining operation to the Navajo Generating Station, to revise the life-of mine (LOM) operation and reclamation plans for the permitted Kayenta mining operation, and to incorporate the initial program surface facilities and coal-resource areas of the adjacent Black Mesa mining operation.

This environmental impact statement (EIS) is being prepared in compliance with the National Environmental Policy Act (NEPA) in order to analyze and disclose the probable effects of the Black Mesa Project in northern Arizona. The purpose of and need for the Black Mesa Project is to continue the supply of coal from Peabody Western Coal Company's (Peabody's) Kayenta mining operation to the Navajo Generating Station near Page, Arizona (Map 1-1). The action proposed by Peabody is to revise the life-of-mine (LOM) operation and reclamation plans for its permitted Kayenta mining operation and, as a part of this revision, to incorporate into these plans the initial program area surface facilities and coal-resource areas of its adjacent Black Mesa mining operations, which previously supplied coal to the Mohave Generating Station in Laughlin, Nevada. This EIS collectively refers to

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the area occupied by the Kayenta mining operation and Black Mesa mining operation as the Black Mesa Complex.

Final EIS at 1-1.

It also pointed out that the purpose and need had changed from the Draft EIS, when the purpose had been to supply coal from the Black Mesa operation to the Mohave Generating Station and approve several projects including a rebuilt coal-slurry pipeline. It further explained that because coal mining from Black Mesa for the Mohave Generating Station was still possible, but unlikely, the Final EIS would continue to analyze its effects.

Since the Draft EIS was published in November 2006, the purpose of and need for the Black Mesa Project to supply coal to the Mohave Generating Station no longer exists. With this change, Peabody amended its permit revision application, thus causing the change in the statement of purpose and need and reducing the scope of the proposed action. Some of Peabody's LOM revisions and three of the four original proposed actions are no longer proposed.

- As a part of its LOM revisions, Peabody no longer proposes a new coal-haul road, construction of a new coal-washing facility, coal production from the Black Mesa mining operation for the Mohave Generating Station, and water for slurry transportation of coal and coal washing.
- Black Mesa Pipeline, Inc. (BMPI) no longer proposes to continue to operate the Black Mesa coal-slurry preparation plant.
- BMPI also no longer proposes to reconstruct the 273-mile-long coal-delivery slurry pipeline from the Black Mesa mining operation to the Mohave Generating Station.
- The co-owners of the Mohave Generating Station no longer propose to construct a new water-supply system, including a

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108-mile-long water-supply pipeline and a well field near Leupp, Arizona, to obtain water from the Coconino aquifer (C aquifer) and to convey the water to the Black Mesa Complex for use in the coal slurry and other mine-related purposes.

Although these actions are no longer proposed and not part of the preferred alternative, they still could occur under certain circumstances. Alternative A addresses supplying coal to the Mohave Generating Station, which remains permitted for operation. Even though operation was suspended in December 2005, it has not been decommissioned. Although it appears that implementing Alternative A is unlikely, Peabody wishes to proceed in revising its permit to incorporate the surface facilities in the initial program area and coal-resource areas of its adjacent Black Mesa mining operation; that is, Alternative B. Because Alternative A is still possible, albeit unlikely, this EIS continues to analyze its effects.

Id. at 1-1 thru 1-2.

2. Alternatives

The Final EIS identified the same three alternatives as did the draft:

A: approve Peabody's former application with the construction projects;

B: approve Peabody's current application for a combined permanent permit for the Kayenta and Black Mesa operations without the construction projects and with no coal mining from the Black Mesa operations; and,

C: disapprove Peabody's application, leaving the operations in the status quo.

The following sections provide additional detail.

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a. Alternative A - Approval of the 2004 LOM Revision and All Components Associated with Coal Supply to the Mohave Generating Station

Under Alternative A, OSM would:

(1) Approve Peabody's LOM permit revision for the Black Mesa Mine Complex (Black Mesa and Kayenta mining operations), including:

- Mining of coal to supply the Mohave Generating Station;
- A new coal-wash plant and associated coal-waste disposal; and
- Construction, use, and maintenance of a new haul road between mine areas on the southern ends of Peabody's coal leases.

(2) Approve BMPI's existing coal-slurry preparation plant and rebuilding the 273-mile-long coal-slurry pipeline to the Mohave Generating Station; and

(3) Approve a new aquifer water-supply system, including a 108-mile-long pipeline to convey the water to the mine complex.

Final EIS at 2-8 (Figure 2-1).

b. Alternative B - Approval of the 2008 LOM Revision (Preferred Alternative)

Under Alternative B, OSM would approve Peabody's LOM permit revision, including incorporation of the Black Mesa mining operation surface facilities and coal deposits into the Kayenta mining operation permit area. This alternative would result in:

- Continued coal mining at the Kayenta mining operation to supply coal to the Navajo Generating Station;
- No coal mining at the Black Mesa mining operation to supply the Mohave Generating Station;
- No construction, use, and maintenance of a new haul road between mine areas on the southern ends of Peabody's coal leases;

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- No reconstruction of the coal-slurry pipeline; and
- No construction of the C aquifer water-supply system.

Id.

c. Alternative C - Disapproval of the LOM Revision (No Action Alternative)

Under Alternative C, OSM would disapprove Peabody's life-of-mine permit revision. This alternative would mean:

- No coal mining at the Black Mesa mining operation to supply the Mohave Generating Station;
- Continued coal mining at the Kayenta mining operation to supply coal to the Navajo Generating Station;
- No incorporation of Black Mesa mining operation surface facilities and coal deposits into the Kayenta mining operation permit area;
- No construction, use, and maintenance of a new haul road between mine areas on the southern ends of Peabody's coal leases;
- No reconstruction of the coal-slurry pipeline; and
- No proposed construction of the C aquifer water-supply system.

Id.

d. Alternatives Considered but Eliminated from Detailed Study

The Final EIS also described fourteen other alternatives, or groups of alternatives, that OSM considered but eliminated from detailed analysis because they were not technically or economically feasible, or did not meet the purpose and need for the project. These included using other water sources, a water-return pipeline, alternative coal delivery methods, no coal-washing facility, no mining, a new customer for the Black Mesa coal, and mining where no sacred springs or sites exist. Final EIS at 2-36 thru 2-50.

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3. Affected Environment

The Final EIS identified 18 elements of the environment that the proposed alternatives could affect. These included such elements as soil resources, water resources, climate, air quality, fish and wildlife, cultural resources, environmental justice, and Indian trust assets. The document described the existing conditions for each in 165 pages. Final EIS Ch. 3.

4. Environmental Consequences

The Final EIS concluded by describing the effects that each of the three alternative actions could have on each of the 18 affected environmental elements. It also analyzed mitigation measures and cumulative effects. Final EIS Ch. 4.

With this background information the following section will review the burden and standard of proof for Nutumya's allegations.

III. Analysis

A. Burden and Standard of Proof

1. Summary Decision

Departmental regulations provide that an administrative law judge may grant a motion for summary decision if there are no disputed material facts and if the moving party is entitled to a decision as a matter of law:

(c) An administrative law judge may grant a motion under this section if the record, including the pleadings, depositions, answers to interrogatories, admissions and affidavits, show that -

- (1) There is no disputed issue as to any material fact; and

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- (2) The moving party is entitled to summary decision as a matter of law.

43 C.F.R. § 4.1125.

These regulations do not exactly duplicate Rule 56 of the Federal Rules of Civil Procedure, which provides for summary judgments in federal courts. Nevertheless the regulation and the rule are sufficiently analogous for constructions of Rule 56 to provide useful guidance when interpreting 43 C.F.R. § 4.1125. *Daniel Bros. Coal Co.*, 2 IBSMA 45, 53-54 (1980). Under Rule 56, a court may grant summary judgment when the pleadings, depositions, answers to interrogatories, and admissions, together with affidavits, if any, show there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-24 (1986).

The nonmoving party may not rest on mere allegations or denials but must "come forward with 'specific facts showing that there is a genuine issue for trial.'" *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). The judge may not weigh the evidence but may only determine whether a genuine factual dispute exists. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

Since neither Nutumya nor OSM has claimed that an issue of material fact exists, and I have found none in the record, I may decide Nutumya's motion on the issues of law it presents.

2. NEPA

Interior Board of Land Appeals precedent holds that "the adequacy of an EIS under section 102(2)(C) of NEPA must be judged by whether it constituted a 'detailed statement' that took a 'hard look' at all of the potential significant environmental consequences of the proposed action and reasonable alternatives thereto, considering all relevant matters of environmental concern." *E.g., Forest Guardians*, 170 IBLA 80, 95 (2006). When exercising statutory authority and undertaking a major federal action having a significant impact on the human environment, an agency must ensure through the NEPA process that it is fully informed of the environmental consequences of its proposed actions. *See id.* "In deciding whether an EIS promotes

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informed decisionmaking, it is well settled that a 'rule of reason' will be employed."
Id. The Board has described the "rule of reason" in the following manner:

[A]n EIS need not be exhaustive to the point of discussing all possible details bearing on the proposed action but will be upheld as adequate if it has been compiled in good faith and sets forth sufficient information to enable the decisionmaker to consider fully the environmental factors involved and to make a reasoned decision after balancing the risks of harm to the environment against the benefits to be derived from the proposed action, as well as to make a reasoned choice between the alternatives.

Id. (quoting *County of Suffolk v. Sec'y of Interior*, 562 F.2d 1368, 1375 (2d Cir. 1977)).

In other words, an EIS must contain "a 'reasonably thorough discussion of the significant aspects of the probable environmental consequence' of the proposed action and alternatives thereto." *Id.* (quoting *Cal. v. Block*, 690 F.2d 753, 761 (9th Cir. 1982)).

An appellant must carry its burden to demonstrate by a preponderance of the evidence and with objective proof that the agency failed to adequately consider a substantial environmental question of material significance to the proposed action, or otherwise failed to abide by Section 102(2)(C) of NEPA. *Western Exploration Inc.*, 169 IBLA 388, 399 (2006). A mere difference of opinion provides no basis for reversal. *E.g.*, *Underwood Livestock, Inc.*, 165 IBLA 128, 133 (2005).

3. SMCRA

Under the Departmental regulations applicable to proceedings reviewing the approval of an application for permit revision, the applicant bears the burden to present a prima facie case and the ultimate burden of persuasion.

(d) In a proceeding to review the approval or disapproval of an application for a permit revision . . .

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(2) If any other person [i.e., a person other than the permit applicant] is seeking review, that person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the application fails in some manner to comply with the applicable requirements of the Act and the regulations.

43 C.F.R. § 4.1366(d)(2).

Having reviewed the burden and standard of proof, I will next address the merits of Nutumya's arguments.

B. NEPA Compliance

1. Nutumya's NEPA Motion

Nutumya's NEPA Motion argues that the Final EIS violated NEPA for three reasons.

- It did not consider a reasonable range of alternatives to the proposed action.
- It did not describe the proper affected (i.e., baseline) environment.
- It did not achieve informed decision-making and meaningful public comment.

OSM and Peabody have both filed memoranda in opposition to the motion. The following analysis will first address the threshold issues raised by OSM and Peabody and then will consider the merits of Nutumya's motion.

2. The Threshold Objections to Nutumya's Motion Do Not Require Denial

a. Standing

Peabody argues that the Nutumya applicants lack standing to challenge NEPA adequacy because they have not demonstrated an injury in fact that is traceable to

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OSM's decision. Peabody Opposition to Nutumya NEPA Motion 4-5. Peabody has previously filed a motion to dismiss the Nutumya applicants for lack of standing. My March 20, 2009, order on that motion dismissed some 42 of the original 82 applicants. I found that the remaining 40 applicants could petition for review because they are persons "having an interest which is or may be adversely affected" within the meaning of 30 C.F.R. § 700.5. Because the standards for determining who may request review of an OSM decision differ from the standards for judicial standing cited by Peabody, I do not find reason to change my prior conclusion. Therefore I conclude that the Nutumya applicants have sufficient interest to challenge NEPA compliance in this proceeding.

b. List of Undisputed Facts

Peabody next argues that Nutumya failed to provide a list of undisputed facts to support their NEPA allegations. Peabody Opposition to Nutumya NEPA Motion 5-6. Peabody cites no authority requiring such a list and I am aware of none. While such a list may be helpful in presenting a motion for summary decision, the failure to provide a list does not present a ground for denying Nutumya's motion.

c. New Alleged Errors Raised in Nutumya's Motion

Finally OSM, supported by Peabody, argues that Nutumya should be prohibited from arguing (1) that the Final EIS described an improper affected, or baseline, environment or (2) that the Final EIS failed to promote informed decision-making and meaningful public comment, because Nutumya failed to make these claims in its original application for review. OSM Opposition to Nutumya NEPA Motion 16-17; Peabody Opposition to Nutumya NEPA Motion 9. Regulations require a request for review to provide an "explanation of each specific alleged error . . . , including reference to the statutory and regulatory provisions allegedly violated." 43 C.F.R. § 4.1363(a)(2). Any amendments require a motion to be filed with the administrative law judge. *Id.* § 4.1363(c).

Nutumya's request for review does not explicitly state that OSM erred by describing an improper baseline environment. But it does allege throughout several pages that the Final EIS did not comply with NEPA. And in one place Nutumya alleges that "OSM changed little of the language from the Draft EIS to the Final EIS."

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Nutumya Request for Review 15. From this statement one can find the genesis of the argument Nutumya now makes: OSM failed to correctly describe the baseline environment because it did not change the description between the time of the Draft and the Final EIS.

Similarly Nutumya's request for review does not explicitly state that the Final EIS failed to promote informed decision-making and meaningful public comment. But this argument can be fairly implied from Nutumya's general allegations that the Final EIS did not comply with NEPA. Nutumya Request for Review 8-12. Therefore I find that Nutumya's request for review alleged NEPA violations sufficient to include the grounds it now relies on for its motion for summary decision.

Moreover neither OSM nor Peabody have shown that they are prejudiced by responding to these arguments. And indeed they have responded to each. OSM Opposition to Nutumya NEPA Motion 17-23; Peabody Opposition to Nutumya NEPA Motion 9-14. Therefore I conclude that Nutumya may rely on these arguments in its motion.

Having considered the threshold issues, I will next address the merits of Nutumya's motion.

3. The Substantially Changed Proposed Action Required a Supplemental Draft EIS or a New NEPA Process

By any measure, substantial changes relevant to environmental concerns occurred to the Black Mesa Project between the time OSM issued its Draft EIS and the time it issued the Final EIS. Peabody changed its application from a permit to operate two mines supplying two generating plants to one mine supplying one generating plant. Coal production reduced from 13.3 million tons to 8.5 million tons per year and water usage dropped from 4,400 acre-feet to 1,200 acre-feet per year. And Peabody eliminated four construction projects: a coal-wash plant, a haul road, a coal-slurry pipeline, and a new aquifer water supply system.

Given this substantial change, Council on Environmental Quality (CEQ) regulations required OSM to at least prepare a supplemental draft EIS.

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[E]nvironmental impact statements shall be prepared in two stages and may be supplemented.

(a) Draft environmental impact statements shall be prepared in accordance with the scope decided upon in the scoping process. . . .

(b) Final environmental impact statements shall respond to comments as required in part 1503 of this chapter. . . .

(c) Agencies:

(1) Shall prepare supplements to either draft or final environmental impact statements if:

(i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns:

(ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

40 C.F.R. § 1502.9 (emphasis added).

Instead of preparing a supplemental draft EIS, OSM kept the same alternatives for the Final EIS, but changed only the preferred alternative from A (approve a combined permanent program permit for the two mines and two generating plants, with four construction projects) to B (approve a combined permanent program permit for two mine areas but only one operating mine and one generating plant, with no construction projects). The change in the proposed action was both substantial and relevant to environmental concerns. At a minimum, the new proposed action would change the impacts on water resources, soils, vegetation, wildlife, and cultural resources. According to the CEQ regulations, OSM should have prepared and circulated at least a supplemental draft EIS.

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A supplemental draft EIS would have allowed OSM to develop and analyze a new set of alternatives to satisfy the changed purpose and need. Instead OSM kept the old alternatives. One of these, Alternative A, could never satisfy the new purpose and need and was no longer feasible because Peabody no longer proposed it or desired to pay for it. Further a supplemental draft EIS would have permitted the public to comment and perhaps suggest additional alternatives.

Because the change was so substantial, OSM may also have considered whether to terminate the NEPA compliance process on Peabody's original application and start anew on Peabody's latest revised application. Since the impacts of the revised application appear to be substantially less than the original application, OSM possibly could even have concluded (by preparing an environmental assessment) that the new proposed action did not significantly affect the environment. Therefore it might have satisfied its NEPA obligations by issuing a finding of no significant impact (FONSI).

The Interior Board of Land Appeals has considered the CEQ regulation requiring supplemental EISs on several occasions. But the cases have applied the second prong of the regulation, requiring supplementation for new circumstances or information, rather than the first prong, requiring supplementation for a new proposed action.

In *William E. Love*, 151 IBLA 309 (2000), the Board considered the situation where the government agency had developed and approved a new alternative for a coal bed methane project that it had not analyzed in the draft EIS. It developed the new alternative in response to public comments on the draft. The CEQ's guidelines contained in its "Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations," specified that a supplemental draft EIS was not required if the new alternative falls "qualitatively within the spectrum of alternatives that were discussed in the draft." 46 Fed. Reg. 18,026, 18,035 (Mar. 23, 1981) (Answer to Question 29b: "How must an agency respond to a comment on a draft EIS that raises a new alternative not previously considered in the draft EIS?"). Relying on this guideline, the Board found that the new alternative lay within the range of alternatives considered in the draft EIS and thus a supplement was not required. *Id.* at 320-21.

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Applying this reasoning to the Black Mesa Draft EIS could lead to the conclusion that a supplement was not required because the Final EIS adopted an alternative that was not only within the range of alternatives it previously considered but was indeed identical to an alternative considered in the draft. But in *Love* the proposed action had not changed as it did for the Black Mesa Project. And the CEQ guidelines the Board relied upon dealt with new alternatives and not with a new proposed action. Further the alternatives considered in *Love* did not include one that, as with the Black Mesa Alternative A, did not even satisfy the stated purpose and need. Therefore the *Love* decision does not require acceptance of OSM's Final EIS here.

In another decision, *In re Stratton Hog Timber Sale*, 160 IBLA 329 (2004), the Board considered the situation where the agency had prepared a report that supplemented a prior EA. Relying on the supplemental report, the agency reduced the timber sale considered in the EA by 20 percent. The Board, citing *Love*, inferred that "a 20 percent reduction in the scope of the project and thereby a 20 percent reduction in the scope of the potential impacts should [not] compel another NEPA document." *Id.* at 335 (emphasis in original).

Similar to *Love*, application of this reasoning to the Black Mesa Draft EIS could lead to a conclusion that the new proposed action did not require a supplemental draft EIS because the preferred alternative in the Final EIS (Alternative B - one mine, one generating plant) significantly reduced the impacts from those of the preferred alternative in the Draft EIS (Alternative A - two mines, two generating plants, and four construction projects). But a comparison of one proposed action to the other makes the wrong comparison.

The new proposed action must be compared to the present environmental conditions. In many situations, such as that in *Stratton Hog*, a new proposed action does not also involve new environmental conditions. Thus a new proposed action will usually affect the same environment as did the former proposed action. But in the Black Mesa situation, the new proposed action also involved new environmental conditions because the Mohave Generating Station and the coal-slurry pipeline no longer operated. The comparison here should be made between the new proposed action and the new environmental conditions. Therefore the *Stratton Hog* decision does not require accepting OSM's Final EIS here.

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The Supreme Court addressed supplemental EISs in *Marsh v. Or. Natural Res. Council*, 490 U.S. 360 (1989), where it considered whether an agency must prepare a supplemental EIS when new information came to light after initial approval of a project. The Court acknowledged that

an agency need not supplement an EIS every time new information comes to light after the EIS is finalized. To require otherwise would render agency decisionmaking intractable, always awaiting updated information only to find the new information outdated by the time a decision is made.

Id. at 373.

The Court ultimately concluded that the agency properly decided that the new information did not require a supplemental EIS. Significantly, for purposes of the present analysis, the Court did not address under what circumstances a change in the proposed agency action may require a supplemental EIS.

In *Alaska Wilderness Recreation and Tourism Assoc. v. Morrison*, 67 F.3d 723 (9th Cir. 1995), the court considered whether a government agency needed to supplement previously approved EISs when a 50-year timber sales contract terminated early because a pulp mill had closed. Those EISs had only considered alternatives that met the requirements of the 50-year contract. The court held that cancellation of the 50-year contract required the agency to prepare supplemental EISs.

While we cannot predict what impact the elimination of the [50-year] contract will have on the Forest Service's ultimate land use decisions, clearly it affects the range of alternatives to be considered. Because consideration of alternatives is "the heart of the environmental impact statement," 40 C.F.R. § 1502.14, we hold that the cancellation of the [50-year] contract, which opened for consideration alternatives which could not be freely reviewed when the [50-year] contract was in force, is an event requiring serious and detailed evaluation by the Forest Service.

Id. at 730.

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While *Alaska Wilderness* does not precisely parallel the Black Mesa situation, it teaches important lessons. In *Alaska Wilderness* the 50-year contract had limited the alternatives the agency had originally considered. When that contract terminated, NEPA required the agency to consider a new range of alternatives. *Id.* at 731. Similarly Peabody's original permit application had defined the range of alternatives considered in the Draft EIS. When Peabody changed its application, the transformation of the proposed action required OSM to consider a new range of alternatives.

Of similar import is *Natural Res. Def. Council v. U. S. Forest Serv.*, 421 F.3d 797 (9th Cir. 2005). There the government agency had developed alternatives for a revised forest plan based on admittedly incorrect market demand scenarios. The court held the agency violated NEPA because a purpose of the plan was to meet market demand and the agency failed to examine alternatives that satisfied the new market demand scenarios. Similarly OSM violated NEPA here when it failed to examine alternatives that would satisfy Peabody's new permit application.

4. The Final EIS Did Not Consider a Reasonable Range of Alternatives

Since OSM did not prepare a supplemental draft EIS, the Final EIS failed to analyze a reasonable range of alternatives to the new proposed action. Instead the Final EIS analyzed the same three alternatives the Draft EIS had analyzed for the original proposal. As a result the Final EIS considered one alternative that could never satisfy the new purpose and need (Alternative A), one alternative that did satisfy the purpose and need (Alternative B), and the no action alternative (Alternative C).

Alternative A emerged from the scoping for the Draft EIS as the alternative that would satisfy the original purpose and need. It combined all operations for the two mines and two generating plants under a single permanent program permit, and authorized four construction projects including reconstruction of a coal-slurry pipeline. This alternative could not possibly satisfy the revised purpose and need, which only sought a permit for operation of one mine to supply one generating plant. NEPA requires an analysis of alternatives to the proposed action that would satisfy

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the purpose and need for action. Since alternative A does not meet this definition it cannot qualify as a valid alternative.

OSM justified including alternative A in the Final EIS because it is “still possible, albeit unlikely.”

Although these actions [Alternative A] are no longer proposed and not part of the preferred alternative, they still could occur under certain circumstances. Alternative A addresses supplying coal to the Mohave Generating Station, which remains permitted for operation. Although operation of the Mohave Generating Station was suspended in December 2005, it has not been decommissioned. Although it appears that implementing Alternative A is unlikely, Peabody wishes to proceed in revising its permit to incorporate the surface facilities and coal-resource areas in the initial program area of its adjacent Black Mesa mining operation; that is, Alternative B. Because Alternative A is still possible, albeit unlikely, this EIS continues to analyze its effects.

Final EIS at ES-2 (emphasis added).

I do not find this justification reasonable because NEPA does not require analysis of possible but unlikely alternatives. Indeed the courts and the Board have consistently emphasized that alternatives must “accomplish the intended purpose, [be] technically and economically feasible, and yet have a lesser impact. 40 C.F.R. § 1500.2(e).” *Sierra Club Uncompahgre Group*, 152 IBLA 371, 378 (2000). *See Headwaters, Inc. v. BLM*, 914 F.2d 1174, 1180-81 (9th Cir. 1990); *City of Aurora v. Hunt*, 749 F.2d 1457, 1466-67 (10th Cir. 1984); *Defenders of Wildlife*, 152 IBLA 1, 9 (2000); *Larry Thompson*, 151 IBLA 208, 219-20 (1999). Peabody no longer wants to implement this action and it clearly has more environmental impacts than the proposed action. Thus it does not satisfy the definition of a reasonable alternative. While OSM enjoys discretion in choosing the alternatives to analyze, it must make a reasonable choice and I do not find the justification it articulated for choosing Alternative A to be reasonable here.

Eliminating Alternative A leaves only the proposed action (Alternative B) and the no action alternative (Alternative C) as viable alternatives. The courts have

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5. The Final EIS Improperly Described the Affected (Baseline) Environment

When the proposed action changed, the affected environment also changed. Mining from the Black Mesa operation stopped in December 2005 when the Mohave Generating Station stopped producing electricity. OSM prepared the Draft EIS the following year in November 2006 when Peabody expected coal and electric production would resume and thus the Draft EIS described the affected environment in its Chapter 3 assuming that both mines and both generating plants would operate.

By the time the proposed action changed in July 2008, OSM and Peabody had concluded that the Mohave Generating Station would not likely resume production. At the time OSM issued the Final EIS in November 2008, the affected environment no longer included the effects from the Black Mesa coal mining operation, the Mohave Generating Station, or the coal-slurry pipeline.

Yet the Final EIS continued to describe the affected environment as if these operations continued. For example it continued to describe the vegetation, wildlife, and land uses along the route of the coal-slurry pipeline. Final EIS at 3-63 thru 3-67 (vegetation), 3-74 thru 3-78 (fish and wildlife), 3-88 thru 3-93 (land uses). And it described water withdrawal from the aquifers (Final EIS at 3-40) and air monitoring data for the years before 2005 (*Id.* at 3-53 (Table 3-13), 3-55 (Table 3-55)) when both mines operated. According to Nutumya, this description provided a skewed baseline against which to analyze the environmental impacts of the proposed action and alternatives. Nutumya NEPA Motion 32-35. Because OSM described the baseline when both mines and both generating stations operated, the baseline would necessarily have higher impacts than when only one mine and generating station operated. A comparison of this high baseline (when both mines operated) to the anticipated impacts from the proposed action and alternatives (when only one mine operated) would necessary yield less impact.

Further by continuing to describe the affected environment as if the Black Mesa and Mohave operations continued, the Final EIS created the impression that just the Kayenta and Navajo operations would have much less impact. For example the Executive Summary for the Final EIS described the anticipated consequences of

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Alternative B (the proposed action) by comparing it to the environment that existed when the Black Mesa and Mohave operations continued.

It is anticipated that, under Alternative B, approximately 6,942 acres would be disturbed by mining from 2010 through 2026. The impacts are characterized similarly to those of Alternative A, for an area reduced in size (i.e., about 6,942 acres would be mined [5,467 acres fewer than Alternative A]). . . . The areas in which vegetation would be disturbed would be reduced. . . . Fewer cultural resource and traditional cultural resources would be affected. . . . With the reduction in mining, there would be fewer coal-haul roads constructed.

Final EIS at ES-17 (emphasis added).

OSM should have made the comparisons to the environment that existed after Black Mesa and Mohave ceased operation, not while the Black Mesa and Mohave operations continued (as described in Alternative A). By describing the affected or baseline environment as if the Black Mesa and Mohave operations continued, OSM misstated the magnitude of the impact of the proposed project (i.e., the Kayenta and Navajo operations) on the environment. It left the impression that the proposed action would have significantly less impact.

OSM should have compared the impacts of the proposed action (i.e., including the Black Mesa operations under the permanent regularity program) to the conditions existing without the Mohave operations. This would have given the true picture of the impact to the existing environment (i.e., without the Mohave operations). Instead of showing less impact, use of the correct baseline may have shown that the proposed action had more impact. But one does not know because OSM did not perform the correct analysis.

6. The Final EIS Did Not Achieve Informed Decision-making and Meaningful Public Comment

Finally by not issuing a supplemental draft EIS, or starting over with a new NEPA compliance process, OSM denied informed decision-making and meaningful public comment. For example when OSM began the EIS preparation it conducted the

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scoping process required by the CEQ regulations. That process resulted in a list of issues raised by the public. Of the issues OSM identified for "actions and alternatives," all nine involved the Mohave Generating Station, its coal-slurry pipeline, or the required water-supply pipeline. Draft EIS 1-12 thru 1-13. Even though Peabody's revised application eliminated each of these projects, the Final EIS continued to list the same nine issues. Final EIS at 1-12. As a result OSM never considered whether the revised application presented new issues.

This failure to revise the scope and significant issue determinations violated CEQ regulations.

An agency shall revise the determinations made under paragraphs (a) [mandatory actions such as determining the scope and the issues to be analyzed in depth] and (b) [permissive actions such as page and time limits] of this section if substantial changes are made later in the proposed action, or if significant new circumstances or information arise which bear on the proposal or its impacts.

40 C.F.R. § 1501.7 (c) (emphasis added).

But more fundamentally, the process OSM followed here – proceeding directly to a final EIS, after making "substantial changes in the proposed action" – failed to achieve NEPA's purposes.

- It failed to "inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment." 40 C.F.R. § 1502.1. Because it copied the alternatives developed for an earlier and now defunct proposed action, it never considered whether different alternatives existed for the substantially changed current proposed action.

- It failed to "provide full and fair discussion of significant environmental impacts." 40 C.F.R. § 1502.1. Because it continued to analyze an unlikely alternative, it failed to focus the discussion on the impacts of the proposed action. Table 2-9 of the Final EIS provides an example of the lack of discussion given to the impacts of the proposed action. This table provides a "summary of impacts by alternative" and

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devotes most discussion to the unlikely alternative (Alternative A). The result contains relatively little discussion of the environmental impacts of the new proposed action (Alternative B).

I have also considered the possibility that the Final EIS could be found sufficient if the two alternatives, B and C, are the only alternatives considered and the discussions about Alternative A are ignored. After all, OSM did analyze Alternative B, the proposed action. *See Friends of Marlot Park v. U. S. Dep't of Transp.*, 382 F.3d 1088, 1097 (10th Cir. 2004) (a supplemental EIS not required as long as the selected alternative was fully evaluated). But this possibility must be rejected for several reasons.

- It deprives OSM of potentially developing additional alternatives to B (the new proposed action). OSM did use Alternative C (the no action alternative) for comparison, but it failed to develop additional alternatives. When Alternative A was the proposed action OSM had the benefit of the scoping process to develop issues and alternatives. And while CEQ regulations do not require additional scoping for a supplemental draft EIS (40 C.F.R. § 1502.9(c)(4)), OSM could have developed additional alternatives on its own (or considered and rejected other alternatives) for a supplemental draft. But we do not know the possibilities because OSM did not follow the procedure required by the CEQ regulations (i.e, prepare a supplemental draft EIS). In addition a supplemental draft EIS may have prompted additional alternatives from public comments. OSM could have then considered these in a final EIS.

- It requires comparing Alternative B to a baseline (described in Chapter 3 of the Final EIS as the Affected Environment) developed for the assumption that the mining and slurry transportation of coal would continue from the Black Mesa Operation to the Mohave Generating Station. Because this assumption is no longer valid the Final EIS needed a revised description of the affected environment.

- By continuing to analyze the unlikely Alternative A, the Final EIS bogs down the reader (both the government and the public) in needless analysis, and the environmental impacts of Alternative B do not emerge.

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Finally the preparation of the Final EIS did not foster informed decision making or public participation because it did not develop a reasonable range of alternatives to the substantially changed proposed action. OSM prepared the Final EIS by first developing alternatives to the original proposed action (which included operation of the Blake Mesa mine, the Mohave Generating Station, and the connecting coal-slurry pipeline) and issuing the Draft EIS analyzing these alternatives. But when Peabody changed the proposed action (by eliminating the operation of the Blake Mesa mine, the Mohave Generating Station, and the connecting coal-slurry pipeline), OSM did not develop new alternatives to the new proposed action, but instead issued the Final EIS with the same set of alternatives. By proceeding directly to a final EIS, without issuing a supplemental draft, OSM deprived itself and the public of the opportunity to develop a reasonable range of alternatives to the new proposed action.

A supplemental draft would have given OSM the opportunity to prepare a new range of alternatives (or explain why none existed) for the new proposed action. Instead OSM used the same alternatives (including one that was not feasible) prepared for the old proposed action. The public should have had the opportunity to comment on alternatives tailored for the new proposed action in a supplemental draft. They could have then suggested additional alternatives that OSM could have analyzed in a final EIS. The process OSM actually used (opening a period to comment on a different preferred alternative chosen from those developed for the original proposed action) eliminated the opportunity for OSM to develop alternatives for the new proposed action which the public could comment on.

In summary the combined effects of these deficiencies in the form, content, and preparation of the Final EIS combined to deprive the public and OSM of the information they needed to participate in and make a decision on Peabody's current application. Because the Final EIS did not comply with NEPA, it cannot support OSM's permit decision, and the permit decision must therefore be vacated and remanded to OSM.

8. Other NEPA Issues

Other pending motions also raise NEPA issues. For example BMW's NEPA Motion alleges that the Final EIS failed to (1) adequately analyze impacts related to

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global warming, (2) consider the impacts of mercury and selenium emissions, and (3) consider the impacts of the National Pollution Discharge Elimination System (NPDES) permit issued by the Environmental Protection Agency. And OSM's NEPA Motion seeks to dismiss CARE's allegations that the Final EIS did not (1) provide a valid purpose and need statement or (2) consider a no action alternative.

I need not address the merits of BMW's motion because I can grant no additional relief, even if a favorable result could be rendered on its motion. The result it sought – vacatur of the OSM decision – has been granted.

In such circumstances, where no relief can be given, further administrative review is normally moot. Nevertheless an exception applies where an issue exists that is "capable of repetition, yet evading review." *See Colo. Env't Coal.*, 108 IBLA 10, 15-16 (1989). While BMW may make the same allegations about any new NEPA document that OSM may prepare in the future, such allegations will not escape review because they may be reviewed then in the context of any new NEPA document instead of one that this order holds invalid.

Similar reasoning applies to OSM's NEPA Motion. OSM must prepare different NEPA documentation to support a new decision that replaces the one vacated here. Because CARE may allege different errors about a new NEPA document, review of an invalidated EIS would be premature at this time. Thus the motion is no longer ripe for review.

C. Rulings on the Eighteen Other Motions

The conclusion that OSM relied on an invalid EIS requires that its decision to approve Peabody's permit application be vacated and remanded to OSM. Upon remand, OSM will have discretion to choose a different means to comply with NEPA. It may prepare a supplemental draft EIS, prepare an EA, or choose some other method. Once it has complied with NEPA, it will have discretion to issue a new decision, which could be different from the present one.

As with the NEPA motions discussed above, granting Nutumya's motion renders the other pending motions either moot or not ripe for review. Each applicant sought to vacate OSM's decision, which has now been done. Since I can give no

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additional relief, their motions are now moot. And, like the NEPA issues, if the applicants seek to review a future OSM decision, their claims must be reviewed on a new administrative record. Such a record will necessarily differ from the one now before me. Because the applicants may allege different errors about a new OSM decision, a decision on the issues raised in their motions would be premature at this time. Thus their motions are no longer ripe for review.

Similarly the motions of OSM and Peabody are rendered moot by this order because I cannot render the relief they seek, i.e., affirmance of OSM's decision. In addition their motions are no longer ripe for review since they are based on the current administrative record, which supported the vacated decision. Any future review will depend upon a different administrative record and new or different claims of error that applicants may make.

Nevertheless, two of the motions – Peabody's Navajo Aquifer Motion and BMWC's ESA Motion – merit individual comment.

- Peabody's Navajo Aquifer Motion seeks an order confirming the adequacy of OSM's Cumulative Hydrologic Impact Assessment (CHIA). OSM prepared the CHIA as required by SMCRA and based it on information provided by Peabody in its Permit Application Package (PAP). BMWC's application for review has challenged its adequacy. Since the CHIA depends on the PAP, and not on the Final EIS, a conclusion that the Final EIS is inadequate does not necessarily mean that the CHIA is inadequate. Therefore a decision on the adequacy of the CHIA could be made.

Nevertheless I decline to do so for two reasons. First, Peabody may change the PAP on which the current CHIA is based between now and the time OSM issues a new permit decision. After all, the current record shows that Peabody revised the permit application numerous times in the past (i.e., in 2004, 2005, 2006 and 2008) A.R. 1-02-01-000005 (Record of Decision). Another revision may require OSM to revise the current CHIA. Second, Peabody has tailored its arguments to the errors claimed in BMWC's application for review. If BMWC were to apply for review of a future permit decision based on the CHIA, it may present different claims of error. Therefore addressing the merits of Peabody's Navajo Aquifer Motion will serve no concrete purpose because the circumstances may materially change by the time OSM issues a new decision on the permit application.

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- BMWC's ESA Motion seeks an order that OSM's Final Biological Assessment (BA) does not satisfy ESA requirements. Similar to the CHIA, the Final BA is a separate document not dependent on the validity of the Final ESA. But the BA did rely upon information contained in Peabody's permit application. The BA concluded that approval "may affect, but was not likely to adversely affect" threatened or endangered species or their critical habitat.

The same reasons for declining to determine the adequacy of the CHIA also apply for declining to determine the adequacy of the Final BA. Peabody may change its permit application before OSM issues a new decision and BMWC may change its claims of error if it applies to review a new OSM permit decision. In addition, as a result of considering possible new alternatives in a new NEPA document, OSM may choose a different action that would have to be analyzed in a new BA or other ESA document. Therefore addressing the merits of BMWC's ESA Motion will serve no concert purpose because the circumstances may materially differ by the time OSM issues a new decision.

Therefore I will not decide the other eighteen pending motions at this time. They are either moot or not ripe for review.

IV. Conclusion

OSM violated NEPA by not preparing a supplemental draft EIS when Peabody changed the proposed action. As a result the Final EIS did not consider a reasonable range of alternatives to the new proposed action, described the wrong environmental baseline, and did not achieve the informed decision-making and meaningful public comment required by NEPA. Because of the defective Final EIS, OSM's decision to issue a revised permit to Peabody must be vacated and remanded to OSM for further action.

Having considered the motion, the other papers on file, and for good cause, it is ordered that:

1. The Motion by Petitioners, Kendall Nutumya, *et al.*, in Docket No. DV 2009-4-PR, for Summary Disposition Based on OSM's Violations of the National Environmental Policy Act (NEPA), is granted.

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2. The Decision, dated December 22, 2008, of the Office of Surface Mining Reclamation and Enforcement, approving the Application for Significant Permit Revision (Project AZ-001-E-P-01)(Permit AZ-001D) filed by Peabody Western Coal Company for the Black Mesa Complex, is vacated.

3. The other pending motions in this consolidated proceeding are denied as moot or not ripe for review.

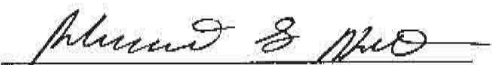
4. The requests for review filed by the following applicants are dismissed as moot.

Californians for Renewable Energy, Docket No. DV 2009-1-PR
Victor Masayesva, Jr., Docket No. DV 2009-2-PR
Black Mesa Water Coalition, *et al.*, Docket No. DV 2009-3-PR
The Forgotten People, Docket No. DV 2009-5-PR
Coal Mine Canyon Chapter, Docket No. DV 2009-6-PR
Tonalea Chapter, Docket No. DV 2009-7-PR
Leupp Chapter, Docket No. DV 2009-8-PR

5. The prehearing conference scheduled for March 9, 2010, and the hearing scheduled for March 16, 2010, are cancelled.

Appeal Rights

Any party aggrieved by this decision may file a petition for discretionary review with the Interior Board of Land Appeals, or seek judicial review, pursuant to the provisions in 43 C.F.R. § 4.1369.


Robert G. Holt
Administrative Law Judge

See page 38 for distribution.

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DV 2009-1-PR thru DV 2009-8-PR

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DV 2009-1-PR thru DV 2009-8-PR

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Addendum to CARE comments on the consent decree in United States v. Pacific Gas &
Electric Company, Civil Action No. 09-4503 (N.D. Cal.) and D.J. Ref. No. 90-5-2-1-09753

Dated: January 8, 2010

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ADDENDUM TO CARE COMMENTS ON THE CONSENT DECREE IN UNITED STATES V. PACIFIC GAS & ELECTRIC COMPANY, CIVIL ACTION NO. 09-4503 (N.D. CAL.) AND D.J. REF. NO. 90-5-2-1-09753

CALifornians for Renewable Energy, Inc. (CARE) wishes to provide this addendum to comments on the consent decree in United States v. Pacific Gas & Electric Company, Civil Action No. 09-4503 (N.D. Cal.) and D.J. Ref. No. 90-5-2-1-09753.

Attached is Exhibit 6 an Administrative Law Judge Order Vacating the December 22, 2008 Life-of-Mine Permit for the Black Mesa Complex, issued by the US DOI Office of Surface Mining Reclamation and Enforcement (OSM), Permit AZ 0001D, that was appealed to the US DOI Office of Hearings and Appeals, Appeals DV-2009-1-PR¹ thru DV-2009-10-PR. We apologize for the attachment being upside down and ask your Honor to rotate the attachment pages by 180 degrees for purposes of reading.

Requests for Relief

In addition to the previously mentioned relief, we request your Honor vacate all the Decision's of the California Energy Commission (CEC) and BAAQMD related to the Gateway Generating Station in order to require the permitting process to begin anew.

If your Honor grants CARE's Party status request we ask you notify CARE's legal counsel Martin Homec, Attorney for CALifornians for Renewable Energy, Inc. (CARE), PO Box 447, Davis, CA 95617, or FAX (530) 686-3968, or E-mail to martinhomec@gmail.com.

Respectfully submitted,



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January 8, 2010

cc.
Martin Homec

Verification

I am an officer of the Commenting Corporation herein, and am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge, except matters, which are therein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 8th day of January, 2010, at San Francisco, California.



Lynne Brown Vice-President
CALifornians for Renewable Energy, Inc.
(CARE)

Continued from the previous page

¹DV-2009-1-PR was the Appeal brought by CARE challenging the EIS and ROD for the project based on an inadequate alternatives analysis which this Order upheld.

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CARE comments on the consent decree in United States v. Pacific Gas & Electric Company,
Civil Action No. 09-4503 (N.D. Cal.) and D.J. Ref. No. 90-5-2-1-09753

Dated: January 8, 2010

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Exhibit 4December 30, 2009 from US EPA denying request for administrative delay
Exhibit 5 US EPA EAB PSD Docket 08-1 Remand Order

I. INTRODUCTION

Californians for Renewable Energy, Inc. (CARE) wishes to provide comments on the consent decree in *United States v. Pacific Gas & Electric Company*, Civil Action No. 09-4503 (N.D. Cal.) and D.J. Ref. No. 90-5-2-1-09753.

We incorporate the comments submitted by Golden Gate University (GGU) dated November 4, 2009 and those submitted by Robert Sarvey and Robert Simpson as if fully set forth by CARE in their entirety. Robert Sarvey and Robert Simpson are both members of CARE and Robert Sarvey is an Officer of the board of directors serving as its Treasurer.

We provide these comments both in an effort to better inform your Honor of the context of Pacific Gas and Electric Company’s (PG&E)'s violations prior to entering into a consent decree and to alert you to the fact that there is evidence that PG&E acted in concert with the

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United States Environmental Protection Agency on its own accordances or through its delegate of authority at the Bay Area Air Quality Management District (BAAQMD) who also conspired with the California Energy Commission (CEC) to “knowingly” violate the Clean Air Act (CAA) including its criminal penalty provisions. Essentially the victims in this crime are the victims who live in the predominantly low income communities of color of Pittsburg and Antioch California who breathe the project’s unregulated emissions of criteria pollutants, greenhouse gases, and toxic air contaminants. The perpetrators of this crime under local, state, federal, and international law and treaty is PG&E in concert with the United States Environmental Protection Agency on its own or through its delegate of its authority at the Bay Area Air Quality Management District (BAAQMD) with the California Energy Commission (CEC); all who conspired “knowingly” to violate the Clean Air Act (CAA) including its criminal penalty provisions. Let us call that Conspiracy A.

We present as additional evidence other unlawful conspiracies by the US EPA, and BAAQMD, in this case with the City and County of San Francisco (CCSF) its SF Redevelopment Agency, and Lennar BVHP; regarding US EPA’s miss-handling of the exposure of the surrounding low-income community of color of Bay View Hunters Point to toxic dust containing asbestos as a result of Lennar’s demolition activities at the the former naval shipyard and US EPA’s subsequent retaliatory actions against critics of cleanup and land dealings with the developer. Additional we incorporate attached evidence that US EPA’s so-called consent decree is a clear effort to retaliate against CARE’s members and officers for bringing complaints and exercising our rights to judicial review; thereby rewarding criminal polluters like PG&E by making the Consent Decree inappropriate, improper, as well as inadequate. Let us call that Conspiracy B.

This makes it no surprise that PG&E and US EPA would be willing to agree to the consent decree as proposed.

Finally we discuss how the consent decree is inadequate in light of the US EPA Administrator’s findings regarding public endangerment due to greenhouse gases and its impacts on Best Available Technology Requirements (BACT) requirements for New Source Review (NSR).

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II. CONSPIRACY A

An example of Respondent US EPA's retaliatory actions against Mr. Boyd and CARE's members is CARE's first Civil Rights Act complaint brought in 2000 with Respondent US EPA that was against three power plants under development review in Contra Costa County California in the low-income communities of color of Pittsburg and Antioch. CARE's civil rights complaint was joined by the Pittsburg Unified School District Board of Trustees who unanimously supported the Resolution¹ to join CARE's complaint because of their concerns for the impacts of these projects on school children; low-income children of color in particular, who like the Bay View community in San Francisco demonstrated a high percentage of health issues related to exposure to environmental toxins that adversely impacted their school performance. Respondent US EPA, now nearly a decade later, has failed to respond. Therefore we believe US EPA and BAAQMD are liable under 42 U.S.C. § 7413 (c) (3), since they (US EPA) have delegated authority under the CAA to BAAQMD to act in their stead including their handling of asbestos dust.

Despite not having received a PSD permit, Authority to Construct (ATC), or a determination of compliance, PG&E finished construction of Gateway and started operating on or before November 10, 2008 or, at the latest, on January 4, 2009. The Gateway facility appears to be substantially similar to the facility it proposed to construct in its 2007 permit application to the District. Specifically, the facility includes all of the equipment that was described in its 2007 permit application, including the dewpoint heater and the diesel engine.

Under the Clean Air Act, the U.S. Environmental Protection Agency (U.S. EPA) sets limits on how much of a pollutant can be in the air anywhere in the United States. This ensures that all Americans have the same basic health and environmental protections. The Act allows individual states to have stronger pollution controls, but states are not allowed to have weaker pollution controls than those set for the entire country.

The GGS has significant potential to violate the CAA act because it has the potential to violate the existing SIP and the public has not been provided proper Notice pursuant to the CAA of this change. "[T]he Air Resources Board's Proposed State Strategy for California's 2007 State

¹ See Figure 7 Resolution 99-32 of the Pittsburg Unified School District at: <http://www.calfree.com/OCRDelta.html>

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Implementation Plan (State Strategy) relies on emission reductions from already adopted State control programs and the expected reductions from new State Measures;"

Congress enacted the PSD provisions of the CAA in 1977 for the purpose of, among other things, "insu[ring] that economic growth will occur in a manner consistent with the preservation of existing clean air resources." CAA § 160(3), 42 U.S.C. § 7470(3). The statute requires preconstruction approval in the form of a PSD permit before anyone may build a new major stationary source or make a major modification to an existing source² if the source is located in either an "attainment" or "unclassifiable" area with respect to federal air quality standards called "national ambient air quality standards" (NAAQS).³ See CAA §§ 107, 161, 165, 42 U.S.C. §§ 7407, 7471, 7475. EPA designates an area as "attainment" with respect to a given NAAQS if the concentration of the relevant pollutant in the ambient air within the area meets the limits prescribed in the applicable NAAQS. CAA § 107(d)(1)(A), 42 U.S.C. § 7407(d)(1)(A). A "nonattainment" area is one with ambient concentrations of a criteria pollutant that do not meet the requirements of the applicable NAAQS. *Id.* Areas "that cannot be classified on the basis of available information as meeting or not meeting the [NAAQS]" are designated as "unclassifiable" areas. *Id.*

The PSD Regulations provide, among other things, that the proposed facility be required to meet a "best available control technology" (BACT)⁴ emissions limit for each pollutant subject

² The PSD provisions that are the subject of the instant appeal are part of the CAA's New Source Review (NSR) program, which requires that persons planning a new major emitting facility or a new major modification to a major emitting facility obtain an air pollution permit before commencing construction. In addition to the PSD provisions, explained *infra*, the NSR program includes separate "nonattainment" provisions for facilities located in areas that are classified as being in nonattainment with the EPA's national Ambient Air Quality Standards. See *infra*; CAA §§ 171-193, 42 U.S.C. §§ 7501-7515. These non-attainment provisions are relevant to the instant case.

³ See CAA §§ 107, 160-169B, 42 U.S.C. §§ 7407, 7470-7492. NAAQS are "maximum concentration ceilings" for pollutants, "measured in terms of the total concentration of a pollutant in the atmosphere." See U.S. EPA Office of Air Quality Standards, New Source Review Workshop Manual at C.3 (Draft Oct. 1990). The EPA has established NAAQS on a pollutant-by-pollutant basis at levels the EPA has determined are requisite to protect public health and welfare. See CAA § 109, 42 U.S.C. § 7409. NAAQS are in effect for the following six air contaminants (known as "criteria pollutants"): sulfur oxides (measured as sulfur dioxide (SO₂)), particulate matter (PM), carbon monoxide (CO), ozone (measured as volatile organic compounds (VOCs)), nitrogen dioxide (NO₂) (measured as NO_x), and lead. 40 C.F.R. § 50.4-.12.

⁴ BACT is defined by the CAA, in relevant part, as follows:

The term "best available control technology" means an emissions limitation based on the maximum degree of reduction of each pollutant subject to regulation under this chapter emitted from or which results from any major emitting facility, which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such facility through application of production

Continued on the next page

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to regulation under the Clean Air Act that the source would have the potential to emit in significant amounts. CAA § 165(a)(4), 42 U.S.C. § 7475(a)(4); see also 40 C.F.R. § 52.21(b)(5).

In addition to the substantive provisions for EPA-issued PSD permits, found primarily at 40 C.F.R. § 52.21, PSD permits are subject to the procedural requirements of Part 124 of Title 40 of the Code of Federal Regulations (Procedures for Decisionmaking), which apply to most EPA-issued permits. See 40 C.F.R. pt. 124.⁵ These requirements also apply to permits issued by state or local governments pursuant to a delegation of federal authority, as is the case here. Among other things, Part 124 prescribes procedures for permit applications, preparing draft permits, and issuing final permits, as well as filing petitions for review of final permit decisions. *Id.* Also, of particular relevance to this proceeding, part 124 contains provisions for public notice of and public participation in EPA permitting actions. See 40 C.F.R. § 124.10 (Public notice of permit actions and public comment period); *id.* § 124.11 (Public comments and requests for public hearings); *id.* § 124.12 (Public hearings).⁶

Continued from the previous page

processes and available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of such pollutant.
CAA § 169(3), 42 U.S.C. § 7479(3); see also 40 C.F.R. § 52.21(b)(12).

⁵ Part 124 sets forth procedures that affect permit decisions issued under the PSD program, the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901-6992k; the National Pollution Discharge Elimination System ("NPDES") program under the Clean Water Act, 33 U.S.C. § 1342; and the Underground Injection Control program under the Safe Drinking Water Act, 42 U.S.C. § 300h to 300h-7. 40 C.F.R. § 124.1(a).

⁶ The requirement for EPA to provide a public comment period when issuing a draft permit is the primary vehicle for public participation under Part 124. Section 124.10 states that "[p]ublic notice of the preparation of a draft permit * * * shall allow at least 30 days for public comment." 40 C.F.R. § 124.10(b). Part 124 further provides that "any interested person may submit written comments on the draft permit * * * and may request a public hearing, if no public hearing has already been scheduled." *Id.* § 124.11. In addition, EPA is required to hold a public hearing "whenever [it] * * * finds, on the basis of requests, a significant degree of public interest in a draft permit(s)." *Id.* § 124.12(a)(1). EPA also has the discretion to hold a hearing whenever "a hearing might clarify one or more issues involved in the permit decision." *Id.* § 124.12(a)(2).

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40 C.F.R. § 124.10 instructs EPA (and its delegates) how to provide notice of permitting actions such as draft permits (including public comment periods and any public hearings), and final permits. See 40 C.F.R. § 124.10(a). Section 124.10 provides instruction on both the method and content of notice.

With regard to the method of notice, the section 124.10 regulations require that EPA notify by mail designated governmental agencies and officials. See § 124.10(c). More particularly, notice is required to be given to the following governmental agencies and officials:

[A]ffected State and local air pollution control agencies, the chief executives of the city and county where the major stationary source or major modification would be located, any comprehensive regional land use planning agency and any State, Federal Land Manager, or Indian Governing Body whose lands may be affected by emissions from the regulated activity[.]

40 C.F.R. § 124.10(c)(1)(vii).

As to general outreach efforts, 40 C.F.R. § 124.10 directs the EPA to proactively assemble a “mailing list” of persons to whom PSD notices should be sent. See 40 C.F.R.

§ 124.10(c)(1)(ix). The mailing list must be developed by:

- (A) Including those who request in writing to be on the list;
- (B) Soliciting persons for “area lists” from participants in past permit proceedings in that area; and
- (C) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as Regional and State funded newsletters, environmental bulletins, or State law journals.

40 C.F.R. § 124.10(c)(1)(ix).10

CARE and the public wish to participate and this is an activity which is protected by the first amendment of the federal constitution.

Procedural Background

In February 2009, PG&E withdrew the 2007 permit application from the District, claiming that it was no longer necessary. In response, the District notified PG&E that any further review by the District of the project would require a new permit application.

Then, by letter dated April 14, 2009 to BAAQMD, PG&E requested modification of its 2001 ATC to conform to the facility it had constructed and began operating. In the letter, PG&E seeks to obtain approval for, among other things, the substitution of the dewpoint heater for a

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natural gas-fired preheater, but does not seek to modify the BACT as PG&E had in its 2007 permit application.

On or about May 1, 2009, BAAQMD and PG&E entered into a Compliance Agreement allowing PG&E to continue operating without a Permit to Operate. BAAQMD and PG&E extended this Compliance Agreement on or about June 1, 2009.

Under BAAQMD Regulation 407.1 “[t]he following requirements shall apply to renewals: 1.1 Except as provided in Sections 2-1-407.2 and 407.3, an authority to construct may be renewed one time for an additional two years; 1.2 Except for renewals pursuant to Section 2-1-407.3, renewal is contingent upon meeting the current BACT and offset requirements of Regulation 2-2-301, 302 and 303; and 1.3 Except as provided in Sections 2-1-407.2 and 407.3, an authority to construct that has been renewed shall expire four years after the date of original issuance.” Under Rule “407.2 “If the authority to construct was issued pursuant to an environmental impact report (EIR) that explicitly covered a construction period longer than four years, the authority to construct shall, upon request by the applicant, be renewed for additional two-year terms throughout the construction period covered by the EIR.” And under Rule 407.3 “If substantial use of the authority to construct has begun, either during the initial term or during a renewal term, the authority to construct shall, upon request by the applicant, be renewed for additional two-year terms until the permit to operate is issued, or, if a term of less than two years is requested, for such term as is requested.” Therefore BAAQMD’s extension of the ATC for PG&E’s project was unlawful in the first instance.

During an August 5, 2009 evidentiary hearing before the California Energy Commission (“CEC”) on the Gateway Complaint the Chief Counsel of the Bay Area Air Quality Management District, Mr. Crockett's public statements where that US EPA Region IX had stated that there was no PSD Permit for the Gateway project and PG&E did not seem to indicate that it planned to stop operating the facility since there was no PSD Permit and this was on the record.

9 MR. CROCKETT: This is Mr. Crockett and
10 I am here. I apologize, I have been joining and
11 dropping off because of other commitments.
12 HEARING OFFICER CELLI: Please,
13 Mr. Crockett, you have the floor, go ahead.
14 MR. CROCKETT: Let me just clarify what
15 representation we made in the Environmental
16 Appeals Board proceeding. We have been in
17 discussions with EPA Region 9. EPA Region 9 is

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18 ultimately the agency that has the authority to
19 issue the federal PSD permit. They delegate that
20 authority to us to issue the PSD permit.
21 When the question of whether the PSD
22 permit had expired or not, whether it has been
23 validly extended. When that question arose we
24 brought it to the attention of EPA Region 9 and
25 asked for their interpretation. And they gave us
1 their interpretation, which was that it was not
2 validly extended.
3 And so what we have represented in the
4 Environmental Appeals Board is that we have
5 discussed the issue with EPA Region 9 and they
6 have given us their interpretation.
7 Really we are bound to follow EPA's
8 interpretation on this question. In the
9 delegation agreement it says if any questions of
10 interpretation of PSD requirements come up that we
11 should seek guidance from Region 9 and be bound by
12 that guidance. We have done that.
13 And the interpretation we have gotten
14 from EPA Region 9 is, as Mr. Sarvey said, that the
15 PSD permit expired, was not validly extended at
16 the point of expiry. So that is what we have
17 informed the Environmental Appeals Board, is of
18 that interpretation that we got from EPA Region 9.
[2009-08-05 Hearing Transcript⁷]

At the August 26, 2009 Business Meeting Mr. Galati of PG&E stated “[y]es, I first want to state that PG&E believes that it has all perfect permits” [2009-08-26 Business Meeting Transcript at page 32 lines 12 to 13] This was following CARE’s representative Mr. Boyd giving the Commission fair warning that its actions to approve the amendment allowed PG&E to continue operating the facility without a federal air permit under the Clean Air Act and that this subjected the CEC to liability under the Act.

21 CHAIRPERSON DOUGLAS: Thank you very much. And
22 finally, Michael Boyd, are you on the line?
23 MR. BOYD: Yes, ma'am. I am here.
24 CHAIRPERSON DOUGLAS: All right, please --
25 MR. BOYD: I am Mike Boyd, President of CARE. I

⁷ See http://www.energy.ca.gov/sitingcases/gateway/compliance/2009-08-05_hearing_transcript.pdf

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1 [don't] want to duplicate what Rob said. I also would like to
2 incorporate for the record on behalf of CARE, the comments
3 of ACORN, that they submitted, as well. My comments are
4 that I do not believe that the Commission has authority to
5 approve this amendment because you have knowledge and have
6 known for a significant amount of time that this facility
7 is operating without a federal permit. And because of
8 that, if you do decide to approve this, I wish to let you
9 know that I am going to give you a notice that under the
10 Clean Air Act, to take you guys to federal court for
11 violating the Clean Air Act by giving them the permit to
12 operate when, clearly, they do not have their federal
13 permit. That is all I have to say. Thank you.
[2009-08-26 Business Meeting Transcript at pages 25 to 26]⁸

On September 3, 2009 Mr. Boyd of CARE received a letter from Mr. Crockett of BAAQMD that included as an attachment a Notice of Violation of the CAA by USEPA to PG&E and BAAQMD date stamped received on August 13, 2009. This confirmed Mr. Crockett's August 5, 2009 public statements where correct. USEPA's statement of Statutory and Regulatory Authorities finds "PG&E failed to obtain a valid PSD permit prior to restarting construction of and operating GGS. PG&E's failure to have a valid permit continues to this time...PG&E violated the SIP and Act by restarting construction of and operating GGS, a major new source of air pollution, without obtaining a valid PSD permit."

The statutory authority cited criminal penalties "for any person who knowingly violates any SIP or permit requirement more than 30 days after the date of issuance of a FNOV, Section 113 (c) of the Act provides for criminal penalties, imprisonment, or both. 42 U.S.C. § 7413 (c) (3)."

Since to our knowledge US EPA Region IX has been aware of this matter since Mr. Simpson filed his Appeal to the US EPA Environmental Appeals Board⁹, PG&E has continued the Gateway project operations un-abated purportedly with the CEC's approval we with the utmost of caution notified the CEC on September 3, 2009 of 60-day Notice of Intent to bring Clean Air Act Citizens Suit Pursuant to 42 USC § 7604¹⁰ for the CEC's approval of PG&E's amendment allowing continued operations of the Gateway project under CEC Docket Number

⁸ See http://www.energy.ca.gov/business_meetings/2009_transcripts/2009-08-26_TRANSCRIPT.PDF

⁹ See http://yosemite.epa.gov/OA/EAB_WEB_Docket.nsf/Dockets/PSD+09-02

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00-AFC-1C, Gateway Generating Station, without a PSD permit. Therefore this complaint included CEC's August 26, 2009 actions to approve PG&E's amended permit to the degree CEC includes "any person" under 42 U.S.C. § 7413 (c) (3).

On September 8, 2009, CARE filed a complaint¹¹ requesting that the Federal Energy Regulatory Commission ("FERC" or "Commission") impose civil penalties on PG&E under the Federal Power Act (FPA) for operating the Gateway Generating Station without a permit required under the Clean Air Act. CARE complaint argues before FERC that PG&E's operation of the Gateway Generating Station without required permits violates section 4A of the Natural Gas Act (NGA) and sections 31(a) and 222 of the FPA, as well as the Commission's rules in its request for rehearing of December 19, 2009.¹²

CARE's complaint included an attached August 4, 2008 e-mail¹³ from the Bay Area Air Quality Management District ("BAAQMD")'s attorney that stated "Sandy Crockett provided a summary of the [USEPA Environmental Appeals Board] EAB decision on the Russell City Energy Center [RCEC] PSD permit amendment and the timing implications of at EAB appeal for GGS. District was taken to task by EAB for not complying with noticing requirements of 40 CFR 124 and is concerned that the notice provided for the GGS amendment might also be viewed by EAB as deficient. Sandy is concerned that the EAB plaintiff in the RCEC case would appeal the GGS permit to the EAB on the same grounds. He indicated that the RCEC plaintiff [who is a CARE member] had been in contact with [CARE member] Bob Sarvey, who had submitted public comments on the GGS draft permit. He noted that power plant project opponents such as Sarvey appear to have discovered that the EAB appeal process is an effective means of delaying projects since an EAB appeal stays the PSD permit for 6 months or more even if EAB ultimately rejects the appeal.... Gary noted that under EPA policy, once a facility starts up, a non-major amendment no longer requires PSD review and public notice, so if amendment issuance were to be delayed until after startup the PSD issues could be moot. However, District would appear to be circumventing the regulatory process if it were to delay. If GGS were to

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¹⁰ 42 USC § 7604. Citizen suits

¹¹ See FERC Docket EL09-73 *et al.* See <http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=12137577>

¹² See <http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=12172687>

¹³ See <http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=12140873> Submittal 20090928-5082 at pages 3 and 4.

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withdraw permit amendment until after commissioning it would be hard for District staff to support, and the Hearing Board to grant, a variance.” The BAAQMD at that time and currently has a delegation agreement with USEPA for PSD permits for facilities such as GGS.

CARE believes this agreement should be revoked by the court setting a precedent that affects all other air districts in the State of California along with an enforcement order for compliance with 40 C.F.R. § 124.10 by US EPA going forward. CEC should also be bared by the court from any say over this or other power plant or transmission project Federal permitting; particularly any notice for public comment hearing or participation on any Federal permits since no statutory authority exists to allow CEC to do so and as CEC has demonstrate a propensity in this case to aid and abet PG&E’s noncompliance.

On August 12, 2009 the United States Environmental Protection Agency (“USEPA”) issued its “Finding and Notice of Violation” (“FNOV”) regarding the PSD permit for the project or lack thereof.¹⁴ On September 24, 2009 the United States Department of Justice (“USDOJ”) lodged a “Consent Decree” before the US District Court for the Northern District of California.

The Consent Decree filed with the court included a Complaint which stated “[a]s set forth more fully herein, PG&E constructed the Gateway Generating Station (“GGS”), a natural gas-fired power plant in Antioch, California, without first obtaining an appropriate PSD permit authorizing this construction and without installing appropriate technology to control emissions of nitrogen oxides and carbon monoxide, as required by the Act and the Act’s implementing regulations. As a result of the Defendant’s operation of the GGS following this unlawful construction, in the absence of appropriate controls, excess amounts of nitrogen oxides and carbon monoxide has been and are still being released into the atmosphere.”

On September 28, 2009 PG&E filed its Answer and Motion to Dismiss CARE’s FERC Complaint¹⁵, stating “PG&E completed and began operating the facility in February 2009 in reliance upon the 2001 BAAQMD PSD Permit and subsequent permit extension....PG&E contests that conclusion and continues to believe it lawfully constructed Gateway Generating Station in compliance with, and in good faith reliance upon, the permits issued to it by the BAAQMD.”[PG&E Answer at pages 6 and 7]

¹⁴ The FNOV was attached to CARE’s Complaint.

¹⁵ See <http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=12159219>

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The August 4, 2008 e-mail and the United State's September 24, 2009 Complaint filed in the US District Court for the Northern District of California that "PG&E constructed the Gateway Generating Station ("GGS"), a natural gas-fired power plant in Antioch, California, without first obtaining an appropriate PSD permit authorizing this construction and without installing appropriate technology to control emissions of nitrogen oxides and carbon monoxide" demonstrates that PG&E had actual "knowledge" within the meaning of 15 USC § 3414 (B) that it did not have a valid PSD permit and therefore on September 28, 2009 PG&E knowingly provided "false information" regarding the permit to the Commission in violation of FPA § 824u.

Violations of Emission Standards or Limitations

The Clean Air Act authorizes citizen suits against any person who has violated or is in violation of an "emissions standard or limitation." Section 304(a)(1) of the Act, 42 U.S.C. § 7604(a)(1). The term "emission standard or limitation" is broadly defined to include an emission limitation; emission standard; "any condition or requirement of a permit under part C of subchapter I of this chapter (relating to significant deterioration of air quality)" and any condition or requirement under an applicable implementation plan relating to . . . air quality maintenance plans;" or any other standard or limitation established under "any applicable State implementation plan;" and any requirement to obtain a permit as a condition of operations. .Id. § 7604(f). PG&E has violated and continues to violate an emission standard or limitation within the meaning of the Act because PG&E has failed to comply with the Act's requirements that major stationary sources obtain a permit before constructing, which would have established BACT current to that time, and an operation permit, which would have established emissions limits for the operation of the facility.

III. CONSPIRACY B

We present as additional evidence of other unlawful conspiracies by the US EPA, and BAAQMD, in this case with the City and County of San Francisco (CCSF) its SF Redevelopment Agency, and Lennar BVHP; regarding US EPA's miss-handling of the exposure of the surrounding low-income community of color of Bay View Hunters Point to toxic dust containing asbestos as a result of Lennar's demolition activities at the the former naval shipyard

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and US EPA's subsequent retaliatory actions against critics of cleanup and land dealings with the developer.

On October 6, 2009 CARE, Michael Boyd and Mr. Lynne Brown respectfully provide the following comments and complaint on the proposal to dissolve (disband) the Hunters Point Naval Shipyard (HPS) Restoration Advisory Board (RAB) and to provide a 60-Day Notice of Intent to Bring Citizens Suit under CERCLA¹⁶ and CAA¹⁷. Commenters allege US Navy, US EPA, the Bay Area Air Quality Management District ("BAAQMD"), CCSF, SFRA, and Lennar-BVHP LLC knowingly conspired to release asbestos, a hazardous air pollutant, into the ambient air, thereby knowingly placing persons in imminent danger of death or serious bodily injury in violation of 42 U.S.C. § 7413(c)(5)(A).

We allege that the proposal to dissolve the Hunters Point Naval Shipyard (HPS) Restoration Advisory Board (RAB) is retaliatory action for Mr. Leon Muhammad the Dean of the Muhammad University of Islam, CARE, Mr. Boyd, and Mr. Brown bringing complaints with US Navy, US EPA, OSHA, and US DOJ against BAAQMD, CCSF, SFRA, and Lennar-BVHP LLC, regarding their exposure of the surrounding shipyard community to dust containing asbestos on a continuous unabated basis, with full knowledge and informed consent of US Navy and US EPA.

We also contend that since US EPA is a respondent to an appeal before the US Dept. of Labor Office of Administrative Law Judges¹⁸ because Mr. Boyd is a whistleblower against US EPA before Department of Labor/OSHA for its miss-handling of his individual civil rights complaint and civil rights complaints¹⁹ brought in behalf of CARE with US EPA; therefore at a

¹⁶ Title 42 Chapter 103, Subchapter III § 9659: Citizens suits

¹⁷ 42 USC 7604 authorizes Citizen Suits under the Clean Air Act ("CAA") if you follow the required notice.

¹⁸ This is under Case No. 2009-SDW-00005.

¹⁹ Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. §§2000d to 2000d-7), under Title VI - Law and EPA's Regulations (<http://www.epa.gov/civilrights/t6lawrg.htm>), and Executive Order 12898.

Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. §§2000d to 2000d-7) prohibits recipients of federal financial assistance from discriminating on the basis of race, color, or national origin in their programs or activities. Title VI itself prohibits intentional discrimination.

Under EPA's Title VI implementing regulations found at 40 C.F.R. Part 7 EPA-funded agencies are prohibited from taking acts, including permitting actions that are intentionally discriminatory or have a discriminatory effect based on race, color, or national origin.

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minimum the proposal to dissolve the Hunters Point Naval Shipyard (HPS) Restoration Advisory Board (RAB) should be held in abeyance until such time as the case is decided, and OSHA has an opportunity to investigate whether or not the disbanding of the RAB to be retaliatory action on US Navy's and US EPA's parts for Mr. Leon Muhammad, CARE, Mr. Boyd, and/or Mr. Brown participating in protected activities.

Procedural Background

CARE filed a Title VI complaint with the US EPA on October 20, 2004 against the City and County of San Francisco ("CCSF") and its San Francisco Redevelopment Agency ("SFRA"), with US EPA, Complaint ID 12R-04-R9, alleging that the actions taken by the CCSF and SFRA in regards to the Hunters Point Naval Shipyard violated the Act. The SFRA took action at its April 29, 2004 meeting adopting environmental findings pursuant to the California Environmental Quality Act ("CEQA") and authorizing execution of the following documents with the United States Department of the Navy concerning the former Hunters Point Naval shipyard site: "(1) the Conveyance Agreement, (CA), (2) the Security Services Cooperative agreement, and (3) ancillary related documents [including the Disposition Development Agreement (DDA) between the San Francisco Redevelopment Agency (SFRA) and Lennar-BVHP for the Redevelopment of the Shipyard]; and authorizing related actions; Hunters Point Shipyard Redevelopment project area."

The SFRA took discretionary action on December 2, 2003, by approving the DDA for the development of the Hunters Point Shipyard. Additionally, by and through Mayor Gavin Newsom, CCSF took what is clearly discretionary action by approving (*i.e.*, entering into) the CA with the U.S. Navy. The CA sets a specific timetable for giving CCSF a portion of the Hunters Point Shipyard for residential development (herein referred to as Parcel A), as well as giving commercial development rights to Lennar/BVHP, a private, non-governmental organization.

On August 6, 2007 CARE filed an amendment to the complaint to include the BAAQMD. CARE amended its complaint to include the BAAQMD as a charged party because

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If a member of the public raises a concern that EPA itself has acted in a manner that is discriminatory or does not comply with the President's Executive Order 12898 on Environmental Justice, that issue is referred to EPA's Office of Environmental Justice which works to ensure that EPA's actions are in compliance with the Executive Order.

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CARE alleges that the BAAQMD failed to follow the California Environmental Quality Act (“CEQA”) public hearing procedures designed to produce an effective asbestos dust control plan for Parcel A of the former Hunters Point shipyard, and for their failure to protect the health and welfare of the workers on the project and the surrounding community of Bay View Hunters Point from exposure to asbestos dust which exceeded action limits on a repeated basis as a result of construction activities on Parcel A of the Hunters Point shipyard by Lennar/BVHP. The neglect with which the US Navy and the US EPA treated these complaints stymied CARE’s ability to resolve the problems involved in our complaints.

US EPA denied CARE’s amendment to include BAAQMD on September 3, 2009 in what appears to us to be in retaliation because it took over two years to get a response from US EPA which exceeded US EPA’s statutory deadline of 180 days and in retaliation for naming their permitting delegate BAAQMD in our complaint.

BAAQMD Action Levels

According to BAAQMD’s informational flyer²⁰ the “District based the action levels [used in its Asbestos Dust Mitigation Plan (‘ADMP’)] on health risk assessment protocols established by the State Office of Environmental Health Hazard Assessment (OEHHA). The first action level in the ADMP is set at 1,600 asbestos structures per cubic meter and requires that Lennar notify the Air District and implement more stringent dust control measures. The second action level in the ADMP is set at 16,000 asbestos structures per cubic meter and requires Lennar to stop work until asbestos levels decline.”

The Department of Public Health Current Cumulative Airborne Asbestos results for the Parcel A monitoring stations report several exceedances²¹ over the District’s action levels. According to a San Francisco Department of Public Health (SFDPH) memorandum dated June 2007, there were complaints about dust from the very beginning of Lennar’s grading activities in April of 2006. The California Department of Public Health (CDPH) reviewed asbestos monitoring data collected between Aug. 3, 2006, and Aug. 19, 2007. No asbestos monitoring

²⁰ See <http://www.sfdph.org/dph/files/EHSdocs/ehsHuntersPointdoc/BAAQMDFactSheet.pdf>

²¹ See the San Francisco Department of Public Health Current Cumulative Airborne Asbestos results for the Parcel A monitoring stations: <http://www.sfdph.org/dph/files/EHSdocs/ehsHuntersPointdoc/ASBdata.xls>

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data was available from April 25, 2006, through Aug. 2, 2006. In 2006, SFDPH issued three Notices of Violation to the developer concerning the generation of visible dust.

On July 17, 2007, Dr. Rajiv Bhatia, director of Occupational and Environmental Health for the San Francisco Department of Public Health, requested that ATSDR review and interpret the incomplete logs of air monitoring data, analyze data gaps and evaluate judgments made by SFDPH about the health impacts and significance of exposure to naturally occurring asbestos in the community.

The analysis was completed by the California Department of Public Health (CDPH) on Sept. 10, 2007, and directed to Capt. Susan L. Muza, regional head of ATSDR. Capt. Muza, who met with community leaders in August of 2007, was asked by Minister Christopher Muhammad to recommend a temporary halt to Lennar's construction activities while the ATSDR investigation was underway. Muza made an off-line comment suggesting that the agency had to accept "political realities" in dealing with "political monsters."

The report conducted by the Site Assessment Section of the CDPH for ATSDR reports that "the contractor exceeded the Bay Area Air Quality Management District asbestos action level that triggers work stoppage on 13 percent of excavation days, and because there have been complaints about dust which may cause health concerns, SFDPH should assign a person to continuously monitor dust production and dust abatement during working hours."

We have reason to believe we have been denied our rights to due process under the state and federal constitutions by CCSF, BAAQMD, the US EPA, acting in concert with the Centers for Disease Control and Prevention ("CDC") for documents related to the CDC's Agency for Toxic Substances and Disease Registry's ("ATSDR") handling of an investigation into potential off-site exposure to the public from dust containing asbestos, lead, and other inorganics from the development of and the approval of and non-enforcement of the Naturally-Occurring Asbestos Dust Mitigation Plan for Parcel A, Phase I Development of Hunters Point Shipyard by Lennar Corp.

"The exposures did result in some increased risk for community residents, although it is not possible to quantify this risk." – Thomas Sinks, Ph.D., deputy director, Agency for Toxic Substances Disease Registry. "Prior to the ATSDR cover letter coming out, there seemed to be an indication that due to political realities, ATSDR would not be able to help much with the asbestos issue. Lennar was on a fast track." – Agenda topic at a meeting of ATSDR, CDPH

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(California Department of Public Health), EPA (U.S. Environmental Protection Agency) and community coalition members at the EPA Region 9 Conference Center on Nov. 13, 2007.

Dr. Sinks, in fact, concluded in his cover letter to the SFDPH that “there was clear evidence that levels of asbestos exceeded the mandated thresholds at both the fence line and in the community. The concentrations of dust could not be interpreted because of the sampling methods and ... the exposures did result in some increased risk for community residents, although it is not possible to quantify this risk.”

In a Community Health Update flyer funded by Lennar-BVHP LLC and widely distributed to a hearing before the San Francisco School Board in October of 2007 – where dozens of parents, teachers, administrators and buildings and grounds supervisors testified that toxic dust from the grading activities on Parcel A was causing headaches, nosebleeds, asthma, bronchitis and declining school performance.

On January 5, 2010 the SF Chronicle that it had issued a report that “[t]he report by the Environmental Protection Agency is the latest in a string that have found the project to be safe, despite lawsuits, a record fine and more than three years of heated public hearings as activists seek to halt the work.” See Exhibit I.

US Navy and US EPA must demonstrate their actions to disband the RAB are not based on discrimination and retaliation for engaging in protected activities. US Navy and US EPA must take enforcement actions against BAAQMD, CCSF, SFRA, and Lennar-BVHP LLC for knowingly conspiring to release asbestos, a hazardous air pollutant, into the ambient air, thereby knowingly placing persons in imminent danger of death or serious bodily injury in violation of 42 U.S.C. § 7413(c)(5)(A). The RAB must be reconvened and the US Navy and US EPA must prepare and make public the administrative record as required for every response action. 40 CFR § 300.800

Occupational Safety & Health Administration the permissible exposure limit (PELS)

According to the Occupational Safety & Health Administration the permissible exposure limit (PELS) time-weighted average limit (TWA) for asbestos dust is as follows:

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The employer shall ensure that no employee is exposed to an airborne concentration of asbestos in excess of 0.1 fibers per cubic centimeter of air as an eight (8)-hour time-weighted average (TWA).²²

The San Francisco Department of Public Health maintains a data base for asbestos air monitoring results and other documents related to Parcel A.²³ The San Francisco Department of Public Health Current Cumulative Airborne Asbestos results for the Parcel A monitoring stations lists 0.2121 fiber per cubic centimeter of air as an eight (8)-hour time-weighted average for December 29, 2008 at BAAQMD monitor HV-4 and 0.2613 fiber per cubic centimeter of air as an eight (8)-hour time-weighted average at monitor HV-4 and 0.2968 fiber per cubic centimeter of air as an eight (8)-hour time-weighted average at monitor HV-9 on December 30, 2009 and the report stated grading was ongoing since Lennar's continued operations continue to expose the surrounding low-income community of color to toxic levels of dust containing asbestos and other hazardous materials in excess of OSHA limits unabated by Lennar BVHP, US Navy, US EPA, BAAQMD, and CCSF.

Under the Federal Clean Air Act ("CAA") of 1970²⁴, the US EPA has been regulating Asbestos Containing Materials ("ACM") that contains more than 1 percent asbestos. Regulations issued by the Occupational Safety and Health Administration ("OSHA") provide, with respect to the permissible levels of asbestos to which employees protected by the Occupational Safety and Health Act²⁵ may be exposed, one standard for regulating general industry and another for regulating construction work. Both standards contain an action level defined as "an airborne concentration of asbestos . . . of 0.1 fibers per cubic centimeter²⁶ . . . calculated as an eight (8)-hour time-weighted average."²⁷ Under both standards, if employees are exposed to asbestos at or

²² See Regulations (Standards - 29 CFR) Asbestos. - 1910.1001(c):
http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=9995

²³ See <http://www.sfdph.org/dph/EH/HuntersPoint/default.asp>

²⁴ 42 U.S.C. §§ 7401-7671 (1988 & Supp. 1992).

²⁵ 29 U.S.C. §§ 651-675 (1988 & Supp. 1992).

²⁶ On May 30, 2008 Monitoring Station HV-9 reported 0.1388 fibers/cc which is above the permissible levels of asbestos to which employees protected by the Occupational Safety and Health Act may be exposed. No NOV has been issued against Lennar-BVHP, LLC by BAAQMD. For Quantitative Data (e.g. charts, tables, and graphs) see <http://www.sfdph.org/dph/files/EHSdocs/ehsHuntersPointdoc/ASBdata.xls>

²⁷ 29 C.F.R. § 1910.1001(b) (1993); 29 C.F.R. § 1026.58(b) (1993).

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above the action level, the employer must take specified compliance actions, including air monitoring, employee training, and medical surveillance.

On November 5, 2007 CARE demanded "the Bay Area Air Quality Management District (BAAQMD and/or District) take immediate enforcement action against the City and County of San Francisco's redevelopment project on Parcel A at Bay View Hunters Point comprises 75 acres located in the northern portion of the Hunters Point Shipyard. Lennar Bay View Hunters Point, LLC (Lennar BVHP) plans to construct approximately 1600 attached single family homes."

On November 19, 2007 BAAQMD responded by stating that the City and County of San Francisco Planning Department and San Francisco Redevelopment Agency was the Lead Agency on the Parcel A project's environmental review.

BAAQMD appears to interpret this to mean that this covers their responsibility for environmental review on the Asbestos Dust Control Plan the District had approved for the project in 2006 three months after Lennar had commenced demolition activities on Parcel A resulting in the disturbance of soil containing asbestos.

On October 1, 2008 the BAAQMD first publicly disclosed that it had reached a \$515,000 settlement²⁸ with Lennar – BVHP, LLC over alleged air quality violations at the Hunter's Point Parcel A development. The settlement, finalized in early September, was announced at the Air District's October 1st board meeting.

Commenters allege US Navy, US EPA, BAAQMD, CCSF, SFRA, and Lennar-BVHP LLC knowingly conspired to release asbestos, a hazardous air pollutant, into the ambient air, thereby knowingly placing persons in imminent danger of death or serious bodily injury in violation of 42 U.S.C. § 7413(c)(5)(A).

Appellant Mr. Boyd²⁹ believes US EPA's failure to properly process his individual complaint and complaints for CARE is based on discrimination based on race and in retaliation for engaging in a protected activity including but not limited to disclosing the presence of dust containing naturally occurring asbestos and other hazardous materials in regard to his CFC

²⁸ See http://www.baaqmd.gov/~media/Files/Board%20of%20Directors/2008/brd_min_10-01-08.ashx and http://www.baaqmd.gov/~media/ss_min_011209.ashx

²⁹ Before the US Dept. of Labor Office of Administrative Law Judges, Case No. 2009-SDW-00005.

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complaint (OCR ID 16R-05-R9) and the CARE shipyard complaint (OCR ID 12R-04-R9 as amended). His September 8, 2005 Title VI charge against CFC states "I allege that I have been the victim of discrimination by so called representatives of CFC based on my race as a person of Caucasian ethnicity in his employment, compensation, and termination of employment.³⁰ "

Mr. Boyd alleges he is being retaliated against by US EPA in concert with the City and County of San Francisco, the San Francisco Redevelopment Agency, the US Navy and the Bay Area Air Quality Management District ("BAAQMD") for participating in protected activities regarding US EPA's handling of the Parcel A clean up, and demolition activities there by Lennar Corporation that disturbed asbestos dust exposing the surrounding community that is already disparately burdened by environmental toxins.

The community co-chair of the Hunters Point Shipyard Restoration Advisory Board ("RAB") elected by other RAB members from the community to serve for the 2009 year provides a case in point for retaliation and discrimination based on race and religion for his continuously raising the issue of the surrounding community being exposed to asbestos dust from the shipyard Parcel A development. The treatment of Mr. Leon Muhammad, the Dean of the Muhammad University of Islam located in Bay View Hunters Point San Francisco California, provides a supporting evidence to the fact that USEPA has a "pattern and practice" of retaliation against anyone who raises the issue of the presence of dust containing naturally occurring asbestos as will be the case if US Navy in concert with USEPA is allowed to disband the community's shipyard Restoration Advisory Board (RAB) created as part of the CERCLA³¹ community acceptance criteria for the clean-up of superfund sites.³²

We allege the disbanding of the RAB is discrimination against Mr. Muhammad based on race and religion and in retaliation for the Nation of Islam's January 29, 2008 *Final Call* article titled Toxic legacy of the clean-up at the Hunters Point Shipyard³³ *Coalition fights community*

³⁰ Mr. Lynne Brown (who is African American) was the CFC co-chair RAB co-chair and a signer of the CFC/US EPA TAG Grant.

³¹ Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9610

³² See http://www.bracpmo.navy.mil/base_docs/hps/documents/public_notices/HPS_PublicNoticeRABDissolutionEmail090209.pdf

³³ This article is a copy of *Toxic Terror in San Francisco* by Charlene Muhammad, Staff Writer *Final Call* Jan 29, 2008. Following in that great tradition of the Nation of Islam's publications, *The Final Call Online Edition* aims to
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exposure to asbestos, other hazards and in retaliation for this Coalition taking control of the RAB in 2009.

A cross section of Black, Latino, Asian-Pacific Islander and progressive Whites are determined to win a battle with city and congressional leaders over what activists call one of the most horrific cases of environmental racism and political double dealing in the country.

The fight began when children at the Muhammad University of Islam (MUI), which sits at the top of Bay View Hunters Point, were unknowingly exposed for months, maybe longer, to asbestos and other cancer-causing toxins when the Lennar Corporation a multi-billion dollar housing developer began grading a hill directly beside the school to make way for 1,500 homes on the site of the old Hunters Point Naval Shipyard.

MUI opened its doors to the community in 1997 and moved to its current location in Hunters Point in 2002. It currently educates Muslim children as well as children from across the city. Currently the school educates about 100 students and often, as they played outside during recess and physical education classes, thick, toxic dust would begin to blow in a tornado-like pattern over the schoolyard.

During that same period, Leon Muhammad, MUI's dean, noticed that the children began complaining about breathing problems, and experiencing chronic nosebleeds, skin rashes, asthma and eye swelling. One student became so ill she was hospitalized for a month for bronchitis.

Catherine Muhammad's son developed skin rashes, but his worst experience was being sent home from school after his actual eyeball swelled up. Her two-year-old daughter underwent surgery and a three-day hospital stay to remove hardened mucous from her left lung.

One of the reasons given by US Navy for disbanding was because of "the RAB voting to stop all work on HPS due to concerns about a developer's construction work on the developer's property adjacent to HPS."³⁴ Mr. Leon also has agreed that US EPA in concert with US Navy disbanded the RAB based on discrimination based on race and religion, and retaliated against RAB members therefore. Clearly the RAB members (and the community as a whole) is being

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serve as an essential source of information for those who thirst for uncompromised reporting in today's arena of corporate driven media.

See http://www.finalcall.com/artman/publish/National_News_2/Toxic_Terror_in_San_Francisco_4345.shtml

³⁴ See http://www.bracpmo.navy.mil/base_docs/hps/documents/public_notices/HP_RAB_01SEP09.pdf at page 3.

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retaliated against by US EPA for engaging in a protected activity; including but not limited to disclosing the presence of dust containing naturally occurring asbestos.

Respondent US EPA's improper handling of CARE's 2007 amendment to CARE's 2004 Civil Rights Act complaint (OCR ID 12R-04-R9) to include BAAQMD regarding the HPS cleanup reflects Respondent US EPA is clearly intent to continue to retaliating against Mr. Boyd for his participation in protected activities. In this matter CARE amended its 2004 complaint to include BAAQMD because Respondent failed to properly process it. It is now improper for the Respondent to open a new complaint years later and then deny the administrative complaint because it is untimely now; due to Respondent's own actions to make it untimely. See Exhibit 2 September 2, 2009 letter from US EPA rejecting administrative complaint.

CARE provided December 9, 2009 comments and a request for an extension period in the consent decree in *United States v. Lennar Communities Development, Inc.*, D.J. Ref. 90-5-2-1-08655. CARE respectfully request your Honor grant such extension request if you deem it appropriate.

Citizen Suits

CERCLA³⁵, like many environmental statutes, provides for citizen suits. These permit citizens to ensure that statutes are complied with via the use of civil actions. If, for example, the US EPA issues an order under CERCLA that is not complied with, or an environmental regulation has been breached, and the US EPA does not pursue the matter, an ordinary citizen

³⁵ The Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601-9675, commonly referred to as "CERCLA" or "Superfund," was enacted by Congress in 1980. CERCLA was designed primarily to respond to situations involving the past disposal of hazardous substances. CERCLA refers to the actions it mandates to address inactive hazardous waste sites as "response actions." There are two basic response actions: "removals" and "remedial actions." A removal action is usually taken in response to an imminent danger to human health or the environment. Remedial actions, on the other hand, are long-term cleanups designed to permanently address the threat posed by contamination at a site. While removals may only take weeks, remedial actions may take years or even decades to complete.

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)
CERCLA is the primary federal law addressing the problem of releases of hazardous substances into the environment. It was significantly amended in 1986 by SARA. Federal agencies are required to comply with CERCLA and the NCP (42 U.S.C. § 9620(a)(1)). It requires the federal government and other responsible parties to clean up inactive hazardous waste sites. CERCLA requires a response where necessary to protect human health and the environment when there is a release of a hazardous substance into the environment or when there is a release of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare. Given this broad authority, CERCLA applies to most federal facility releases or threatened releases of hazardous substances, pollutants, or contaminants.

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can launch a civil suit that would, if successful, compel the offending party to comply with the statute. A successful citizen suit does not result in any benefit to the citizen in the form of compensation for damages; at best, the polluter pays for clean-up and for the legal costs incurred by the citizen in the filing of the suit.

Feasibility Study (FS)

A Feasibility Study should have been conducted on the Asbestos Dust Mitigation Plan ("ADMP") approved by BAAQMD, to whom US EPA's had delegated its authority over such plans under the CAA. A Feasibility Study ("FS") must be undertaken prior to conducting Remedial Action in this case to prevent the disturbance of soil containing asbestos dust. The FS "means a study undertaken by the lead agency to develop and evaluate options for remedial action (40 C.F.R. § 300.430(e)). The FS emphasizes data analysis and is generally performed concurrently with the remedial investigation (RI), using data gathered during the RI. The RI data are used to define the objectives of the response action, to develop remedial action alternatives, and to undertake the initial screening and detailed analysis of the alternatives . . ." (40 C.F.R. §§ 300.5 and 300.430(e)(1)).

The FS is the second step in the "investigation" stage of the remedial action process. The primary purpose of the FS is to ensure that appropriate remedial alternatives are developed and evaluated so that relevant information concerning the remedial action options can be presented to a decision-maker and an appropriate remedy selected. To do this the lead agency must identify potential treatment technologies and screening technologies, assemble technologies into alternatives, screen the alternatives preserving an appropriate range of alternatives, identify ARARs, and perform a detailed analysis of alternatives (40 C.F.R. § 300.430(e)). Within the FS, an ARARs table is developed to document all federal and state ARARs with which the final remedy must comply. The FS must utilize nine criteria to assess each alternative and to compare alternatives: (1) protectiveness of human health and the environment; (2) ARARs compliance; (3) long-term effectiveness and permanence; (4) reduction of toxicity, volume or mobility through treatment; (5) short-term effectiveness; (6) implement ability; (7) cost; (8) state acceptance; and (9) community acceptance (40 C.F.R. § 300.430(e)(9)).

A proposed plan must outline the preferred remedial alternative and summarize the other alternatives considered in the FS. The proposed plan should be written in a manner that can

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be easily understood by the public. A clear statement of the restrictions associated with the proposed action should be included to allow the public to be fully informed about the proposed action. The remedy selection process under CERCLA are described in the National Contingency Plan (NCP) (40 CFR Part 300.430(a)(1)(iii)) and its preamble (55 FR 8706). Under the NCP, *community acceptance is one of the nine criteria for selecting a CERCLA remedy*. While community acceptance is an essential ingredient in making the final remedy selection, it is not always possible to accomplish all the community's goals. It is the Department of Defense (DoD) responsibility to make the final remedy selection in accordance with applicable laws and requirements and to ensure that it will be protective of human health and the environment, as well as be compatible with, to the extent reasonably practicable, community reuse plans. This final remedy selection is formalized through the Record of Decision (ROD), which will be compatible with any ICs that may be implemented at the site.

\$82 million in federal funding for the toxic cleanup of the Hunters Point Shipyard

On March 7, 2009 CARE filed a request with US Navy under the Freedom of Information Act ("FOIA") requesting among other things "[a]ll records and other communications (in electronic format where available) regarding the expenditure of the \$82 million in federal funding for the toxic cleanup of the Hunters Point Shipyard superfund site". In July 2009 a partial response was provided to the FOIA in the form of various of contract documents for various cleanup activities purportedly taking place at the shipyard. A spread sheet of the documents was prepared to list the expenditures and other transactions reported. The data provided was unresponsive to the request and added confusion by reporting expenditures totaling \$357,229,399.23 far in excess of what was publicly reported; \$82 million.

US Navy refused to provide the following information in response to the March FOIA request; all records and other communications (in electronic format where available) regarding the \$82 million in federal funding for the toxic cleanup of the Hunters Point Shipyard superfund site announced by House Speaker Nancy Pelosi and San Francisco Mayor Gavin Newsom on December 19, 2007 in press releases; all records and other communications (in electronic format where available) regarding and a list of all persons in attendance of the meeting in early January to announce the \$82 million in federal funding for the toxic cleanup of the Hunters Point Shipyard superfund site announced by the Fogcityjournal on January 3, 2008; and, all records

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and other communications (in electronic format where available) regarding the \$82 million in federal funding for the toxic cleanup of the Hunters Point Shipyard superfund site includes every and all communications with all federal state and local agencies, Lennar Homes of California and any of its agents, affiliates, subsidiaries, or joint venture partners, and any other person or corporation.

CERCLA Section 113(k) requires the establishment of administrative records upon which the President shall base the selection of a response action. 42 U.S.C. §9613(k). The US Navy has been using its response action authorities under CERCLA to conduct cleanup at Hunters Point. That being the case, the US Navy is responsible for complying with all requirements of CERCLA and the NCP. One such requirement is the “Administrative Record and Participation Procedure” requirements of 42 U.S.C. § 9613(k) and 40 CFR Part 300, Subpart

The US Navy has established a RAB at Hunters Point. The US Navy has provided certain documents on proposed cleanup actions to the RAB and sought their comments. Nonetheless, notice to the RAB does not constitute nor does it meet the notice required by 40 CFR § 300.820, or the public participation requirements of 40 CFR §§300.820 and 825.

A few of the most significant deficiencies and violations of law are:

A separate administrative record is required for every response action. 40 CFR § 300.800. It appears the US Navy only kept a chronological file of some relevant documents.

There is no evidence that the administrative record for each response was placed in a public repository within regulatory timeframes nor that the record was made available and notice of same was published in a local newspaper. 40 CFR §§ 300.805 and 820.

There is no evidence that the US Navy has taken public comment on any response action, and if it did, the publication of the decision and the public comments received and the Army’s responses are not in an administrative record. 40 CFR § 300.820. Furthermore, evidence of compliance with the community relations requirements for each response of 40 CFR § 300.415(m) is not evident from the index.

There is no indication that the EPA’s comments on the Navy’s investigation reports, planned cleanup actions, data analysis, or other regulatory technical reviews are contained in the administrative record for each cleanup action the Navy chose to take. Thus, there likely are other documents which the Navy considered in deciding to take action that are not contained in the record. 40 CFR §300.800(a). All documents that form the basis for the selection of the response

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are to be placed in the record. Documents required to be included are relevant documents that were relied on in selecting the response action, as well as, relevant documents that were considered but ultimately rejected as a basis for the response action. See Preamble to the NCP (46 Fed. Reg. 8807, March 8, 1990) and EPA AR Guidance.

There are no decision documents that comply with the NCP and EPA guidance. In accordance with US EPA guidance, if the Navy was using removal authorities then an action memorandum is required. Decision documents are required to be in the administrative record as required by 40 CFR §300.825.

We incorporate attached evidence that US EPA's so-called consent agreement is a clear effort to retaliate against CARE's members and officers for bringing complaints and exercising our rights to judicial review; thereby rewarding criminal polluters like PG&E by making the Consent Decree inappropriate, improper, as well as inadequate. This makes it no surprise that PG&E would be willing to agree to the consent decree as proposed.

Appellant Mr. Boyd²⁶ believes US EPA's failure to properly process his individual complaint and complaints for CARE is based on discrimination based on race and in retaliation for engaging in a protected activity including but not limited to disclosing the presence of dust containing naturally occurring asbestos and other hazardous materials in regard to his CFC complaint (OCR ID 16R-05-R9) and the CARE shipyard complaint (OCR ID 12R-04-R9 as amended). On December 15, 2009 the Administrative Law Judge, Case No. 2009-SDW-00005 issued Exhibit 3 an order for evidentiary hearings in Mr. Boyd's case to demonstrate that the ALJ seems to indicate that there are sufficient facts to go to trial. In Mr. Boyd's whistleblower appeal against the US EPA.

Exhibit 4 is a letter dated December 30, 2009 which we allege demonstrates US EPA is continuing to retaliate harass and intimidate Mr. Boyd by continue to purport to process their untimely "investigations" of Mr. Boyd's Civil Rights Act complaint to US EPA OCR and denying his request for administrative delay during the pendency of his appeal before the Administrative Law Judge in his Case No. 2009-SDW-00005.

Commenters ask your honor to grant an administrative delay during the pendency of Mr. Boyd's appeal before the Administrative Law Judge in his Case No. 2009-SDW-00005.

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IV. COMMENTS OF GGU, ROBERT SARVEY AND ROBERT SIMPSON

We incorporate the comments submitted by Golden Gate University (GGU) dated November 4, 2009 and those submitted by Robert Sarvey and Robert Simpson.

CARE agrees whole heartedly with GGU that “[t]his Decree appears to be based on a fundamentally incorrect premise – that PG&E operated and constructed Gateway Generating Station (GGS) in good faith with no knowledge that it was breaking the law. To the contrary, as the relevant documents demonstrate, PG&E knew it needed to change its air permit months before it constructed and started operating GGS. Instead of waiting for the required approval, PG&E took a calculated risk when it finished construction and withdrew a pending air permit application. This illegal approach has not only resulted in the emission of tons of harmful air pollution without the required controls but also obstructed the community’s ability to have a say in decisions affecting it. . . . Rather than penalizing PG&E for its illegal approach, the Decree is essentially rewarding PG&E with a much better deal than other similarly situated, law abiding, companies are currently receiving through the permitting process. Thus, not only is this deal unfair to the low income and minority community living next to and around GGS, but it is unfair to other utilities that are going through the PSD permitting process. . . . This unfair and unjust Decree is unacceptable. PG&E should be held liable for its actions by requiring it to meet the best available technology control standards and by penalizing it to deter future violations of the law. Therefore, the United States should withhold its consent of this Decree pursuant to Paragraph 43 of the Decree.”

CARE also agrees with Mr. Sarvey that your Honor should “[p]ermanently enjoin Defendant PG&E from operating the Gateway Generating Station except in accordance with the Clean Air Act and any applicable regulatory requirements. . . . Order Defendant PG&E to remedy its past violations by, inter alia, requiring PG&E to apply for all necessary permits in conformity with the requirements of the PSD provisions of the Act. . . . Order Defendant PG&E to remedy its past violations by, inter alia, requiring Defendant to install, as appropriate, the best available control technology at the GGS for each pollutant subject to regulation under the Act, and to take such other measures as are necessary to bring the Gateway Generating Station into compliance

Continued from the previous page

³⁶ Before the US Dept. of Labor Office of Administrative Law Judges, Case No. 2009-SDW-00005.

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with the PSD provisions of the Act...[and therefore].. [a]ssess an appropriate civil penalty³⁷ against Defendant PG&E". CARE however asks that your honor also assess criminal penalties where appropriate as well.

CARE agrees with Robert Simpson as well that "[t]he complaint and consent decree does not consider significant factors. On its face it does not examine the complete context of how this facility came to operate illegally and how the California power plant licensing system serves to violate the Clean Air Act. The Gateway facility did not magically appear one day and accidentally operate in violation of the Clean Air Act. This is the result of a systematic process coordinated by the California Energy Commission (CEC) and associated Air Districts cooperating with power plant developers to violate the Clean Air Act. The consent Decree neither addresses these issues nor cures the system that allows power plants to be constructed and operate despite the provisions of the Clean Air Act. Power plant licensing in the S[t]ate of California is guided by the Warren Alquist Act. The Warren Alquist Act interjects itself and the CEC between California Air Districts and their Compliance with their State Implementation Plans of the Clean Air Act, with a parallel process known as a Preliminary Determination of Compliance (PDOC) and a final Determination of Compliance(FDOC) which stands in the place of a Draft permit and an Authority to Construct (ATC). The process serves to derail, public participation and review. It is at odds with clear Congressional direction for 'informed public participation,' see CAA § 160(5), 42 U.S.C. § 7470(5), and § 124.10's expansive provision of notice and participation rights to members of the public.' EAB PSD Remand 08-01 page 26...The facility does not simply operate without a PSD permit, it operates without a Title IV or Title V permit. It operates in violation of the New Source Review provisions of the Clean Air Act, without a legal Authority to Construct (ATC) or any Operating Permit. It operates in conflict with its CEC license. The demonstration of the facility operating without permits is the result of years of work by myself, Robert Sarvey and organizations like Golden Gate University Environmental Law and Justice Clinic, CALifornians for Renewable Energy (CARE), and Communities for a Better Environment (CBE) and therefore I concurrently incorporate their comments herein.....In the Remand of the PSD permit issued by the Bay Area Air Quality

³⁷ We assume this means all penalties available under CAA and FPA pursuant to CARE's FERC complaint where we believe your Honor also has jurisdictional authority.

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Management District for the planned Russell City Energy Center (actually located in the City of Hayward), the EAB implicated both the CEC and the Air District in its Remand. The EAB held that: 'The District's almost complete reliance upon CEC's certification related outreach procedures to satisfy the District's notice obligations regarding the draft permit resulted in a fundamentally flawed notice process.' page 3 'the pivotal importance to Congress of providing adequate initial notice within EPA's public participation regime under 40 C.F.R. part 124, see supra Part IV.B.,' EAB 08-01 page 39....The United States should investigate how the CEC approved the continued operation of GGS in an "Order Amending the Energy Commission Decision to Modify Equipment and Change Air Quality Conditions of Certification"[] despite pending complaints at the CEC regarding a lack of a PSD permit. and in the Shadow of the EPA Notice of Violation. The CEC's decision to approve this facility in clear violation of the Clean Air Act should not be ignored in this proceeding." CARE provides a copy of the Remand Order in EAB PSD Docket 08-1 as Exhibit 5.

V. **THE CONSENT DECREE IS INADEQUATE IN LIGHT OF THE US EPA ADMINISTRATOR'S FINDINGS REGARDING PUBLIC ENDANGERMENT DUE TO GREENHOUSE GASES**

On December 7, 2009, the US EPA Administrator signed two distinct findings regarding greenhouse gases under section 202(a) of the Clean Air Act:

* Endangerment Finding: The Administrator finds that the current and projected concentrations of the six key well-mixed greenhouse gases--carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF₆)--in the atmosphere threaten the public health and welfare of current and future generations.

* Cause or Contribute Finding: The Administrator finds that the combined emissions of these well-mixed greenhouse gases from new motor vehicles and new motor vehicle engines contribute to the greenhouse gas pollution which threatens public health and welfare.³⁸

No BACT analysis is provided for the public to consider greenhouse gas emissions (as regulated pollutants) emitted from GGS. Carbon Dioxide, CO₂, and Nitrous Oxide, N₂O, are

³⁸ These findings were signed by the Administrator on December 7, 2009. On December 15, 2009, the final findings were published in the Federal Register (www.regulations.gov) under Docket ID No. EPA-HQ-OAR-2009-0171. The final rule will be effective January 14, 2010. <http://www.epa.gov/climatechange/endangerment.html>

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components of the emissions expected to indirectly result from the GGS³⁹ that must be included as regulated emissions, and the quantities produced projected. The United States Environmental Protection Agency (USEPA) website⁴⁰ recognizes the climate change impacts of these emissions and yet these impacts were not included as pollutants.

This BACT analysis needs to identify the siting of new fossil fuel power plants locations so as not to disparately place environmental burdens upon low-income, minority residents, as the TGGS has significantly increased emissions of greenhouse gases responsible for global warming. The United States Supreme Court has affirmed that “[t]he harms associated with climate change are serious and well recognized,” *Massachusetts v. EPA*, 549 U.S. 497, 127 S. Ct. 1438, 1455 (April 2, 2007). In that case, the Supreme Court ruled that the Clean Air Act (CAA or Act) authorizes regulation of greenhouse gases (GHGs) because they meet the definition of air pollutant under the Act.⁴¹ This is the provision entitling CARE to commence a civil action against the PG&E, Lennar, CCSF, SFRA, US EPA, “any person” who violates the Clean Air Act including the President.

The Clean Air Act requires that the proposed facility be subject to the best available control technology for each pollutant subject to regulation that results from the facility. CAA § 165(a)(4). The Act defines “best available control technology” as “the maximum degree of reduction of each pollutant . . . which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such facility” *Id.* § 169(3). US EPA’s guidance provided in the New Source Review Workshop Manual (draft Oct. 1990) outlines the analytical steps typically followed to make this case-by-case determination. *See Northern Mich. U.*, PSD Appeal No. 08-02, slip op. at 12. The April 2, 2007 Supreme Court ruling recognizing “GHGs” as a form of “pollutant” extended the list of qualified gases covered by the CAA, these included but are not limited to CO₂, Methane (CH₄), and Nitrous Oxide (N₂O). “Non-CO₂ greenhouse gases are a significant

³⁹ Greenhouse Gases

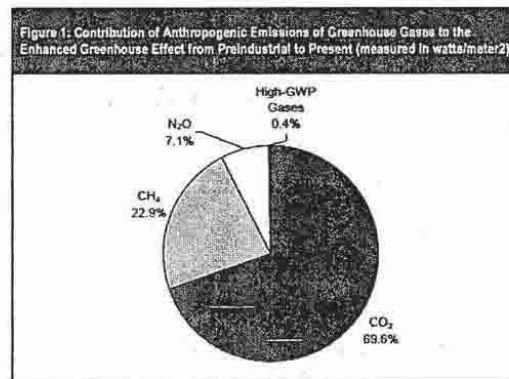
Greenhouse gases are any gas that absorbs infrared radiation in the atmosphere. Greenhouse gases include, but are not limited to, water vapor, carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrochlorofluorocarbons (HCFCs), ozone (O₃), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF₆). [ARB CEQA Functional Equivalent Document at J-25]

⁴⁰ <http://epa.gov/climatechange/index.html>

⁴¹ 42 USC § 7604. Citizen suits

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contributor to climate change. Figure 1 shows the global contribution of human-related greenhouse gas emissions to the enhanced greenhouse gas effect since Preindustrial times. Approximately 30 percent of the human-induced greenhouse effect can be attributed to the non-CO₂ greenhouse gases. EPA collects data on international historical and projected greenhouse gas emissions and estimates the costs of reducing these emissions, and has issued several analytical reports on international emissions projections and mitigation opportunities for the non-CO₂ greenhouse gases.⁴²



Source: IPCC, 2001

Carbon Dioxide was not analyzed for BACT

CARE disagree with the consent decree because it does not consider greenhouse gas emissions as regulated pollutants and the combustion of coal is the leading source of greenhouse gas production worldwide. Carbon Dioxide, CO₂, Methane, and Nitrous Oxide, N₂O, are components of the emissions expected from the Black Mesa Complex and yet they are not included as regulated emissions. Agencies must prepare an EIS for "major Federal actions significantly affecting the quality of the human environment." Id. § 4332(2) (C). The regulations define "human environment" broadly to "include the natural and physical environment and the relationship of people with that environment," and note that "[w]hen an [EIS] is prepared and economic or social and natural or physical environmental effects are interrelated, then the [EIS]

⁴² See <http://www.epa.gov/climatechange/economics/international.html>

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will discuss all of these effects on the human environment." 40 C.F.R. § 1508.14

The United States Environmental Protection Agency (US EPA) website⁴³ recognizes the climate change impacts of these emissions and yet these impacts were not included as pollutants. This project has been located so as to disparately place environmental burdens upon low-income, minority residents, and this project significantly increases emissions of greenhouse gases responsible for global warming. The United States Supreme Court has affirmed that "[t]he harms associated with climate change are serious and well recognized," *Massachusetts v. EPA*, 549 U.S. 497, 127 S. Ct. 1438, 1455 (April 2, 2007). In that case, the Supreme Court ruled that the Clean Air Act (CAA or Act) authorizes regulation of greenhouse gases (GHGs) because they meet the definition of air pollutant under the Act which is therefore subject to the Citizen Suit provisions of the CAA.⁴⁴ This is the provision of the Act that allows CARE and Vernon Masayesva to file suit against Peabody, OSM, and US EPA for violating the Act for the EIS failing to consider the impacts of these emissions.

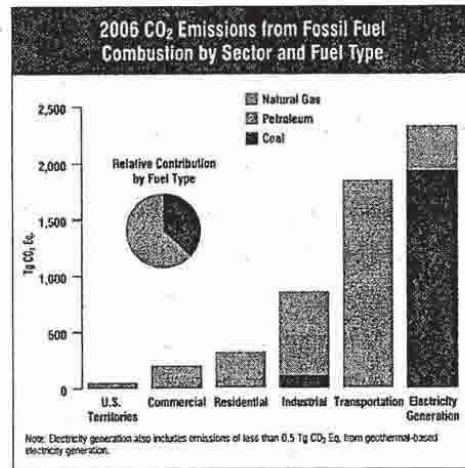
According to USEPA the "largest source of CO₂ emissions globally is the combustion of fossil fuels such as coal, oil and gas in power plants, automobiles, industrial facilities and other sources."⁴⁵

⁴³ <http://epa.gov/climatechange/index.html>

⁴⁴ 42 USC § 7604. Citizen suits

⁴⁵ The source of this information is the USEPA website at: http://www.epa.gov/climatechange/emissions/co2_human.html and it includes the following figure that demonstrates coal is the largest electricity generation fuel source for CO₂ production by fuel type in 2006.

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Source: *U.S. Greenhouse Gas Emissions Inventory*
(y-axis units are teragrams of CO₂ equivalent)

Carbon dioxide (CO₂) was not subject to US EPA's regulations until the United States Supreme Court affirmed that "[t]he harms associated with climate change are serious and well recognized," *Massachusetts v. EPA*, 549 U.S. 497, 127 S. Ct. 1438, 1455 (April 2, 2007). In that case, the Supreme Court ruled that the Clean Air Act (CAA or Act) authorizes regulation of greenhouse gases (GHG) s because they meet the definition of air pollutant under the Act.

US EPA is well aware that the Environmental Appeals Board (EAB) has returned multiple PSD permits for failing to consider whether CO₂ is a pollutant "subject to regulation" under the Clean Air Act. *See In re Deseret Power Elec. Coop.*, PSD Appeal No. 07-03 (EAB Nov.13, 2008); *In re Northern Mich. University Ripley Heating Plant*, PSD Appeal No. 08-02 (EAB Feb.18, 2009). In light of these decisions, US EPA Region 9 also withdrew portions of the PSD Permit issued to Desert Rock Energy Company in order to reconsider the issue of whether CO₂ is a pollutant subject to regulation. Yet US EPA did not require a PSD permit for the Black Mesa Complex and thereby failed to account for how many tons of CO₂ would be produced each year (directly or indirectly) without any discussion of these contentious issues whatsoever. EPA must revise the proposed permit to explain US EPA's position on BACT for CO₂ so that the

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public can comment on the control levels selected or US EPA's rationale for refusing to impose such controls.⁴⁶

While Commentors believe US EPA should be well informed of the legal and technical issues surrounding the control of CO₂, commenters nonetheless provide the following summary. The Clean Air Act defines BACT as an emission limitation based on the maximum degree of reduction of *each pollutant subject to regulation under this Act.*" CAA § 169(3) (emphasis added). Thus, a BACT analysis for carbon dioxide must be completed if: (1) carbon dioxide is a "pollutant"; and (2) if it is "subject to regulation" under the Act.

Carbon Dioxide is a Clean Air Act "Pollutant"

The Supreme Court of the United States has held unequivocally that carbon dioxide is a "pollutant" as that term is used in the Act. *See Massachusetts v. EPA*, 549 U.S. 497, 528- 29 (2007). In *Massachusetts*, "a group of States, local governments, and private organizations," challenged EPA's contention that it lacked authority under the Clean Air Act to regulate greenhouse gas pollution, including carbon dioxide emissions, from motor vehicles. *Id.* at 504. The Court sided with challengers, ruling that "greenhouse gases fit well within the Clean Air Act's capacious definition of 'air pollutant.'" *Id.* at 532.

Carbon Dioxide is "Subject to Regulation"

Congress first enacted the PSD program (and the BACT requirements) as part of the 1977 Clean Air Act Amendments. One year later, EPA finalized its first regulations governing the PSD permitting process. In the preamble to those regulations, US EPA stated: Some questions have been raised regarding what "subject to regulation under this Act" means relative to BACT determinations. . . . "[S]ubject to regulation under this Act" means any pollutant regulated in

⁴⁶ For example, commenters should be informed if EPA's decision not to address controls for CO₂ is based on the memo from former EPA Administrator Stephen Johnson entitled "EPA's Interpretation of Regulations that Determine Pollutants Covered by Federal Prevention of Significant Deterioration (PSD) Permit Program" (Dec. 18, 2008). This memo was issued in violation of the procedural requirements of the Administrative Procedure Act and conflicts with the plain language of the Clean Air Act. As a result, Administrator Jackson granted a petition for reconsideration on February 17, 2009 noting that the Johnson memo does not represent the "final word on the appropriate interpretation of Clean Air Act requirements." *See* Letter from Administrator Jackson, EPA, to David Bookbinder, Sierra Club (Feb. 17, 2009). EPA is in the process of formal rulemaking to resolve the meaning of the phrase "subject to regulation." *See* 74 Fed. Reg. 51535 (Oct. 7, 2009). If EPA Region 9 now contends that the Johnson memo does represent the "final word" without further discussion, commenters need to be made aware of this claim so that the appropriate record of responses can be prepared.

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Subchapter C of Title 40 of the Code of Federal Regulations for any source type. 43 Fed. Reg. 16388, 16397 (June 19, 1978) (*hereinafter* the “1978 Preamble”).

As US EPA is aware, there are multiple examples of regulations in 40 CFR Subchapter C that specifically apply to CO₂. Two of these. Section 821(a) of the 1990 Clean Air Act Amendments provides: Monitoring. – [US EPA] . . . shall promulgate regulations within 18 months after the enactment of the Clean Air Act Amendments of 1990 to require that all affected sources subject to Title [IV] of the Clean Air Act shall also monitor carbon dioxide emissions The regulations shall require that such data be reported to the Administrator. *See* 42 USC § 7651k note; Pub. L. 101-549; 104 Stat. 2699. In 1993, when US EPA promulgated the regulations implementing this carbon dioxide monitoring and reporting program, it did so by amending Subchapter C of Title 40 of the Code of Federal Regulations. *See* 40 C.F.R. §§ 75.1(b), 75.10(a)(3), 75.33, 75.57, 75.60-64. The EAB recently confirmed that, based on this example, “the 1978 Federal Register Notice augers in favor of a finding that” CO₂ is subject to regulation under the Act. *Deseret*, PSD Appeal No. 07-03, slip op. at 41.

As US EPA is also aware, on April 29, 2008, the Agency approved a state implementation plan revision for Delaware establishing federally enforceable emission limits for CO₂. *See* 73 Fed. Reg. 23101. US EPA’s approval notice stated that US EPA was approving the CO₂ emission limits for new and existing generators “in accordance with” and “under” the Clean Air Act. *See id.*; 73 Fed. Reg. 11845 (Mar. 5, 2008). US EPA’s approval made these CO₂ control requirements enforceable under the Act. *See* CAA §§ 113, 304(a)(1) and (f)(3). These revisions to the state implementation plan appear in the regulations codified in Subchapter C of Title 40 of the Code of Regulations. *See* 40 CFR § 52.420 (2009). Accordingly, these regulations are also within the scope of the 1978 Preamble interpretation of “subject to regulation.”

US EPA in *Deseret* argued that “EPA does not currently have the authority to address the challenge of global climate change by imposing limitations on emissions of CO₂ and other greenhouse gases in PSD permits.” *Deseret*, PSD Appeal No. 07-03, slip op. at 16 (internal quotation marks omitted). The EAB rejected this rationale as “clearly erroneous.” *Id.* at 9. It then rejected US EPA’s BACT decision and remanded the permit to US EPA. *Id.* at 63. The EAB recently reaffirmed this decision. *See Northern Mich. U.*, PSD Appeal No. 08-02, slip op. at 31 (instructing the state agency on remand to be “guided by our findings in *Deseret*, to undertake

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the same consideration whether the CAA's 'pollutant subject to regulation' language requires application of a BACT limit to CO₂ emissions").

While the EAB in *Deseret* found that the Clean Air Act is ambiguous and allows room for agency interpretation, it was careful to warn that the agency's discretion was not unbounded. It advised that construing the Act to require BACT for CO₂ is not only plausible, but is also supported by the only regulatory history that speaks directly to the meaning of "subject to regulation." *Deseret*, PSD Appeal No. 07-03, slip op. at 38-42.

US EPA's silence on the issue in the project's Statement of Basis⁴⁷ provides nothing to support its apparent decision to ignore CO₂ controls. This approach is inconsistent with the EAB's directives following remand of the *Deseret* and *Northern Michigan University* permits. It also denies commenters the ability to meaningfully review and comment on the proposed permitting decisions. The failure to address the legal status of CO₂ control is consequential for approval of this permit because the proposed permit does not otherwise ensure that CO₂ will be subject to BACT.

If US EPA had conducted any analysis, it could not have approved this project as meeting the BACT requirement for CO₂. A proper BACT analysis should have explored the full range of alternatives available to reduce CO₂ emissions from the proposed project.

Requests for Relief

In addition to the above mentioned relief we request your Honor grant Party status to CARE and other commenters on the consent decree. If your Honor has reason to approve the consent decree as proposed we ask that we have an opportunity for additional discovery and an opportunity to brief the matter prior to the courts approval of the consent decree.

Conclusion

US EPA's so-called consent agreement is a clear effort to retaliate against CARE's members and officers for bringing complaints and exercising our rights to judicial review;

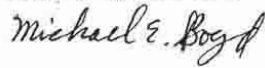
⁴⁷ See

<http://yosemite.epa.gov/R9/air/EPSS.NSF/6924c72e5ea10d5e882561b100685e04/68f094f72d568ebb88256dab0068a4c1/body/0.144C!OpenElement&FieldElemFormat=gif>

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thereby rewarding criminal polluters like PG&E making th proposed Consent Decree inappropriate, improper, as well as inadequate.

Respectfully submitted,



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January 8, 2010

cc.
Martin Homec

Verification

I am an officer of the Commenting Corporation herein, and am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge, except matters, which are therein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 8th day of January, 2010, at San Francisco, California.



Lynne Brown Vice-President
CALifornians for Renewable Energy, Inc.
(CARE)

■ Letter 42: Californians for Renewable Energy, Inc. (1/12/10)

Response to Comment 42-1

This comment contains introductory or general background information and is not a direct comment on environmental issues or the content or adequacy of the Draft EIR. No response is required.

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■ Letter 43: People Organized to Win Employment Rights (1/12/10)

1 of 3

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Letter 43

January 12, 2010

Bill Wycko
Environmental Review Officer
Planning Department
1650 Mission Street Ste 400
San Francisco CA 94102

2007.0946E Candlestick Point-Hunters Point Shipyard Phase II Draft EIR Comments on behalf of People Organized to Win Employment Rights (POWER)

II-34 Transportation Comments

Area C omission -

The roadway network for this area provides two main routes from freeways & Third Street into Candlestick Point and Hunters Point - Harney to the south and Innes to the north. BVHP Redevelopment Survey Area C is west of the project area Innes and was formerly an integral part of this project. Major development is slated to occur in this area, which abuts Innes.

Analysis of the development of and impacts from development in this area has been inappropriately removed from this DEIR. I refer to the Notice of Scoping which was issued for the entire Waterfront Project - including new plans for Candlestick Point, Hunters Point Shipyard AND INDIA BASIN SHORELINE AREAS OF SAN FRANCISCO.

Development of Area C will, in particular affect transportation and circulation in the area. Innes is the route north to the freeways and to 3rd Street and street connections to downtown San Francisco.

Bayview Transportation Improvements Projects DEIS/DEIR (TIP)

Redevelopment and MEA have been simultaneously drafting two separate and major environmental studies for this area of Bayview Hunters Point. One sets out and analyses the impacts of major transportation improvements and involves substantial effort by CalTrans. It is the joint DEIS/DEIR for Bayview TIP. Those improvements are necessary to add the substantial community contemplated by THIS DEIR for CP/HPt Shipyard Phase II.

Up until very recently all parties planned for the release of the release of the TIP DEIS/DEIR in advance of THIS DEIR. It would provide additional transportation information and inform the readers of THIS DEIR about impacts of transportation plans and alternatives. Around August the schedule switched - environmental analysis of the Transportation Improvements Project had been switched to be released

43-1

43-2

2 of 3

AFTER close of comments and the desired certification date of THIS (Lennar FEIR), thereby depriving the public and decision makers of information that would bear on evaluation of the Lennar project.

This is being pushed as the integration of EXISTING Bayview/Hunters Point community to the "benefits" of the Lennar project.

The DEIR states that 75% of new development will be within ¼ mile of transit stop. Please map the remaining areas and explain why THEY do not have similar transit access. Please also explain transit availability for the existing BVHP community since so much of transportation and transit routes occur outside the boundaries of THIS Plan's site.

Note that Proposed Roadway Improvements (Fig II-12) map shows that they are predominantly outside of CP/HP area. Which means that they will bear brunt of construction impacts. Will land/property have to be acquired for those improvements? Eminent domain?

Transit passes will be part of homeowners dues for condo owners. What about renters?

This area is currently isolated from transit access to much of the rest of City because of hills, freeways and geographical context. To reduce environmental impacts, transit use really MUST be not only encouraged, but actually occur. What measures will be implemented to monitor AND CHANGE the situation if transit use in the project area and surrounding communities falls short of expectations set out in the DEIR.

This includes reducing traffic volumes to/from 3rd St to avoid slow traffic on Innes/Harney. Particularly address traffic on Palou since it will bear the brunt of traffic coming to/from Shipyard towards 3rd Street.

If the stadium is a NO GO (i.e. the real world) and other uses generate traffic on more of a 365 days/year, Palou could be swamped.

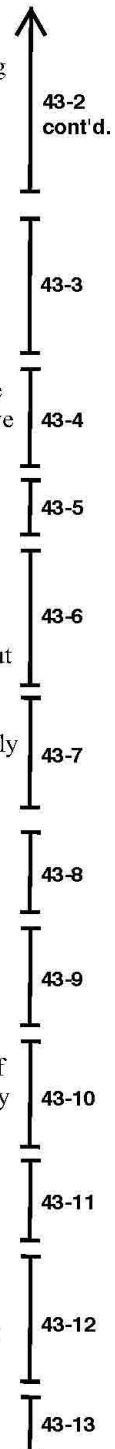
Commissioner Antonini asked that the bridge over Yosemite Slough operate for autos 365 days a year. Please explain in detail the impacts of such use - particularly on air quality and integrity of restored slough - because it may evolve to auto use full time if it is built.

Are all of the east-west streets outside area to be redesigned? What involvement to date of residents of the streets to be "improved?" particularly Palou, Ingalls, Crisp, Ingerson, Jamestown, Gilman AND any additional streets improved until any alternative.

Please explain how Alice Griffith will be integrated (transportation-wise) into both the existing BVHP community and into CP/HP.

The parking standards seem to require that grocery stores must have PAID parking? Is that so? When and where is a grocery store anticipated to be built? How will it be integrated to the broader BVHP community - both cars and especially TRANSIT. Please note that people using transit will be carrying groceries.

Please describe the exact use, existing and proposed, on parcel labeled NAP (Not a Part) along Crisp?



3 of 3

How are the Phase I area/s to be integrated into both the existing BVHP community and into Lennar area? 43-14

Figure II-13 - It is impossible to understand "Phase I Improvements" on II-40, What is that green blob? 43-15

Please provide a simple chart that sets out the timing of transportation improvements (road and transit) relative to construction of individual parts of the project. It is necessary to understand what improvements will already be in place as individual parts (e.g. Alice Griffith, initial residences in HP) are completed. 43-16

Will Alice Griffith continued to be isolated if delay in demo of CPark because 49ers still there until their new stadium complete? 43-17

Will gas stations be built in CP/HP? If not, where are closest ones located? 43-18

How much elevation of transit/roadway improvements on Harney and Innes will be necessary to avoid problems if 1.5 meter (5 feet) sea level rise occurs? 43-19

Need Map of the traffic signals that will be controlled to move traffic to/from stadium. I couldn't find it. 43-20

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■ Letter 43: People Organized to Win Employment Rights (1/12/10)

Response to Comment 43-1

The process and assumptions used in developing future year 2030 No Project cumulative conditions are presented in Draft EIR pages III.D-39 and III.D-40. As indicated on page III.D-40, the analysis of future cumulative transportation impacts included traffic expected to be generated as part of the India Basin/Area C development. Therefore, the cumulative effects of Area C traffic, traffic from the Project, and traffic from other reasonably foreseeable developments were incorporated into the analysis and informed the mitigation measures. None of the foreseeable projects are in any way dependent on the other taking place, and could occur regardless of whether the other takes place or not.

Although the NOP for this Draft EIR included the Area C development as part of the Project, Agency and Planning Department staff decided to separate the environmental review of the Area C redevelopment program from the Candlestick Point-Hunters Point Shipyard Redevelopment Plan EIR. This separation was to allow this Draft EIR to fully focus on the Candlestick Point-Hunters Point Shipyard Redevelopment Plan and to accommodate the continuing community participation process on planning for the proposed Area C redevelopment program.

Response to Comment 43-2

The Bayview Transportation Improvement Project (BTIP) began almost a decade ago to review options to provide a major truck and auto route between US-101 and the Hunters Point Shipyard and to the South Basin industrial area, and to reduce through truck traffic on Third Street and east/west residential streets. Auto and truck activity is an essential component of the BVHP commercial and industrial businesses and will continue to be so. Providing designated truck access routes as proposed by the BTIP study would help to:

- Provide a roadway for traffic accessing the BVHP community that minimizes travel time, to attract traffic off of Third Street and other residential streets
- Reduce the wear and tear, and excessive damage to residential streets
- Reduce conflicts between truck traffic and residential uses, including pedestrians and light rail

As the project sponsor for the BTIP, the City & County of San Francisco will comply with state and federal environmental laws requiring analysis and disclosure of the potential environmental impacts of the project. To do so, the San Francisco Department of Public Works has been working with the San Francisco Planning Department, Caltrans, and the Federal Highway Administration to develop a joint Draft Environmental Impact Statement (DEIS)/Draft EIR to satisfy provisions of the CEQA and the National Environmental Policy Act (NEPA). The DEIS/Draft EIR for this project, which is as yet unpublished, is intended to ensure a thorough decision-making process—including the identification of alternatives; assessment of potential impacts; and coordination with environmental permitting agencies and the public.

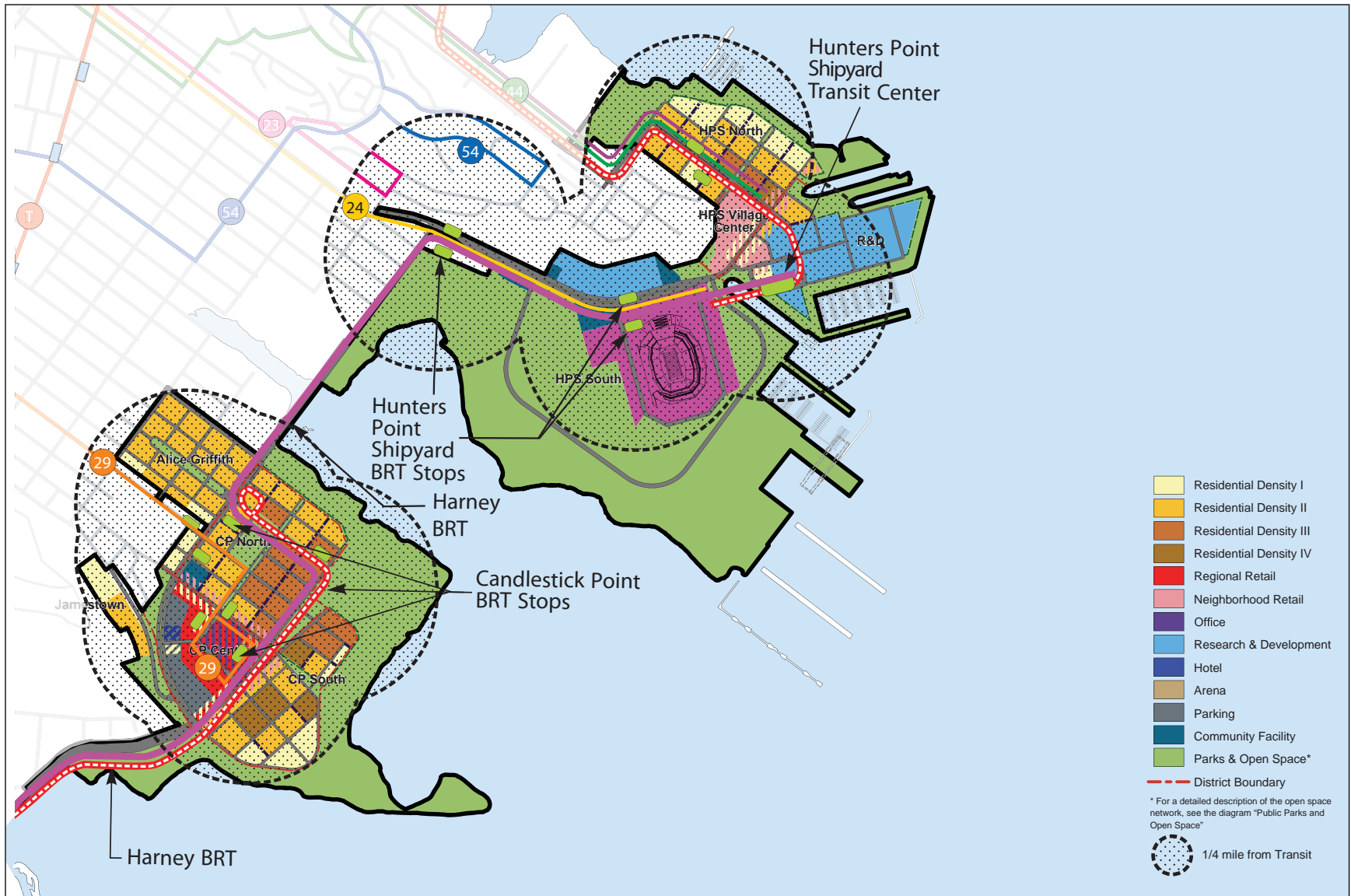
The BTIP requires an extensive environmental review process. Special studies to address the issues identified in the initial site assessments and conceptual engineering reports were completed during 2008 and the information was compiled into an Administrative DEIS/Draft EIR. The BTIP DEIS/Draft EIR was proposed to be published in the summer of 2009; however, reviewing delays were encountered which were out the control of the City & County of San Francisco.

Subsequently, the Candlestick Point-Hunters Point Shipyard Phase II Development Plan Project proceeded and published this Draft EIR on November 12, 2009, with more recent assessments. The objectives of the BTIP were considered in developing the transportation circulation network for the CP-HPS Phase II Development Plan, and the CP-HPS Phase II roadway cross-sections incorporate and expand upon the proposed BTIP improvements to meet the needs of the proposed mixed-use development at Candlestick Point and a new stadium at Hunters Point Shipyard. Therefore, the BTIP was included in the CPHPS Draft EIR in the cumulative analysis as a reasonably foreseeable project. However, because of the timing, some of the previously completed BTIP environmental studies are no longer considered relevant or consistent with the latest cumulative analyses in the area. For example, the transportation analysis conducted for BTIP did not assume the proposed CP-HPS Phase II development, and therefore the BTIP roadway improvements, future year traffic volumes, and operational analyses no longer represent an accurate assessment of the cumulative conditions in the area. Consequently, the City is now revising/updating certain technical studies (transportation, air quality, and noise) to reflect the newest updated information available from this Draft EIR, so that the cumulative analyses are consistent and so that decision makers do not have conflicting descriptions of improvements and analysis results.

Response to Comment 43-3

As currently proposed, nearly all of the Project development would be within $\frac{1}{4}$ mile of a transit stop. The portions of the development that would not be within this distance include the southernmost portion of the dual-use sports fields, parts of the R&D area, and parts of the parks and open space. As proposed, they would be within $\frac{1}{2}$ mile. Refer to Figure C&R-6 (Transit Routes and Stops) illustrating locations of transit stops within the Project and the land uses contained within a $\frac{1}{4}$ -mile radius of those stops. Existing transit services are described on Draft EIR pages III.D-12 to III.D-15, and existing transit routes are depicted on Figure III.D-3 (Existing Transit Network).

Because the new and expanded Muni lines serving the Project would run through surrounding neighborhoods in the Bayview Hunters Point area to varying extent, as well as other city neighborhoods, these areas would generally experience increased transit frequencies and extended access in conjunction with the transit service plan proposed by the Project. These reliabilities of lines would also benefit from transit-priority treatments within and in the Project vicinity. The Muni lines planned for increased coverage, reliability improvements, and/or frequency include the 23-Monterey, 24-Divisadero, 28L-19th Avenue Limited, 29-Sunset, 44-O'Shaughnessey, 48-Quintara-24th Street (replacing portions of the 19-Polk as proposed in the TEP), 54-Felton, and the T-Third.



SOURCE: Fehr & Peers, 2010.

PBS&J 04.12.10 02056 | JCS | 10

FIGURE C&R-6



**Candlestick Point — Hunters Point Shipyard Phase II EIR
TRANSIT ROUTES AND STOPS**

Response to Comment 43-4

Section II.E.3 of the Draft EIR (on pages II-35 through II-38) states that some of the Project's proposed transportation improvements would require property acquisition. In order to complete both the Harney Way widening improvements described in Section II.E.3 (on page II-35) and the Crisp Road and Arelious Walker Drive improvements described in Section II.E.3 (on page II-38), some property acquisition would need to be required. None of the other transportation improvements proposed by the Project would require the acquisition of private property. The City and the Agency have met with several of the property owners whose property is envisioned to be affected by the roadway improvements. In addition, all property owners received a copy of the Draft EIR. Owners include the State, Lowpensky Family Trust, Regents of the University of California, Murphy Properties, George and Rosalie Yerby, Tuntex Properties, and Sunpark Properties, and several of them have participated in public meetings where the Project has been discussed. In addition, as required by Chapter 31 of the Municipal Code, a Notice of Availability indicating that the Draft EIR was available was also sent to owners and occupants within the 94124 zip code, as well owners and occupants within the Project site and a 300-foot radius beyond the Project site.

BVHP Redevelopment Area Acquisitions

For the improvements to Arelious Walker Drive between Gilman Avenue and Bancroft Avenue proposed by the Project, a total of approximately 2.32 acres would need to be acquired. These include portions of Blocks 4876, 4886-807, 4886-808, 4886-828, 4917-003, and 4935-003. These properties are currently owned by one private owner and the California Department of Parks and Recreation. The acquisition of the California Department of Parks and Recreation property is authorized under SB 792. This is discussed further in the Section III.P (Recreation) of the Draft EIR. There are currently no permitted residences on these properties and no businesses operating on these parcels other than game day parking. The privately owned property is zoned M1.

The properties that would need to be acquired to complete the proposed improvements to Arelious Walker Drive between Gilman Avenue and Bancroft Avenue are within the boundaries of the Bayview Hunters Point Redevelopment Project Area and are subject to the eminent domain limitations and prohibitions of Proposition G, state law, and the Bayview Hunters Point Redevelopment Plan.

Proposition G expressly prohibits, in implementing the Project, the use of eminent domain to acquire any property that is currently residentially zoned, is improved with a building that contains one or more legally occupied dwelling units, is a church or other religious institution, or is publicly owned, including, without limitation, property owned by the Housing Authority of the City and County of San Francisco.

Under state law, eminent domain cannot be used until the Agency “make[s] every effort to acquire property by negotiation, instead of by condemnation or eminent domain; that the Agency pay just compensation based upon fair market value; and that the Agency adopt at a public hearing by a vote of not less than two-thirds of all members of the Agency Commission, a resolution finding that acquisition of such property through eminent domain is in the public interest, and necessary to carry out the Redevelopment Plan.”

In addition, the Bayview Hunters Point Redevelopment Plan provides that the use of eminent domain shall be subject to the following limitations and prohibitions:

- The Agency shall not use eminent domain to acquire property without first receiving a recommendation from the PAC or appointed citizens advisory committee. As stated in Section 1.1.6 [of the Bayview Hunters Point Redevelopment Plan], the Agency commits to maintain a PAC or an appointed citizens advisory committee for the duration of this Redevelopment Plan.
- The Agency shall not use eminent domain to acquire publicly owned property including without limitation, property owned by the San Francisco Housing Authority.
- Eminent domain proceedings, if used in Project Area B [which includes Candlestick Point], must be commenced within 12 years from the Effective Date. This time limitation may be extended only by amendment of this Redevelopment Plan, as adopted and approved by the Board of Supervisors and the Agency Commission, following a community process.
- The Agency shall not acquire, through the use of eminent domain, real property in a Residential (R) District, as defined by the Planning Code (“R” zone), as of the Effective Date, in Project Area B.
- The Agency shall not acquire, through the use of eminent domain, property that contains legally occupied dwelling units.
- The Agency shall not acquire, through the use of eminent domain, property owned by Churches or other religious institutions, as defined in Planning Code Section 209.3(j).
- The Agency shall not acquire real property in Project Area B to be retained by an owner pursuant to an Owner Participation Agreement, unless the owner fails to perform under that agreement and as a result the Agency exercises its reverter rights, if any; or successfully prosecutes a condemnation or eminent domain action.
- The Agency shall use eminent domain on a parcel not zoned “R” (Residential) only as a last resort after the property owner has failed, after reasonable notice, to correct one or more of the following conditions:
 - > The property contains an unreinforced masonry building (UMB) that has not been seismically retrofitted by the date required by City ordinance.
 - > The property contains a building in which it is unsafe or unhealthy for persons to live or work as determined by the Department of Building Inspection, after failure to comply with an order of abatement of such conditions pursuant to Section 102 of the Building Code.
 - > The property contains uses that pose a threat to the public’s safety and welfare as formally determined through major citations by the appropriate City agencies or departments, including, but not limited to the San Francisco Police Department, San Francisco Fire Department, San Francisco District Attorney’s Office, San Francisco Department of Public Health, San Francisco Department of Building Inspection, and San Francisco Planning Department.
 - > A parcel that is vacant, used solely as a surface parking lot (not accessory to another use), or contains a vacant or substantially vacant (approximately 75 percent or more of the rentable area) building(s) and the owner has no active plans for a new use or development.
 - > Under-utilization of a property of irregular form and shape, and of inadequate size that substantially hinders its economically viable uses for development consistent with this Redevelopment Plan.

Consistent with the BVHP Redevelopment Plan, owners of real property in the BVHP Project Area may participate in the redevelopment of the Project Area by new development or rehabilitation in accordance with the standards for development or the standards for rehabilitation, which are set forth in the OPA Rules that were adopted on March 7, 2006, after a public hearing. The OPA Rules governing participation

by property owners are subject to amendment from time to time. The Agency may require as a condition to participate in redevelopment in the Project Area that each participant enter into a binding written OPA with the Agency by which the property will be developed, maintained or rehabilitated for use in conformity with the Redevelopment Plan, the Planning Code, the OPA Rules, declaration of restrictions, if any, and applicable design guidelines promulgated by the Agency. The proposed amendments to the BVHP Redevelopment Plan provide that owners of property in Zone 1 of the Project Area, which covers Candlestick Point, must enter into an OPA in order to coordinate the delivery of public infrastructure with the development of publicly owned land in the Candlestick Point sub-area. Properties whose owners choose not to participate in development pursuant to an OPA with the Agency will be permitted to continue existing uses as nonconforming uses.

The Agency has a number of avenues available for completing the roadway improvements in the BVHP Redevelopment Plan area. SB 792 authorizes acquisition of the California Department of Park and Recreation property. The private property could be acquired by negotiation, through an OPA process, or by eminent domain as a last resort. The Agency would comply with the requirements of the BVHP Redevelopment Plan and Proposition G provisions in carrying out the roadway improvements.

Acquisitions outside the Redevelopment Project Areas

For the Harney Way widening improvements proposed by the Project, a total of approximately 0.7 acre of property located north of Harney Way between Thomas Mellon Drive and Executive Park East, currently zoned C-2, would need to be acquired. These include portions of Blocks 4991-075 and 4991-074. There are two separate private owners of these properties. On these portions of the respective properties, there are currently no permitted residences or any operating businesses.

Additionally, approximately 1.3 acres of property containing no structures, and located within the Candlestick Point State Recreation Area south of Harney Way, would need to be acquired from the California Department of Parks and Recreation; such an acquisition is authorized under SB 792. This is discussed further in the Section II.P (Recreation) of the Draft EIR. These include portions of Blocks 5076-008, 5076-010, and 5023-101.

In addition, to complete the improvements connecting Arelious Walker Drive to Crisp Road near the HPS Phase II area, approximately 0.81 acres of property on Blocks 4591A-007 (zoned M2) and 4591A-002 (zoned P/M2) would need to be acquired. There are two separate owners for these properties and there are no permitted residences on these properties. Uses currently operating on these properties are a commercial woodshop and institutional research, respectively. No structures would be affected except for a small shed structure on Block 4591A-002, which is on land owned by the Regents of the University of California (UCSF). The Arelious Walker Drive improvements also require approximately 0.24 acres of property on Block 4805-025, which contains no structures and would need to be acquired from the California State Lands Commission as authorized under SB 792. This is discussed further in the Section II.P (Recreation) of the Draft EIR.

The properties that would need to be acquired to complete the Harney Way widening improvements and the connections between Arelious Walker Drive and Crisp Road are not within the boundaries of the Bayview Hunters Point Redevelopment Project Area or the Hunters Point Shipyard Redevelopment

Project Area. The proposed amendments to the Bayview Hunters Point Redevelopment Plan and Hunters Point Shipyard Redevelopment Plan do not change the existing zoning for these properties.

Regardless of whether these properties are located within any redevelopment project area, Proposition G expressly prohibits, in implementing the Project, the use of eminent domain to acquire any property that is currently residentially zoned, is improved with a building that contains one or more legally occupied dwelling units, is a church or other religious institution, or is publicly owned, including, without limitation, property owned by the Housing Authority of the City and County of San Francisco. The Project implementation would be carried out in a manner that would comply with these provisions. None of the property is residentially zoned, improved with dwelling units, or is a church. With the exception of a small portion of property owned by UCSF, use of eminent domain could be employed, consistent with Proposition G. If for any reason negotiation with UCSF were unsuccessful, the Agency could modify the roadway configuration. For example, instead of routing the roadway in a manner that required acquisition of UCSF property, the roadway could be accommodated on adjacent property that the Navy would transfer to the Agency.

With respect to when property acquisitions could occur, they could occur any time after certification of the EIR, if the EIR is ultimately certified by the Lead Agencies. Page II-80 of the Draft EIR further clarifies the time periods during which off-site roadway improvements would be constructed, indicating that it would only be during a portion of the Project's overall construction schedule. (The indicated text changes are a result of updating the development schedule since publication of the Draft EIR.):

Construction activities in Candlestick Point would occur from ~~2014~~2012 through ~~2028~~2031.³⁹ Off-site roadway, utility, and shoreline improvements would be constructed ~~during years 2013 through 2024 beginning in 2013 and would align with vertical development.~~ ...

Construction activities in HPS Phase II would occur from ~~2010~~2011 through ~~2023~~2031.⁴⁰ Off-site roadway, utility, and shoreline improvements would be constructed ~~during years 2011 through 2016 beginning in 2013 and would align with vertical development.~~ ...

Response to Comment 43-5

As described on page II-35 of the Draft EIR, one of the strategies of the TDM would require that homeowner's dues include the cost of transit passes for all households. As currently described in the Draft EIR, a rental household would not specifically include the cost of transit passes.

Response to Comment 43-6

The forecasts for transit usage in the Draft EIR are based on transit mode share forecasting models developed specifically for this analysis and validated based on observed transit usage in other neighborhoods in San Francisco. The models have been designed to account for differences in trip type (work vs. non-work), travel time, parking costs, and transit service levels. Ultimately, the analysis forecasted that 20 percent of weekday AM and PM peak hour trips would occur by transit. The current transit mode share in the Bayview neighborhood is 15 percent. Given the substantial increase in transit service proposed as part of the Project, the slight increase predicted in this analysis is reasonable.

The Project's transit improvements described on Draft EIR pages III.D-48 through III.D-50, and included in mitigation measure MM TR-17 on Draft EIR page III.D-99, would be implemented to meet the needs

of the Project. The phasing plan for implementing this service was designed to ensure that the level of transit provided is generally substantially greater than the Project's transit demand, to ensure that the Project maintains its "transit orientation" throughout the development horizon. If transit use generated by the Project falls short of expectations, measures included in the Project's TDM Plan could be implemented to encourage transit use and discourage auto use. The Project's TDM Plan, which would be approved as part of the Disposition and Development Agreement, would include a provision for monitoring the effectiveness of congestion-reducing and traffic-calming measures. As part of the annual monitoring of the measures and programs, the on-site coordinator, would, in cooperation with SFMTA, review the effectiveness of the Project's transportation measures and other traffic calming measures implemented in the project vicinity. If warranted, the on-site coordinator and SFMTA would consider implementation of additional parking, traffic-calming, and congestion-alleviating measures.

Response to Comment 43-7

The traffic impact analysis includes 14 study intersections on Third Street, four intersections on Evans Avenue/Innes Avenue, four intersections along Harney Way, and four intersections along Palou Avenue. The impacts of Project traffic and traffic associated with cumulative development on study area roadway facilities, including Third Street, Evans Avenue/Innes Avenue, Harney Way, and Palou Avenue were analyzed and are described in Impacts TR-3, TR-5, TR-6, and TR-9. The potential for area congestion to cause traffic to "spill" into adjacent neighborhood streets was described in Impact TR-10. No further analysis is required.

Response to Comment 43-8

Chapter IV of the Draft EIR describes transportation conditions associated with Project Variants 1 and 2, in which case additional development would be provided in the Hunters Point Shipyard site instead of a new NFL stadium. Four intersections along Palou Avenue were analyzed in the Draft EIR including Palou Avenue at Third Street, at Keith Street, at Ingalls Street, and at Crisp Avenue. Under the Project, Variant 1 and Variant 2, traffic operating conditions at the intersection of Third/Palou would be LOS F, due primarily to the cumulative traffic volume increases on Third Street. Under the Project, Variant 1 and Variant 2, the intersections of Keith/Palou, Ingalls/Palou and Crisp/Palou would be signalized as part of the Project. Under Variant 1 and Variant 2, intersection LOS at Ingalls/Palou and Keith/Palou would be LOS C or better, indicating acceptable operating conditions even with the additional development proposed for these project variants. At the intersection of Crisp/Palou, operating conditions would be LOS D for Variant 2. Under Variant 1 the additional R&D development would cause the intersection of Crisp/Palou to fail (i.e., LOS F). As indicated on Draft EIR page IV-19, a mitigation measure was identified that would reduce Variant 1 impacts at this location to less than significant levels.

More detailed analysis of these variants is provided in the Project Transportation Study, which was included as Appendix D of the Draft EIR.

Response to Comment 43-9

As indicated on Draft EIR page II-38 (Project Description), the Yosemite Slough bridge would primarily function for transit, bicycle and pedestrian use. The bridge would have a 40-foot-wide greenway, which would

be converted for peak direction auto travel lanes on 49ers game days only. Refer to Response to Comment 17-1 for a discussion of the process that would be required for the bridge to be open for public use. The Project's Infrastructure Plan, which the Board of Supervisors will approve through the Interagency Cooperation Agreement, would require that the bridge be closed to autos except on football game days. Before the bridge is open for use, the Board of Supervisors, by a legislative act must accept the bridge and designate it as a transit use only lane, except for the limited purpose specified in the Infrastructure Plan. Any subsequent changes to the use of the bridge would require Board of Supervisors approval.

Response to Comment 43-10

As shown on Figure III.D-6, the Project would provide improvements along portions of seven east-west streets outside of the Project Boundary, including Jamestown Avenue, Ingerson Avenue, Gilman Avenue, Carroll Avenue, Thomas Avenue, Palou Avenue, and Innes Avenue/Hunters Point Boulevard. Generally, these improvements consist of resurfacing and some lane reconfiguration within the existing right-of-way, although the sidewalks would be narrowed on Gilman Avenue from existing 15 feet to 12 feet to accommodate two travel lanes in each direction and to maintain on-street parking. (Note that the proposed 12-foot-wide sidewalks would remain consistent with the City's Draft Better Streets Plan guidelines).

As of the date of publication of this document, there have been approximately 236 workshops and public meetings on the Project, including four focused workshops in the spring of 2008 on the topics of transportation, urban design, and open space. A number of design features and priorities from those workshops have been incorporated into the roadway improvements, including maintaining existing on-street parking, provision of new street trees, better connections to the City bicycle network, and generally safer and more walkable sidewalks. In summer 2009, several street-specific community workshops were held in the Bayview and India Basin area, with a focus on design and engineering treatment options for Palou Avenue, Gilman Avenue, Harney Way, and Innes Avenue, among other corridors, the input from which has led to final design decisions for each street.

Response to Comment 43-11

The existing Alice Griffith housing site sits at the eastern end of the Bayview Neighborhood. Internally, the character of the street configuration within the Alice Griffith site is considerably different from the rest of the Bayview neighborhood, offering a more suburban-style, curvilinear street design. As a result, the Alice Griffith site has only two connections to the existing neighborhood, at the intersections of Griffith Street/Gilman Avenue and Hawes Street/Fitzgerald Avenue. These limited connections isolate the site and discourage walking and bicycling. It is currently served by the 29-Sunset bus route, which operates with frequencies of 10 minutes during typical weekday peak periods.

The Project would reconstruct the Alice Griffith housing site and extend the existing street grid network in the Bayview neighborhood through the site, providing a substantial increase in the number of roadway connections and better integrating the site with the rest of the neighborhood. The street grid would continue east into the Candlestick Point development, such that the Alice Griffith site is connected to both the Bayview neighborhood and the Project via a continuous street grid network.

The Project would also double the frequency of service on the 29-Sunset from existing 10 minutes during peak commute periods to 5-minute frequencies. The Alice Griffith site would also be a short walk (less

than ¼ mile) from the proposed new BRT service, which would offer high-quality rapid service in exclusive right-of-way to the Hunters Point Shipyard site to the northeast and across US-101 to the west toward the Geneva Avenue corridor and regional transit connections at the Bayshore Caltrain station and the Balboa Park BART station. The Alice Griffith site would also be within ¼ mile of the new Candlestick Point Express (CPX) bus route offering express service to Downtown San Francisco and connections to other regional transit service (ferries, AC Transit, etc.).

Response to Comment 43-12

As noted on page II-43 of the Draft EIR, “all commercial parking facilities would be paid parking, with measures to discourage single-occupant automobile use, such as designation of preferred parking areas for bicycles, carpools, vanpools, and carshare vehicles.” This would include grocery stores.

The Project calls for 125,000 square feet of neighborhood-serving retail each in the Candlestick Point and Hunters Point Shipyard developments. A grocery store is not specifically proposed as part of the Project, but would be allowed under the proposed land uses. Adequate space is proposed at either site to accommodate a grocery store.

Generally, the neighborhood-serving retail spaces are provided adjacent to the primary transit nodes within each site, specifically including both local transit and the proposed BRT. This would allow high-quality and frequent transit access to the retail space. Further, with the proposed extension of the existing street grid system in the Bayview neighborhood into the Project site, patrons could access the neighborhood-serving retail via a direct walk, bicycle ride, or vehicle trip, if desired.

Response to Comment 43-13

The parcel along Crisp that is labeled Not a Part of the Project is owned by the Regents of the University of California and is occupied by an animal testing facility, APN 4591A-002. The property is zoned P (Public uses) (north portion) and M-2 (Heavy Industrial) (south portion).

Response to Comment 43-14

The Project has been designed to transition in a pleasing manner from the adjacent neighborhoods through the use of setbacks, landscaping treatments, and stepped-up building heights and massing oriented primarily toward the center of the development. The street grid system will be extended to connect the Project with adjacent neighborhoods, including HPS Phase I. Although architectural finishes have not yet been chosen, they will be selected to blend harmoniously with existing neighborhoods while still attaining a distinct sense of place.

Response to Comment 43-15

In response to the comment, Figure II-13 (Proposed Transit Improvements), page II-40, in the Draft EIR has been revised to delete “Phase I Improvements” from the legend, and rename “Phase II Improvements” to “Bus Rapid Transit.” Figure 7 (Proposed Transit Improvements) from Draft EIR Appendix D (the Transportation Study) is correct. Refer to Response to Comment 7-1 for the revised Figure II-13.

Response to Comment 43-16

Phasing of transit improvements is shown in Table 2 on page 31 of the Project Transportation Study, included as Appendix D of the Draft EIR. A more detailed roadway and transit service timing and phasing plan would be provided as part of the Project's Infrastructure Plan, which would be included in the Project's DDA. The Project would be implemented in four overlapping phases, with transportation infrastructure improvements (both transit and roadway) linked to the development phases. The majority of development and infrastructure improvements would be completed by the end of the second phase, which has a scheduled completion date of 2021.

Response to Comment 43-17

The new Alice Griffith housing is proposed to be constructed as part of the first phase of development, along with construction of the new stadium. Following completion of the new stadium, the old stadium would be deconstructed and new roadway network in Candlestick Point would be constructed. However, access to Alice Griffith would be maintained as the Candlestick Point development proceeds.

Response to Comment 43-18

Land uses, including gas stations, in the Project site will ultimately be dictated by the amended Bayview Hunters Point and Hunters Point Redevelopment Plans and not by the Planning Code. Gas stations have not been identified as a Principal use in these amendments.

Response to Comment 43-19

Refer to Master Response 8 (Sea Level Rise) for a discussion of sea level rise taken into account for various Project components and how the Project will provide continued flood protection with greater levels of sea level rise. The shoreline will remain at or very close to the as-proposed Project shoreline location, which implies that only groundwater effects need to be considered for the subject roadway improvements.

Response to Comment 43-20

Figure C&R-7 (Location of New Traffic Signals) presents the locations of proposed on-site and off-site traffic signals. The figure illustrates 26 intersections throughout the Project area and the Bayview neighborhood that would be either manually controlled from within the Stadium's Transportation Management System or by an on-site Traffic Control Officer. The manual control would allow for efficient egress of game attendees from the stadium.



SOURCE: Fehr & Peers, 2010.

PBS&J 05.04.10 05015 | JCS | 10

FIGURE C&R-7



Candlestick Point — Hunters Point Shipyard Phase II EIR
LOCATION OF NEW TRAFFIC SIGNALS

Off-site intersections that would be signalized as part of the Project are also listed on Draft EIR page III.D-46.

The following currently unsignalized off-site intersections would be signalized as part of the transit preferential treatment on Palou Avenue, or when traffic volumes warrant signalization:

- Crisp Road/Arelious Walker Drive
- Crisp Road/Outer Ring Road (West)
- Crisp Road/Inner Ring Road (West)
- Crisp Road/Inner Ring Road (East)
- Crisp Road/Outer Ring Road (East)
- Robinson Street/Fisher Street
- Robinson Street/Donahue Street
- Innes Avenue/Donahue Street
- Palou Avenue and Griffith Street
- Palou Avenue and Hawes Street
- Palou Avenue and Ingalls Street
- Palou Avenue and Jennings Street
- Palou Avenue and Keith Street
- Palou Avenue and Lane Street
- Carroll Avenue and Ingalls Street
- Thomas Avenue and Ingalls Street
- Arelious Walker Drive and Carroll Avenue
- Arelious Walker Drive and Gilman Avenue
- Arelious Walker Drive and Ingerson Avenue
- Arelious Walker Drive and Harney Way
- Pennsylvania Avenue and 25th Street
- Evans Avenue, Jennings Street and Middlepoint Road

Intersection control for new intersections within the Project site will be included in the Project Infrastructure Plan. The following intersections would be signalized:

- Arelious Walker Drive/Harney Way/P Street
- Arelious Walker Drive/Jamestown Avenue
- Arelious Walker Drive/Bill Walsh Way
- Arelious Walker Drive/Ingerson Avenue
- Arelious Walker Drive/Gilman Avenue
- Arelious Walker Drive/Egbert Avenue
- Arelious Walker Drive/Carroll Avenue
- Harney Way/8th Street
- Harney Way/Ingerson Avenue
- West Harney Way/Ingerson Avenue
- West Harney Way/Gilman Avenue
- West Harney Way/Egbert Avenue
- Earl Street/Egbert Avenue

A pedestrian and bicycle-actuated signal would be installed at the Bay Trail crossing of the Yosemite Slough Bridge, about 150 feet north of the slough.

At intersections on major roadways where traffic signals are not installed, STOP signs would be installed on streets intersecting the following major roadways:

- Donahue Street, at Galvez Street
- Robinson Street, between Donahue Street and Fischer Street
- Spear Avenue, between Fischer Street and B Street
- Arelious Walker Drive, between Harney Way and Carroll Avenue
- Harney Way, between Arelious Walker Drive and 4th Street
- West Harney Way, between 8th Street and Donner Avenue
- Palou Avenue and Jennings Street

As noted above, the on-site intersection of Donahue/Innes would be signalized as part of the Project and the intersection of Donahue/Galvez would be STOP-sign controlled (the westbound approach of Galvez Street would have a STOP sign, while Donahue would not be controlled). These two intersections reflect the proposed street network for Hunters Point Shipyard, which differs somewhat from the roadway design in the Hunters Point Shipyard Redevelopment Plan adopted in 1997. The 1997 Redevelopment Plan featured a four lane curved roadway bypassing the intersection of Innes/Donahue in the northeast quadrant of HPS (known as the “S-Curve”). The S-Curve plan included traffic signals at the intersections of Innes/S-Curve and S-Curve/Donahue/Galvez. As the current CP-HPS Phase II planning and design progressed, the roadway was refined, leading to the removal of the S-Curve. Intersection analyses were conducted for 2030 Cumulative plus Project conditions to determine the intersection LOS conditions and if the removal of the S-Curve would affect transit operations.

- Removal of the S-Curve would not affect intersection operations, and both intersections would operate at acceptable levels. During both the AM and PM peak hours, the signalized intersection of Innes/Donahue would operate at LOS C, while at the intersection of Donahue/Galvez, the westbound approach of Galvez Street would operate at LOS C (Donahue Street would be uncontrolled and therefore not be subject to intersection control delays).
- Removal of the S-Curve from the plan would not affect the proposed transit routes that would serve Hunters Point Shipyard (i.e., the 48-Quintara, the 54-Felton and the Hunters Point Expresses). While the proposed plan would increase the bus routes by an additional 300 feet than under the S-Curve plan, the modest increase in travel distance would be offset by the removal of a traffic signal at the intersection of S-Curve/Donahue/Galvez that would be required under the S-Curve plan.

The traffic analysis is detailed in the memorandum *Supplemental Intersection Analysis in the Hunters Point Shipyard*, Fehr and Peers, January 12, 2010.

■ Letter 44: Neighborhood Parks Council (1/12/10)

1 of 2

Letter 44



January 12, 2010

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San Francisco, CA 94103

Bill Wycko, Acting Environmental Review Officer (Bill.Wycko@sfgov.org)
San Francisco Planning Department
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San Francisco, CA 94103-2479

Re: Candlestick Point - Hunters Point Shipyard Phase II DEIR
SFRA File No. ER06.05.07, Planning Dept Case No. 2007.0946E

Gentlemen:

The Neighborhood Parks Council has concerns about the adequacy of the environmental review of the captioned project, particularly as respects the Blue Greenway, which is a segment of both the Bay Trail and the Bay Area Water Trail between AT&T Park and Candlestick Point.

44-1

The DEIR should include reference to and appropriate proposed locations for elements of the Bay Area Water Trail in the Land Use section (IIIB).

Chapter III. D. Transportation and Circulation

This entire section should be rewritten. The focus of the DEIR is the traditional vehicle LOS analysis, without taking into consideration the new 2009 SB 97 Rules (http://ceres.ca.gov/ceqa/guidelines/proposed_guidelines_amendments_and_related_materials.html), where there's not only a requirement to reduce greenhouse gas emissions (Section VII), but a revised Transportation section (XVI). This project is expected to be built out over 20 years, and the transportation analysis should reflect current CEQA guidelines; most significantly, the criteria that determine whether the project would:

44-2

a) Conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, **taking into account all modes of transportation including mass transit and non-motorized travel** and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit?

44-3

b) Conflict with an applicable congestion management program, including, but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways?

44-4

2 of 2



NEIGHBORHOOD PARKS COUNCIL

f) Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities supporting alternative transportation?

44-5

The Bicycle Plan outlined in the DEIR (Figure II-14) does not provide near-term improvements to the bicycle network between Innes Avenue (India Basin/Area C) and Crisp Avenue. Bicycle improvements should also be constructed in Phase I connecting Crisp Avenue, through the Shipyard to Candlestick Point. Class III bike markings will not be safe or adequate, particularly on streets with high vehicle traffic. Since the planned Bay Trail alignment along the shoreline is dependent on environmental remediation, and development of much of this area will not occur until at least Phase III, construction of an interim Class I bike path to provide a short-term connection that is not dependent on the possible Yosemite Slough bridge is very important. A comparable interim bicycle and pedestrian connection in Mission Bay on the south side of Mission Creek under the 280 freeway has been critical to the hundreds of residents and workers in that new neighborhood.

44-6

Chapter III. P – Recreation

While Mitigation measure RE-2 is a good beginning, in that phasing of parks and open space should be linked to residential **and** employment-generating uses, it does not adequately address the need.

44-7

Table III.P-3 should be amended to show, at each phase of development, the park-to-population ratio including the employee population, and should be maintained throughout the development at no less than 5.5 acres per 1,000 residents **and** employees. In addition, there should be an adjacency requirement, so that parks and recreation facilities (including facilities for families and children, if appropriate) are built adjacent to and concurrently with infrastructure and vertical development parcels, and connecting with existing open spaces (India Basin Shoreline Park and Hillside Park and Open Space, for example).

44-8

The proposed Marina and waterfront recreation areas should be sited to provide protection from summer winds (Chapter III.G – Wind) and southern surge in the winter. In addition to an analysis of Windsurfing in the Recreation section, there should be an analysis of appropriate conditions for kayaking and other non-motorized vessel operations along the Bay Area Water Trail.

44-9

Sincerely yours,

NEIGHBORHOOD PARKS COUNCIL

Corinne W. Woods
Blue Greenway Coordinator

For Meredith Thomas, Executive Director

■ Letter 44: Neighborhood Parks Council (1/12/10)

This letter is identical to Letter 49. Letter 44 was submitted to the San Francisco Planning Department, while Letter 49 was submitted to the Agency.

Response to Comment 44-1

As indicated in Response to Comment 31-9, Figure III.B-3 has been revised to include Bay Area Water Trail access points in the Project vicinity. While the precise location of access points within the Project area will be determined through future public processes, including the CPSRA General Plan Amendment process, the Project will provide access for small non-motorized recreational watercraft and therefore will advance the purposes of the Bay Area Water Trail. Refer to Response to Comment 31-9 for the revised Figure III.B-3.

Response to Comment 44-2

Refer to Draft EIR Section III.S (Greenhouse Gas Emissions) for discussion of the Project's impact to greenhouse gas emissions.

Senate Bill 97 (Chapter 185, 2007) requires the Governor's Office of Planning and Research (OPR) to develop draft CEQA guidelines "for the mitigation of greenhouse gas emissions or the effects of greenhouse gas emissions." On April 13, 2009, OPR submitted to the Secretary for Natural Resources its proposed amendments to the state CEQA Guidelines for greenhouse gas emissions, as required by Senate Bill 97. These proposed CEQA Guideline amendments would provide guidance to public agencies regarding the analysis and mitigation of the effects of greenhouse gas emissions in draft CEQA documents.

At the time the Draft EIR was prepared and released, these guidelines had not been adopted by the Natural Resources Agency. However, On December 31, the Natural Resources Agency formally adopted the proposed new CEQA Guidelines concerning the analysis of greenhouse gas emissions. These new CEQA Guidelines do not become legally effective until the Office of Administrative Law (OAL) approves the Guidelines and transmits them to the Secretary of State for inclusion in the California Code of Regulations. OAL has 30 days to review the Guidelines, and they become legally effective 30 days after OAL submits them to Secretary of State. The OAL approved and filed the guidelines with the Secretary of State on February 16, 2010. The guidelines were published in the *California Code of Regulations* on March 18, 2010.

With respect to transportation, the revised language is as follows:

Would the project:

- a) Exceed the capacity of the existing circulation system, based on an applicable measure of effectiveness (as designated in a general plan policy, ordinance, etc.), taking into account all relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit?
- b) Conflict with an applicable congestion management program, including, but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways?
- c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?

- d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?
- e) Result in inadequate emergency access?
- f) Conflict with adopted policies, plans, or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks)?

While the revised guidelines referenced by the commenter had not been adopted at the time the Draft EIR was prepared and circulated for public review, the Draft EIR does include an analysis of Greenhouse Gas Emissions in Section III.S. Further, with respect to the transportation requirements of the CEQA guideline changes, no changes occurred that 'require' any new analysis. Appendix G as cited by the commenter is just a sample of what criteria may be used in an initial study. They are not formal requirements. As discussed in the CEQA Guidelines (Section 15064.7), lead agencies as have the discretion to set their own thresholds for determining significance of project impacts.

The criteria for determining significance for each mode of transportation in the Draft EIR, as established by the City of San Francisco, are described in pages III.D-31 through -33 of the Draft EIR.

The Draft EIR adequately examines the potential traffic-related impacts of the Project in relation to the existing traffic conditions and street system capacity. The Draft EIR also provides detailed analysis of alternative transportation modes including transit (refer to Impacts TR-17, TR-18, TR-19, TR-20, TR-21, TR-22, TR-23, TR-24, TR-25, TR-26, TR-27, TR-28, TR-29, TR-30, TR-39, TR-47, and TR-52), bicycles (refer to impacts TR-31, TR-32, TR-40, TR-48, and TR-53) and pedestrians (refer to Impacts TR-33, TR-34, TR-41, TR-49, and TR-54).

The timing and phasing of transportation improvements would be developed and included in the Project's DDA. Refer also to Master Response 18 (Transit Mitigation Measures) for details and clarity regarding proposed roadway configuration and implementation mitigation measures.

Response to Comment 44-3

The particular comment is one of the proposed amendments to the CEQA guidelines for evaluating transportation impacts. While the revised guidelines had not been adopted at the time the Draft EIR was prepared and circulated for public review, with respect to the transportation requirements of the CEQA guideline changes, no changes occurred that "require" any new analysis. As stated on page III.A-3 of the Draft EIR, the impact significance used in the EIR are appropriately based on the San Francisco Planning Department MEA and Agency guidance regarding environmental effects to be considered significant. Page III.A-3 of the Draft EIR specifically states that:

The impact significance criteria used in this EIR are based on San Francisco Planning Department Major Environmental Analysis (MEA) and San Francisco Redevelopment Agency guidance regarding the environmental effects to be considered significant. This guidance is, in turn, based upon Appendix G to the CEQA Guidelines and MEA's Initial Study checklist, with some modifications. In cases where potential environmental issues associated with the Project are identified, but are not clearly addressed by the guidance listed above, additional impact significance criteria are presented. The significance criteria used for each environmental topic/resource are presented at the beginning of the impact discussion in each section of Chapter III of this EIR.

Response to Comment 44-4

This particular comment is also one of the proposed amendments to the CEQA guidelines for evaluating transportation impacts. Refer to Response to Comment 44-3 for discussion of revisions to the CEQA guidelines.

Response to Comment 44-5

This particular comment is also one of the proposed amendments to the CEQA guidelines for evaluating transportation impacts. Refer to Response to Comment 44-3 for discussion of revisions to the CEQA guidelines.

Response to Comment 44-6

Figure II-14 does not provide the phasing of the bicycle improvements on the Project roadway network. The timing and phasing of transportation improvements would be defined in the Infrastructure Plan, which would be included in the Project's DDA.

Within Hunters Point Shipyard Class II bicycle lanes would be provided on Innes Avenue, Robinson Street, Fisher Street, and along Crisp Road a Class I off-street facility would be provided. Construction of these streets and development adjacent to these roadways are currently planned to occur within the first phases of CP-HPS Phase II development, and therefore interim bicycle and pedestrian connections would not be necessary. The bicycle network within Hunters Point Shipyard would connect with existing Bicycle Route #7 on Palou Avenue (a Class III facility).

Response to Comment 44-7

The analysis provided in Impact RE-2, beginning on page III.P-15 of the Draft EIR and concluding on page III.P-31, evaluates not only impacts that could occur as a result of the resident and employee population, but also what could occur with the existing population of the Bayview area. The analysis determines that the increase in the Project's resident and employee population and the existing area population would not lead to substantial physical deterioration or degradation of existing and proposed facilities, nor would it result in the need for new or expanded facilities. The Project would, therefore, not cause a significant impact and no mitigation is required. Nonetheless, mitigation measure MM RE-2 has been identified to ensure that parks are phased as development occurs.

Response to Comment 44-8

Page III.P-31 of the Draft EIR has been revised to include Table III.P-3a (Residential Units, Employment, and Park Acreage Provided during Each Stage of Development) following Table III.P-3 in the Draft EIR, page III.P-31:

Table III.P-3a Residential Units, Employment, and Park Acreage Provided during Each Stage of Development [New]

<u>Stage of Development</u>	<u>Residential Units</u>	<u>Population</u>	<u>Total Parkland (ac)</u>	<u>Park-to-Population Ratio (acres per 1,000 Residents)</u>	<u>Employees</u>	<u>Park-to-Population Ratio (acres per 1,000 Residents & employees)</u>
Existing	256	1,113a	120.2	108	=	201.5
Phase 1	3,160	7,363	235.6	32.0	2,346	24.3
Phase 2	5,165	12,035	246.9	20.5	7,474	12.7
Phase 3	7,670	17,872	250.4	14.0	10,595	8.8
Phase 4	10,500	24,465b	336.4	13.8	10,730	9.6

a. Refer to Table III.C-1 (Existing Population [2005]) in Section III.C (Population, Housing, and Employment). This population correlates to the total number of households in the Traffic Analysis Zone, which includes more than the 256 households located in the Candlestick portion of the Project site (e.g., 292). It is likely, therefore, that the population within the Candlestick portion of the Project site is less than 1,113, which would only increase the existing park-to-population ratio.

b. Calculated as 2.33 people per residential unit.

As illustrated in Table III.P-3a, when employees are included in the Project’s population, the parkland ratio remains well above the standard of 5.5 acres per 1,000 population at all phases of the Project. The Project will not cause significant physical degradation of exiting park facilities.

Figure II-17 (Proposed Building and Parks Construction Schedule), Draft EIR page II-52, shows that the Project’s construction schedule would maintain adjacency between residential development and park construction and improvement. This phasing will be made mandatory by the Project’s Disposition and Development Agreement. (Figure II-17 has been revised in Section F [Draft EIR Revisions] to reflect that building construction activities would occur 1 to 2 years later than originally planned.)

Response to Comment 44-9

The comment regarding marina siting is noted. The Project area is not presently used by substantial numbers of small non-motorized craft such as kayaks. Moreover, with the exception of the Yosemite Slough bridge impacts discussed in Response to Comment 47-20, the Project is unlikely to impact conditions for watercraft other than windsurfers.

■ Letter 45: National Trust for Historic Preservation, Western Office, and California Preservation Foundation (1/12/10)

1 of 7



Letter 45

NATIONAL
TRUST
FOR
HISTORIC
PRESERVATION®

Western
OFFICE

January 12, 2010

VIA EMAIL

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Environmental Review Officer
San Francisco Redevelopment Agency
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Bill Wycko
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San Francisco, CA 94103

Re: Draft Environmental Impact Report (DEIR) for the Candlestick Point-Hunters Point Shipyard Phase II Development Plan Project (SFRA File No. ER06.05.07, SFPD File No. 2007.0946E)

Dear Mr. Muraoka and Mr. Wycko,

On behalf of the National Trust for Historic Preservation and the California Preservation Foundation, we appreciate the opportunity to comment on the Draft Environmental Impact Report (DEIR) for Candlestick Point-Hunters Point Shipyard Phase II Development Plan Project (Project). We have serious concerns that the City's analysis of the Project's impacts to historic and cultural resources is inadequate and incomplete.

After review of the Project alternatives analysis in the DEIR, we find the analysis of alternatives incorporating historic preservation insufficient to meet the strict mandates of the California Environmental Quality Act (CEQA). Of additional concern are the substantial gaps in the identification and evaluation of historic resources on the Project site and inadequate analysis of impacts of Project components on historic resources. The mitigation measures proposed for impacts to historic resources are also insufficient to address the significant adverse impacts posed by the Project. In the foregoing letter, we

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NTHP and CPF to SFRA, SFPD
SFRA File No. ER06.05.07, SFPD File No. 2007.0946E
January 12, 2010

recommend that the City conduct supplemental analysis of the Project in order to give legally sufficient treatment to historic resource and historic preservation issues.

Interests

The National Trust for Historic Preservation (National Trust) was chartered by Congress in 1949 as a private non-profit membership organization for the purpose of facilitating public participation in the preservation of our nation's heritage. 16 U.S.C. § 468. With the support of over 207,000 members nationwide, including nearly 20,000 members in California, the National Trust works to protect significant historic sites and to advocate historic preservation as a fundamental value in programs and policies at all levels of government. The National Trust has nine regional and field offices around the country, including the Western Office in San Francisco which is responsive to preservation issues in the State of California.

The California Preservation Foundation (CPF) is the only statewide nonprofit organization dedicated to the preservation of California's diverse cultural and architectural heritage. Established in 1977, CPF works with its extensive network of 1,500 members to provide statewide leadership, advocacy and education to ensure the protection of California's diverse cultural heritage and historic places.

The National Trust and CPF have participated in a number of mandamus actions enforcing CEQA's mandate to "take all action necessary" to protect California's "historic environmental qualities." (Pub. Resources Code § 21001 (b).) Among the CEQA cases in which the National Trust and CPF have recently participated as *amicus curiae* are Uphold Our Heritage v. Town of Woodside (2007) 147 Cal.App.4th 587 and Preservation Action Council v. City of San Jose (2006) 141 Cal.App.4th 1336.

Requirements of the California Environmental Quality Act

CEQA reflects the "policy of the state" that projects with significant environmental impacts should not be approved "if there are feasible alternatives ... available which would substantially lessen the significant environmental effects ..." (Pub. Resources Code § 21002.) CEQA thus requires consideration of alternatives that would "feasibly obtain most of the basic objectives of the project." (Guideline § 15126.6 subd.(a).) "Feasible" is defined as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors." (Pub. Resources Code § 21061.1.) The listed factors are "taken into account" to the extent that they may impact the capability for accomplishment of the project, but do not stand alone.

Any project that would demolish an historic resource necessarily has a significant effect on the environment, requiring a lead agency to study and adopt feasible alternatives such as rehabilitation, if available and practical. (Pub. Resources Code § 21081, 21084.1; see

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45-1
cont'd.

45-2

45-3
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NTHP and CPF to SFRA, SFPD
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Architectural Heritage, supra, 122 Cal.App.4th 1095, 1118.) CEQA's requirements to identify and analyze feasible project alternatives in an EIR are of great importance when projects threaten historic resources, as is its substantive mandate that demolition not be allowed if there is indeed a feasible alternative.

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45-3
cont'd.

Proposed Impacts to Historic Resources in the Hunters Point Shipyard

The National Trust and CPF are particularly concerned about the significant impacts of the Project on historic resources identified as eligible for listing in the California Register of Historical Places (CR) and determined eligible for listing in the National Register of Historic Places (NR), including demolition and potentially incompatible new construction. As outlined in the DEIR, the Project includes demolition of five of eleven contributing elements in the identified CR-eligible Hunters Point Commercial Dry Dock and Naval Shipyard Historic District: Buildings 208, 211, 224, 231, and 253. This action would result in the removal of all significant buildings associated with the Naval use of the Hunters Point Shipyard from 1941 to 1974 and would result in a significant impact that cannot be reduced to a less-than-significant impact via mitigation.

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45-4

The DEIR suggests proposed mitigation measures that are inadequate for reducing impacts, such as written and photographic documentation of the identified district according to National Park Service Historic American Building Survey guidelines and interpretive displays related to the history of the Hunters Point Shipyard. These measures clearly fail to reduce the environmental detriment "to a point where clearly no significant effect" will result. (Pub. Resources Code § 21064.5.) Therefore, the City is required to modify the Project in a manner that would protect historic resources if there are feasible alternatives.

Inadequacy of the Historic Preservation Alternative (Alternative 4)

The DEIR does not sufficiently include historic preservation in its alternatives analysis and does not adequately demonstrate that retention and rehabilitation of the five buildings in the Hunters Point Commercial Dry Dock and Naval Shipyard Historic District proposed for demolition is infeasible or will not meet the Project Objectives.

↑
45-5

Alternative 4 is the sole alternative incorporating historic preservation. The DEIR states that Alternative 4, "would fail to meet several of the Project objectives because it would include a reduced development program, including a 30 percent reduction in residential and most non-residential uses, no State Lands agreement, no development of the Yosemite Slough bridge or stadium, and no development of the marina compared to the Project." The associated table analyzing Alternative 4 against Project Objectives (Table VI-8: Attainment of Project Objectives, Alternative 4), however, indicates that the *alternative meets five of the six summarized project objectives*. The sole objective not met by the alternative (no construction of a new stadium for the San Francisco 49ers) is unrelated to the currently identified historic preservation issues on the project sites.

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NTHP and CPF to SFRA, SFPD
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January 12, 2010

This alternative also only analyzes the retention of 3 of the 5 eligible historic resources currently being proposed to be demolished. There is no alternative that examines retaining all of the contributing buildings and elements in the Hunters Point Commercial Dry Dock and Naval Shipyard, nor justification for the selection of three of the five resources for preservation and rehabilitation.

Alternative 4 is also the only alternative, other than No Project Alternative, in which all key aspects of the Project were eliminated. There is no examination of historic preservation in alternatives that incorporate key aspects of the Project, including but not limited to the HPS Phase II Stadium, Yosemite Slough Bridge, or the CP-HPS Phase II Development Plan. The placement of historic preservation in an alternative without key Project components prejudices a fair assessment of a viable preservation alternative.

Due to the lack of alternatives that incorporate the retention of the potential historic resources in the CR-eligible Hunters Point Commercial Dry Dock and Naval Shipyard Historic District, there are potentially other feasible alternatives that would meet the project objectives and lessen the impacts to cultural resources. Since public agencies "should not approve projects as proposed if there are feasible alternatives," additional alternative should be analyzed in a supplemental analysis.

Inadequate Analysis of Impact of Development of Heritage Park

The DEIR does not adequately address potential impacts of the development of Heritage Park on historic resources. The Project Description regarding treatment of Heritage Park states: "Heritage Park (15.6 acres) would retain and reuse historic resources and materials as much as possible while utilizing modern design with industrial character." The majority of the area comprising Heritage Park consists of the Hunters Point Commercial Dry Dock National Register Historic District (NRHD) determined eligible for the NR and the CR in 1998. Per the Hunters Point Shipyard Reuse Final EIR (2000), any construction within the Hunters Point Commercial Dry Dock NRHD must comply with the Secretary of the Interior's Standards for Rehabilitation (Standards). All potential impacts to historic resources in the NR and the CR eligible districts should be analyzed in the DEIR, not just the impact of demolition of historic resources in the district. While the DEIR cites a memorandum from Page & Turnbull analyzing proposed repairs to Dry Docks 2, 3, and 4 for compliance with the Standards, there is no analysis of impacts to the district as a whole from the Project in and around the eligible districts.

Inadequate Evaluation of the Historic Significance of Candlestick Park Stadium

The DEIR does not adequately evaluate Candlestick Park Stadium for historic significance. The Project includes demolition of Candlestick Park Stadium, the first major league baseball stadium constructed of concrete. Designed by recognized Bay Area architect John Bolles, Candlestick Park was completed in 1960. A historic resource study from 2007 conducted by Jones & Stokes determined that Candlestick Park was ineligible for the NR,



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as it did not meet the criteria consideration requiring exceptional significance for properties less than 50 years old. The study also noted that the park had undergone modifications for joint use as a baseball and football stadium, including the expansion and enclosure in 1970 and more recent modifications to convert the stadium into a football-only facility.

A critical circumstance has changed concerning the NR eligibility of Candlestick Park Stadium, however, as the Stadium has reached 50 years in age. A fresh evaluation of the Park is required given that the strict "exceptional significance" criteria no longer would apply. However, the DEIR simply asserts that, "The stadium, if reviewed at the 50-year mark, would not meet criteria for listing on the NRHP or CRHR due to lack of physical integrity resulting from the extensive alterations discussed above." The DEIR cites no report or written opinion from a professional meeting the Secretary of the Interior's Professional Qualification Standards for Architectural History to support this assertion. The supporting technical studies prepared by Circa Historic Property Development utilized to prepare the DEIR do not include any recommendation regarding the eligibility of Candlestick Park Stadium for the NR now that it has achieved the 50 year age mark, or evaluation of eligibility of the stadium for the California Register of Historical Resources. Circa Historic Property Development's technical report in fact recommends this analysis.

Inadequate Evaluation of NR Eligibility for Buildings 208, 211, 224, 231, and 253

The DEIR does not provide adequate and current evaluation of Buildings 208, 211, 224, 231, and 253 for eligibility for the NR. More than ten years has passed since the buildings were evaluated for NR eligibility in 1998, and neither that evaluation nor the present evaluation for CR eligibility includes a comparative evaluation of these resources with similar surviving resources in the San Francisco Bay area. Given the dramatic disposal and demolition of Naval resources in the region, the framework for evaluation of such resources for local significance has changed, and the eligibility of Buildings 208, 211, 224, 231, and 253 should be reevaluated.

Insufficient Information on Rehabilitation of Historic Resources

The DEIR provides insufficient information on plans to rehabilitate historic resources in the Hunters Point Commercial Dry Dock District. The DEIR states in Section III.J.4 , Impact CP-1b that the project will include rehabilitation of Dry Docks 2 and 3 and Buildings 140, 204, 205, and 207, all contributors to the Hunters Point Commercial Dry Dock District, determined eligible for the NR and the CR in 1998. The DEIR states in the same section that the rehabilitation of these buildings will comply with the Secretary of the Interior's Standards for Rehabilitation of Historic Buildings. The Project Description does not include any information regarding the proposed rehabilitation, and the DEIR does not contain analysis from a professional meeting the Secretary of the Interior's Professional Qualification Standards for Architectural History that any proposed treatment for these buildings will meet the Standards.



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Inadequate Mitigation Measures

The DEIR acknowledges that some impacts to historic resources cannot be mitigated to a less-than-significant level, but the mitigation proposed to reduce the impacts, namely Historic American Building Survey documentation and interpretive displays, is both unimaginative and inadequate. The proposed demolition of key buildings associated with the Navy's use of the site between World War II and the 1970s and the history of ship repair during that era removes some of the most substantial reminders of the site's history and destroys more than half of an identified historic district. For this level of impact, more significant and meaningful mitigation should be required.

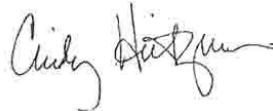
At a minimum, the Project mitigation measures should include measures outlined in the Hunters Point Shipyard Reuse Final EIR (2000) that have yet to be completed. The Hunters Point Shipyard Reuse Final EIR included an agreement to designate resources on the Project site eligible for the NR as San Francisco Landmarks, or to expressly prohibit the demolition of these structures (Section 4.12.1; page 4-98). Neither the NR-eligible Hunters Point Commercial Dry Dock District or Dry Dock 4, which is individually listed on the CR and was determined individually eligible for the NR in 1998, are San Francisco Landmarks. In addition, the Hunters Point Commercial Dry Dock District has not been formally listed on either the state or national register. Preparation of nomination forms for these designations should be required as part of any mitigation for impacts to historic resources on the site in this phase of development.

The National Trust and CPF recommend a supplemental analysis to address our comments on the analysis of the treatment of historic resources and historic preservation considerations in the DEIR. Please do not hesitate to contact Elaine Stiles, Program Officer with the Western Office of the National Trust or Jennifer Gates, Field Services Director at the California Preservation Foundation with any questions or responses to these comments.

Sincerely,



Anthea M. Hartig, Ph.D.
Director, Western Office
National Trust for Historic Preservation



Cindy Heitzman
Executive Director
California Preservation Foundation

cc: Joy Navarrete, San Francisco Planning Department
Jack Gold, Executive Director, San Francisco Architectural Heritage
Tina Tam, Historic Preservation Coordinator, San Francisco Planning Department
San Francisco Historical Commission

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Wayne Donaldson, California State Historic Preservation Officer
Gretchen Hilyard, President, Northern California Chapter, DOCOMOMO
Elizabeth Goldstein, President, California State Parks Foundation

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■ Letter 45: National Trust for Historic Preservation, Western Office, and California Preservation Foundation (1/12/10)

Response to Comment 45-1

This comment contains introductory information and is not a direct comment on the content or adequacy of the Draft EIR. No response is required.

Response to Comment 45-2

This comment contains introductory information and is not a direct comment on the content or adequacy of the Draft EIR. No response is required.

Response to Comment 45-3

Refer to Responses to Comments 28-1 and 39-3, and to Section F (Draft EIR Revisions) of this document, with regard to Alternative 4 (Reduced CP-HPS Phase II Development, Historic Preservation) and Subalternative 4A (CP-HPS Phase II Development Plan with Historic Preservation) as preservation alternatives that would retain the structures in the CRHR-eligible Hunters Point Commercial Drydock and Naval Shipyard Historic District and would avoid significant adverse effects on historic resources.

Response to Comment 45-4

Draft EIR Section III.J (Cultural Resources and Paleontological Resources) discusses the NRHP-eligible Hunters Point Commercial Drydock Historic District, as identified in 1998. The Hunters Point Commercial Drydock Historic District is shown in Figure III.J-2 (Potential Historic District), page III.J-23. As discussed in Draft EIR Chapter II (Project Description), page II-23, the Project would retain structures in this NRHP-eligible Hunters Point Commercial Drydock Historic District, including Drydocks Nos. 2 and 3, and Buildings 104, 204, 205, and 207. Impact CP-1b, Impact of Hunters Point Phase II, pages III.J-33 to -34, notes that that the Project would have less than significant impacts on the NRHP-eligible district. Section III.J also identified a larger CRHR-eligible Hunters Point Commercial Drydock and Naval Shipyard Historic District, shown on Figure III.J-2, that would include Buildings 208, 211, 224, 231, and 253. The Project would demolish those buildings, and as stated in the Draft EIR, this would be an unavoidable significant adverse impact on the CRHR-eligible district. (As noted in Section B (Project Refinements), herein, the Project analyzed in the Draft EIR proposed demolishing Buildings 208, 211, 224, 231, and 253. Building 208 will now be retained as an element of the cultural landscape, but would not be occupied.) The NRHP-eligible resources would remain and would continue to be part of the NRHP-eligible Hunters Point Commercial Drydock Historic District.

The NRHP-eligible Hunters Point Commercial Drydock Historic District as part of the Project would be bounded by new R&D development to the west and south and by the shoreline areas of HPS and San Francisco Bay to the north and east. Structures in the historic district, including Drydock Nos. 2 and 3, and Buildings 104, 204, 205, 207, and 208 would be within open space areas, as shown in Draft EIR Figure II-9 (Proposed Parks and Open space), page II-27. (Figure II-9 has been revised in Response to Comment 86-5 to reflect the proposed Bay Trail route around the Yosemite Slough.) With the Project, R&D buildings south of the drydocks would replace large-scale buildings, such as Building 211 and Building 253. While nearby

R&D development up to 105 feet in height would be a different design than the existing structures in the historic district, that new development would not alter the setting of the historic district such that its integrity would be impaired. In addition, the historic district would retain its waterfront setting, including the drydocks. Thus, new development at HPS would not have an adverse impact on the setting and context of NRHP-eligible Hunters Point Commercial Drydock Historic District as part of Project.

Mitigation measure MM CP-1b.1, pages III.J-34 to -35, requiring documentation of the CRHR-eligible resources before demolition, would reduce, but not avoid, the significant effect on CRHR-eligible resources.

Refer to Section F of this document, discussing Subalternative 4A (Proposed Project with Historic Preservation Alternative) that would retain the structures in the CRHR-eligible Hunters Point Commercial Drydock and Naval Shipyard Historic District and would avoid significant adverse effects on historic resources.

Response to Comment 45-5

Refer to Responses to Comments 28-1 and 39-3, and to Section F (Draft EIR Revisions) of this document, with regard to Alternative 4 (Reduced CP-HPS Phase II Development, Historic Preservation) and Subalternative 4A (CP-HPS Phase II Development Plan with Historic Preservation) as preservation alternatives that would retain the structures in the CRHR-eligible Hunters Point Commercial Drydock and Naval Shipyard Historic District, consistent with the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings, and would avoid significant adverse effects on historic resources.

Response to Comment 45-6

The Draft EIR found that the Project would not have a significant adverse effect on the NRHP-eligible Hunters Point Commercial Drydock District. As stated on Draft EIR pages III.J-33 to III.J-34:

The Project proposes to retain the buildings and structures in the potential Hunters Point Commercial Drydock District, identified in 1998 as eligible for listing in the NRHP. Drydocks 2 and 3 and Buildings 140, 204, 205, and 207 would be rehabilitated using the Secretary of the Interior Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings. Page & Turnbull, architects and historic resource consultants, reviewed the proposed treatment and rehabilitation of Drydocks 2, 3, and 4. The treatments would include repair of concrete surfaces of the drydocks and addition of guardrails along their perimeter. Page & Turnbull found that the proposed treatments would provide a methodology for resolving severe deterioration issues, and ultimately provide for the longevity of the historic resources; the treatments would be consistent with the *Secretary of the Interior's Standards for Rehabilitation*²⁶⁶ (refer to Appendix J [Drydock Assessment] of the Draft EIR). Heritage Park is proposed at Drydocks 2 and 3 and would include interpretive display elements related to the history of HPS. Per CEQA Guidelines Section 15064.5(b)(3), these impacts would be mitigated to a less-than-significant level.

As discussed on in Section III.J, pages III.J-33 to -34, the Project would demolish structures identified as part of the CRHR-eligible Hunters Point Commercial Drydock and Naval Shipyard Historic District; this would be a significant and unavoidable adverse effect. Refer to Response to Comment 28-1 with regard to Subalternative 4A (CP-HPS Phase II Development Plan; Stadium, Marina, Yosemite Slough Bridge, with Historic Preservation), which would retain the structures in the California Register of Historical Resources (CRHR)-eligible Hunters Point Commercial Drydock and Naval Shipyard Historic District, and would avoid significant adverse effects on historic resources.

The Draft EIR includes supplementary information on the historic treatment of the Drydocks 2, 3, and 4 as atypical structures. All buildings to be retained in the NRHP-eligible Hunters Point Commercial Drydock Historic District, would, as noted, be rehabilitated under the Secretary of the Interior Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings. Draft EIR, page III.J-29, third full paragraph, notes:

CEQA Guidelines Section 15064.5(b)(3) states that “generally, a project that follows the Secretary of the Interior’s Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings or the Secretary of the Interior’s Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings shall be considered as mitigated to a level of less than a significant impact on the historical resource.”

Response to Comment 45-7

Refer to Response to Comment 39-4 on the evaluation of Candlestick Park stadium under NRHP and CRHR criteria. As discussed in that Response, Candlestick Park stadium would not meet NRHP or CRHR criteria as an historic resource.

Response to Comment 45-8

The *Bayview Waterfront Plan Historic Resources Evaluation, Volume II: Historic Resources Survey and Technical Report*, October 2009, by Circa Historic Property Development (Circa Report, cited on page III.J-1), evaluated structures at Hunter Point Shipyard for eligibility for the NRHP, the CRHR, and local historic registers. The Circa Report concluded that Buildings 208, 211, 224, 231, and 253 met criteria as contributors to the CRHR-eligible Hunters Point Commercial Drydock and Naval Shipyard Historic District, described on pages III.J-22 through III.J-25. The Circa Report did consider NRHP criteria in that evaluation, and concluded that Buildings 208, 211, 224, 231, and 253 did not meet criteria for the NRHP. The conclusion is noted on page III.J-22 and Table III.J-1, page III.J-24. Therefore, the Draft EIR provides information that updates the evaluation of historic resources at Hunters Point Shipyard since the 1998 study noted in the comment, the 1998 study is also addressed on Draft EIR, page III.J-21.

To clarify the summary of the Circa Report in the Draft EIR, the following underlined text has been added after the second sentence, first paragraph, page III.J-22:

... The investigation evaluated the eligibility of buildings and structures for the NRHP, the CRHR, or local historic registers. ...

Refer also to Response to Comment 39-1 with regard to evaluation of historic resources at Hunters Point Shipyard.

Response to Comment 45-9

Refer to Responses to Comments 34-4 and 45-6 with regard to preservation of resources in the NRHP-eligible Hunters Point Commercial Drydock Historic District consistent with the Secretary of the Interior Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings.

Response to Comment 45-10

Refer to Response to Comment 34-6, clarifying that the Navy is completing the NRHP listing process for the Hunters Point Commercial Drydock Historic District identified in 1998.

■ Letter 46: Visitacion Valley Planning Alliance (1/11/10)

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Letter 46



VISITACION VALLEY PLANNING ALLIANCE

Joy Navarette
San Francisco Planning Department
Suite 400
1660 Mission Street
San Francisco, CA 94103

January 11, 2010

Dear Ms. Navarette,

I wish to make a few comments regarding the DEIR for the Candlestick Hunters Point Development Project, some of which may not seem appropriate, but are relevant nevertheless.

Overall, the sponsor's community planning outreach process has been deeply flawed. That has had a significant impact on the EIR, because certain issues did not get addressed in a public forum and get answered in the EIR. Our neighborhood, Visitacion Valley, has, except for a single initial meeting, been left out of the planning process. The sponsors of the project refused to hold any further meetings in our neighborhood. One can only think it was because of the huge impacts that the project will have on Visitacion Valley and the sponsor did not want to address them.

The actual Project is partially in Visitacion Valley. Some of the area south and east of Bayview Hill within the Candlestick Park Stadium area is in Visitacion Valley and our shoreline extends to the tip of CPSRA. Our neighborhood will be deleteriously impacted by this mega project due to the enormous transportation/traffic and open space impacts.

Given the lack of sufficient time to read and respond to the DEIR, I am going to concentrate on a few issues in a general fashion:

1) Transportation, Traffic and Land Use.

The City of San Francisco purportedly adheres to the *Transit First* policy. The EIR states that the Project promotes alleviating the use of single occupancy vehicles and tying land use and transportation, i.e. residents may either walk or take public transportation to their nearby jobs.

46-1

46-2

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How does this conform with the entertainment center and regional retail proposed for the Candlestick Point area? Both of these entities will generate traffic from the greater Bay Area and create the need to expand Harney Way to accommodate the expected high volume of traffic. The closest and only link to Candlestick Point from Highway 101 is Harney Way, which is bounded on the south by the Bay. Already, Highway 101 cuts the greater Visitacion Valley Watershed from the Bay. Now the shoreline access will be further degraded by the Harney Way expansion to say nothing of the impact on the proposed and existing Executive Park developments. If feasible economically and topographically, build a land bridge across Harney Way to allow easier access to the Bay and continuous interface with the shoreline that was originally envisioned by Executive Park developers and the community.

46-2
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The proposed LOS at intersections in Visitacion Valley are not acceptable and need to be better mitigated, primarily by better land use planning for the Project, i.e. no regional entertainment and retail center. Already Bayshore Boulevard, Tunnel and Blanken Avenues are congested and this is even before the Schlage Lock, Executive Park, Travelodge and Sunnydale developments are completed.

Our neighborhood is held hostage to traffic and parking congestion on the 49er Game Days and this will only be exacerbated by an entertainment and regional retail center at Candlestick Point.

2) Regional planning.

There needs to be coordinated regional planning between San Mateo and San Francisco Counties. Visitacion Valley is caught in the middle of unprecedented mega developments that should be working together for the good of the entire region.

- The 600 acre Brisbane Baylands project next door to Visitacion Valley is proposing an Entertainment Center to replace the Cow Palace, which will eventually have to be closed. The Baylands site, being directly adjacent, has easy access to Highway 101. Why would anyone even consider building another entertainment center at Candlestick Point, which can only be accessed by a single narrow strip of land, i.e. Harney Way?

46-3

- The solely commercial development at the Baylands, as well as the research and development and other commercial development proposed for Hunters Point, will generate enormous employment opportunities for the entire region. It does not all have to be included in this Project - to the point of spoiling another neighborhood, Visitacion Valley, which is finally emerging from years of neglect.

3) Open Space.

We are missing a golden, once and forever opportunity to create a magnificent signature park in the Southeast by not emphasizing the link between Bayview Hill and CPSRA. As an aesthetic consideration, yes, almost anything would be better than the stadium parking there now. However, aesthetically and environmentally, a better alternative, rather than a narrow link across the roadway, would be significant

46-4

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expansion of the connection between the state and city parks. It would create a grand view in both directions from the Hill and the shoreline. It would provide an unfettered safe means for wildlife to travel from hill to shore, as well as increase the open space for the public. A Doyle Drive type of pedestrian/wildlife crossing could be built by culverting the roadway to create a land bridge.

As District 10 residents know, the southeastern waterfront has the potential to offer the kind of quality open space found at other locations such as Crissy Field. Overlooking the potential to better connect Bayview Hill to the Project's broader open space seriously underestimates the value - aesthetic, educational, recreational, environmental and even financial - that such space will bring to the City. This could be a cultural attraction, if an outdoor sculpture garden were created on the order of New York State's Storm King Center.

In any other section of the City, the Candlestick Point portion of the Project would not be acceptable. There has not been sufficient attention paid to development planning at Candlestick, certainly nothing compared to the Shipyards, which has had its own CAC and years of community participation.

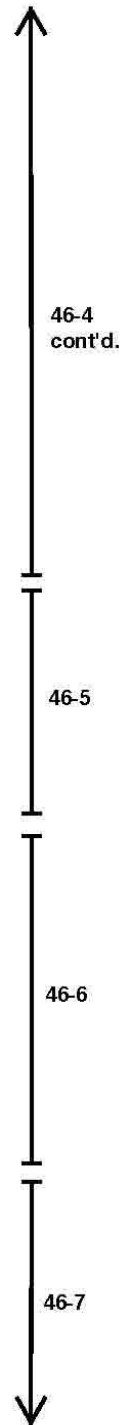
4) Air Quality.

Further studies need to be done specifically for Executive Park and the greater Visitacion Valley intersections. The DEIR does not include air quality studies in Visitacion Valley, only in BVHP. Most anticipated Project traffic will travel along Harney Way and come from 101 and the future Geneva Extension. The southern routes will be those most used, because of accessibility and that is where the air quality will be most heavily impacted. Once again, the well being of our residents is not being addressed.

• Aesthetics.

Although, I am generally favorable of higher density brought about by taller buildings, it is disingenuous for the DEIR to state that there will be no adverse effects visually on the views either towards or from Bayview Hill, which will in effect be obscured. There will be an enormous impact on the view corridors affecting the southern neighborhoods, which will block the bay views. Also, I will reiterate the aesthetic importance of the view corridor that could be created by a significant expansion of the land connecting Bayview Hill and CPSRA. The proposed buildings will forever block the magnificent view from the park up the eastern side of Bayview Hill, which has been degraded on all other sides. This is the only remaining open space left of the Hill that descends to the shore

Overall, there is much to look forward to in the project, but, again, the Candlestick land use portion and traffic issues in Visitacion Valley have been overlooked. There is a strong sense in our neighborhood that we are being sacrificed to this Project. We are sandwiched between 2 mega developments - one, in our own City and one at the Brisbane Baylands - both of which are ready to go forward without consideration of health and aesthetic issues that will emanate from traffic congestion, upheaval of our neighborhood and quality of life that their projects will produce.



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I ask that further study be done on the effects of this Project on our neighborhood particularly as concerns the Candlestick Point area in terms of traffic congestion, Harney Way, connecting Bayview Hill and CPSRA, and deleting the regional entertainment and retail centers, which are traffic generators, in favor of local neighborhood serving uses. I have enclosed an alternative concept plan for Candlestick Point that shows an expansion of the land mass between Bayview Hill and CPSRA and an adjacent mixed-use retail/housing area. The mixed-use area would have retail on the ground floor with housing above and be more in keeping with other San Francisco neighborhoods - a main street kind of concept - rather than separating the housing from retail as shown in the Project's plan.

There is a basic disconnect between some of the City's stated policies, such as the *Precautionary Principle* and *Transit First* and the proposed Project that need to be examined. If given sufficient time, I could have commented more specifically. Although I read portions of the DEIR, I could not give it the attention that such an important document deserves.

Thank you.

Fran Martin

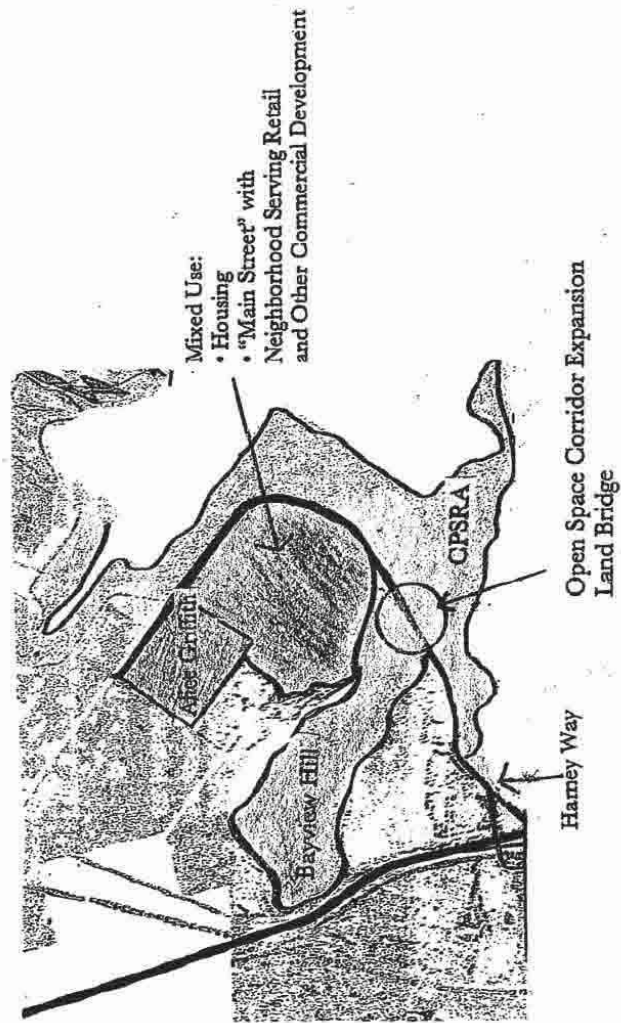
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cont'd.

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Alternative Plan: Candlestick Point



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■ Letter 46: Visitacion Valley Planning Alliance (1/11/10)

Response to Comment 46-1

Refer to Response to Comment 1-1 and Response to Comment 85-5 for a discussion of the adequacy of the public comment period, including the many opportunities for providing comments on the Draft EIR.

Response to Comment 46-2

The comment questions whether construction/approval of an entertainment and regional retail center at the location proposed is consistent with the City's Transit First policy. There would be a robust transit network serving the entertainment and retail sites. These facilities would be served by three transit lines, including:

- 29-Sunset, with service to Mission Street, the Balboa Park BART station, San Francisco City College, and San Francisco State University
- CPX, which would provide express service to the Transbay Terminal in Downtown San Francisco, where patrons can connect to many other local bus lines as well as regional transit systems, including ferries, AC Transit bus service to the East Bay, and Golden Gate Transit bus service to Marin and Sonoma Counties
- 28L BRT, which would provide high-frequency service in exclusive right-of-way to the Hunters Point Shipyard transit hub, the Bayshore Caltrain station, and the Balboa Park BART station

Consequently, patrons from the regional retail and entertainment centers who wish to use transit would be able to connect to destinations throughout the entire Bay Area with only a single transfer between systems or routes. The ability to provide convenient connections to this robust transit network was a key reason for the design and proposed location of these uses.

The Project proposal includes a mix of regional and local transit links to ensure quick access by transit from points throughout the Bay Area to major destinations in the Project area. These include the proposed stadium, the parks, and the entertainment and retail center complex at Candlestick Point. While these land uses are consistent with the voter-approved Proposition G, the transit links proposed in the Project have been designed specifically to ensure that regional attractions (e.g., the arena) have multiple transit route access and strong connections to BART and Caltrain. Thus, the entertainment and retail complex would have direct access to BART and the T-Third by the 28L-BRT and the 29-Sunset, and direct access to Caltrain by the 28L-BRT, as well as multiple pedestrian and bicycle links to the Bayview via Gilman Avenue, Jamestown Avenue, and Ingerson Avenue, and along Harney Way and the State Park; links that would also serve the same local-to-regional transit hubs.

Unlike numerous regional attractions in the Bay Area, transit serving this site would not only provide links to BART, Muni Metro, and Caltrain, it would provide those links on exclusive right-of-way to reduce and minimize conflicts, congestion impacts and other typical delay and unreliability factors of conventional bus transit service. The Project therefore provides a high level of transit orientation and amenity to support the trips to and from the Project, from both San Francisco and the larger Bay Area.

The commenter also suggests that the proposed reconstruction of Harney Way would negatively impact shoreline access. The proposed configuration of Harney Way includes a number of pedestrian amenities designed to improve shoreline access. The reconstruction would include two new signalized intersections,

at Thomas Mellon Drive and Executive Park East. Each of these new signalized intersections would provide new crosswalks across Harney Way and allow controlled crossings for pedestrians. The reconstructed Harney Way has also been designed in two phases—the first being a slightly narrower, interim phase with fewer travel lanes, and the second being a slightly wider ultimate phase with more travel lanes when traffic volumes warrant—such that pedestrian crossing distances across travel lanes would remain as short as possible for as long a duration as possible.

The intersection and freeway facility LOS impacts associated with the Project were analyzed and described in the Draft EIR. The analysis indicated a number of significant traffic-related impacts to the surrounding roadway system, including facilities in Visitacion Valley. The analysis describes mitigation measures to reduce traffic-related impacts to less than significant levels, where feasible mitigation measures were identified. However, at a number of facilities expected to experience significant impacts, no feasible mitigation measures were identified. For those facilities where no feasible mitigation measures were identified, a detailed discussion of mitigation measures considered and why they were determined to be infeasible is provided in the Transportation Study in Appendix D of the Draft EIR.

The commenter also suggests that unacceptable LOS at intersections in Visitacion Valley be mitigated by land use planning for the Project by not providing a regional entertainment and retail center. A number of intersections in Visitacion Valley would operate at LOS E or LOS F under future year 2030 conditions without the Project. Therefore, not providing the Project's regional entertainment and retail center would not mitigate the poor operating conditions at these intersections. Chapter VI of the Draft EIR describes a number of Alternatives to the Project, some of which would generate less traffic than the Project, and would therefore add less traffic to study intersections in Visitacion Valley.

Impacts TR-38 and TR-43 describe traffic and parking impacts, respectively, associated with 49er game day conditions. Although mitigation measures are proposed to reduce the severity of traffic impacts, they would remain significant and unavoidable with mitigation. Parking impacts during 49er game days were found to be less than significant. Visitors to the regional retail and entertainment center during game days would likely use regional facilities, such as US-101 and the Harney Way interchange, rather than local roadways within Visitacion Valley to access the retail and entertainment center.

Response to Comment 46-3

The Project's commercial uses have been designed to provide a range of opportunities to the region, the adjacent neighborhoods, and the new Project residents. The retail market analysis prepared by CBRE Consulting (Appendix U to the Draft EIR) determined that the commercial uses proposed by the Project would be sufficiently supported by growth in the region and the new residents of the Project. The market analysis determined that there would be no adverse urban decay impacts from cumulative development on the surrounding neighborhoods, including Visitacion Valley. Access to the Project area would be improved under the Project with numerous connections, including BRT and a marina, to the greater San Francisco area. It is anticipated that there would be sufficient market base to support more than one entertainment venue.

Response to Comment 46-4

The comment is acknowledged. This proposal does not reduce or avoid any significant and unavoidable impact of the Project.

Response to Comment 46-5

The Draft EIR evaluates potential impacts from the Project construction and traffic along the Harney Way corridor, including Executive Park, as described in Section III.H (Air Quality) and in Appendix H3, Attachments 1, 2, 4 and 6. The greater Visitacion Valley area is farther away than and generally upwind of the Harney Way corridor. As pollutant concentrations from these types of sources decrease with increasing distance and as the predominant wind direction tends to blow from west to east, out to the San Francisco Bay, the air quality impacts in Visitacion Valley would be lower than those in the Harney Way corridor. As discussed in Appendix H3, Attachments 1, 2, 4 and 6, the impacts in the Harney Way corridor were well below the BAAQMD CEQA threshold of significance so no adverse health impacts associated with the Project would be expected for the greater Visitacion Valley area.

Response to Comment 46-6

Refer to Response to Comment 31-5 regarding the subjectivity of aesthetic evaluation. Section III.E (Aesthetics) of the Draft EIR does not indicate there would be no impact on views. Rather, the analysis acknowledges that the towers would partially obstruct some views from different vantage points, which were clearly identified. Figure III.E-22 (View 10: Northeast from Bayview Hill), page III.E-33, of the Draft EIR, shows the view from Bayview Hill. To the east, residential towers at Candlestick Point would be visible. Short and mid-range views of degraded and unmaintained areas would be replaced with well-designed development (page III.E-60 of the Draft EIR). As shown in Figure III.E-21 (View 11: Northwest from CPSRA), page III.E-34, of the Draft EIR from the easterly area of CPSRA, the Bay, Bayview Hill, and Candlestick Point stadium are clearly visible. Views of Bayview Hill would be partially obstructed, as noted on page III.E-60 of the EIR. However, this view would not be completely blocked, as shown in the simulation, and Bayview Hill would remain fully visible from other vantage points.

Response to Comment 46-7

The traffic-related impacts associated with the Project have been analyzed and are presented in the Draft EIR. Specifically, Impacts TR-1 through TR-16, TR-38, TR-46, and TR-51 identify traffic-related impacts due to the Project, their levels of significance, whether mitigation is feasible, and level of significance after mitigation. These impacts include traffic throughout the transportation study area, including a number of intersections in the Visitacion Valley area and the nearest freeway facilities. They also include the cumulative effects of a number of already approved and/or reasonably foreseeable development projects in the study area, as referenced by the commenter.

The health and aesthetic impacts emanating from traffic congestion, as well as quality of life have been addressed in Draft EIR Sections III.I (Air Quality), Section III.E (Aesthetics), and Section III.B (Land Use and Plans) respectively. Further as the Draft EIR includes a cumulative analysis of all impact areas, the combination of the Project with all reasonably foreseeable development has also been addressed in Chapter III (Environmental Setting, Impacts, and Mitigation Measures) under each issue area.

With regard to replacing the regional retail centers with neighborhood-serving uses, these ideas were addressed in Chapter VI Alternatives. A reduced development scenario was presented in Alternative 3, page VI-4, in which retail uses would not be developed.

Refer to Response to Comment 52-7 regarding the neighborhood-serving retail (which includes grocery stores) uses and other services proposed by the Project that would be available and accessible to the larger Bayview community and also to the residents of Alice Griffith. Draft EIR Chapter II (Project Description), page II-16, second paragraph, states:

Existing 256 public housing units would be demolished on the existing SFHA site and 844 new homes would be constructed in their place along with neighborhood serving retail and services, open space and new streets. The 844 new homes would include a mix of market-rate, affordable and below-market rental and homeownership and public housing replacement units.

Figure II-4 (Proposed Land Use), page II-11, identifies the location of neighborhood-serving retail with a pink striped overlay.

The commenter reiterates a previous comment regarding consistency between the Project and the City's Transit First Policy. Refer to Response to Comment 46-2 for a discussion of the consistency of the City's Transit First policy with the proposed entertainment and regional retail center.

The commenter notes that the specificity of comments was affected by the length of time available to comment. Refer to Responses to Comments 80-1 and 84-11 for a discussion of the adequacy of the public comment period, including the many opportunities for providing comments on the Draft EIR. In addition, refer to Response to Comment 96-1 for a discussion of the other opportunities for providing public comment prior to publication of the Draft EIR. Refer to Response to Comment 85-5 for a discussion of the extensive planning process for the Project.

Finally, the commenter has submitted an alternative concept plan for consideration that replaces the proposed regional retail and entertainment center with residential, neighborhood serving retail and other commercial development. California has declared that the statutory requirements for consideration of alternatives must be judged against a rule of reason. CEQA Guidelines Section 15126.6(f) defines the "Rule of Reason," which requires that an EIR set forth only those alternatives necessary to permit a reasoned choice. The alternatives shall be limited to those that would avoid or substantially lessen any of the significant effects of the Project. Of those alternatives, the EIR need examine in detail only those that the Lead Agency determines could feasibly attain most of the basic objectives of the Project. Among the factors that may be used to eliminate alternatives from detailed consideration in an EIR is (i) failure to meet most of the basic project objectives, (ii) infeasibility, or (iii) inability to offer substantial environmental advantages over the project proposal (CEQA Guidelines Section 15126.6(c)). Further, CEQA Guidelines Section 15126.6(f)(1) states that "the factors that may be taken into account when addressing the feasibility of alternatives are site suitability, economic viability, availability of infrastructure, general plan consistency, other plans or regulatory limitations, jurisdictional boundaries (projects with a regionally significant impact should consider the regional context), and whether the proponent can reasonably acquire, control or otherwise have access to the alternative site (or the site is already owned by the proponent)." Sufficient information is not provided by the commenter on the alternative concept plan to draw any conclusions about its feasibility.

■ Letter 47: California State Parks Foundation (1/12/10)

1 of 97

Letter 47



CALIFORNIA
STATE PARKS
FOUNDATION

January 12, 2010

Via Email and U.S. Mail

Environmental Review Officer
San Francisco Redevelopment Agency
One South Van Ness Avenue, Fifth Floor
San Francisco, CA 94103

Environmental Review Officer
San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco, CA 94103

**RE: Candlestick Point-Hunters Point Shipyard Phase II Draft Environmental
Impact Report; SCH No. 2007082168**

Dear Mr. Muraoka and Mr. Wycko,

On behalf of the California State Parks Foundation (“CSPF”) and our 115,000 members statewide, we write to comment on the Draft Environmental Impact Report (“DEIR”) for the Candlestick Point-Hunters Point Shipyard Phase II Development Plan Project (“Project”). Our comments consist of this cover letter and the attached legal comment letter with exhibits from experts. CSPF is concerned primarily with the Project’s impacts to the Candlestick Point State Recreation Area (“CPSRA”) and the Yosemite Slough Wetlands Restoration Project.

The California State Parks Foundation

The California State Parks Foundation is the only statewide non-profit membership organization dedicated to protecting, enhancing and advocating for California’s 278 natural, cultural and historic state parks. Through programs that help restore park properties, educate teachers and students about environmental resources in parks, build volunteerism and stewardship in our state parks, and promote sound public policy, we work to protect countless natural, cultural and historical treasures found within our parks, as well as the 280 miles of coastline, 625 miles of lake and river frontage, 18,000 campsites and 3,000 miles of hiking,

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Your Voice for **Parks**

biking and equestrian trails. On behalf of our members, we are committed to ensuring that state parks continue to provide recreation, adventure, renewal, and inspiration to all Californians.

Statewide Advocacy to Protect State Parks

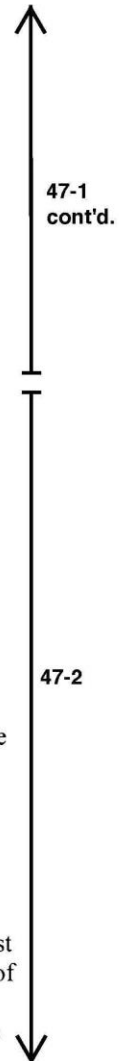
In recent years, it has become clear that California’s 278 state parks are vulnerable to proposals to use these lands for purposes inconsistent with their acquisition and development as parks. Each year we monitor parkland for these proposed “non-mission” uses. Almost 25% of our state parks are confronting non-conforming uses. These proposals, individually and collectively, are a significant threat to the California State Park system. Heated public dialogue and litigation resulted from proposals to construct a toll road through San Onofre State Beach and a power line through Anza Borrego Desert State Park, for instance.

Candlestick Point-Hunters Point Shipyard Phase II Development Plan Project and CSPF

Before commenting generally on the DEIR, I want to comment on the nature of the dialogue that has taken place between CSPF and the City regarding this project. I think it is fair to say that we have received the level of respectful, proactive dialogue that you would hope for in a project as complex and far-reaching as this one. This dialogue has given us a high level of confidence that the issues raised in our comments on the DEIR will be resolvable with further dialogue.

We have chosen to send the detailed comment letters that you will find in this package because we also respect the formal nature of this moment in the development of any project and wish to be forthright about our concerns. However, we hope that many of these concerns will be dealt with outside the environmental review process.

I would also like to comment on our view of the project overall. Although you will see many concerns raised about specific aspects of the project, overall we feel that the Candlestick Point-Hunters Point Shipyard Phase II Development Plan Project will provide substantial benefits to the system of both state and city parks in the area and provide the level of residential and commercial development appropriate to the site. It is ultimately the policy makers who must opine on whether this is true. However, it is essential to us to express this more balanced view of the project. It may be too easy to read into the concerns expressed in the following pages an opposition to the overall project which does not exist. We write with the intent to address flaws



in the DEIR in furtherance of a better disclosure of the impacts of the project, better analysis of alternatives, and our desire to improve it to its full potential.

↑ 47-2
cont'd.

The DEIR

CPSRA is a unique and valuable recreational resource, and like all our state parks, merits the utmost protection from any surrounding development. The Project, however, does not recognize and protect the full recreational value of CPSRA.

47-3

The Candlestick Point-Hunters Point Shipyard Phase II Development Plan Project DEIR does not convince us that CPSRA will be sufficiently protected. Notwithstanding the Project's planned improvements to certain areas of CPSRA, which CSPF recognizes and appreciates, we remain unconvinced the damage that would occur elsewhere to the park is necessary.

Yosemite Slough and the Bridge

Frankly this is the area of our biggest concern. The DEIR overlooks impacts to Yosemite Slough – a critically important and valuable part of the state park – are evident.

First, the environmental documentation appears to cloak the true nature of the proposed Yosemite Slough Bridge. Simply put, Yosemite Slough Bridge is a road proposal that runs through a park. However, nowhere in the environmental documentation is the bridge presented as exactly that: a road through a park. Instead, the Project seems intentionally designed to avoid this conclusion. For example, the state park is oddly divided with the Yosemite Slough area being excluded from the project site and treated disparately while the remainder of the park is included as part of the project.

47-4

Second, the Project fails to recognize the importance of the Yosemite Slough Wetlands Restoration Project. No analysis is provided on how the project will affect the California Department of Parks and Recreation's ("DPR") and CSPF's multi-million dollar efforts to revitalize the Slough.

Finally, the impacts from the Yosemite Slough Bridge remain largely unexamined. This manmade infrastructure will impose a significant change to the park setting anticipated both in the parks General Plan and in the Yosemite Slough Wetlands Restoration Project. The DEIR needs to fully examine these impacts. Further, CSPF is concerned that the bridge itself is



unnecessary. Our traffic expert concludes that the DEIR does not contain sufficient justification for the bridge. Additionally, the Project does not advance a no-bridge option if the 49ers Stadium is built elsewhere. If the fundamental purpose of the bridge is to meet game-day traffic needs, an alternative proposal for traffic should be presented in the event no stadium is built.

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Impacts to Candlestick State Recreation Area as a Whole

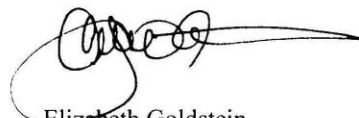
CSPF also is concerned more generally with the Project's impacts to the entire state park. The DEIR repeatedly asserts that improving the state park in some areas justifies degradation and the take of the park elsewhere, and therefore significant impacts to park resources are minimal. This turns the California Environmental Quality Act ("CEQA") on its head. Significant impacts must be analyzed and fully disclosed prior to any form of mitigation.

Development projects should avoid encroachments on parklands if at all possible, and we are not convinced that this Project is configured in a manner that sufficiently protects our parklands. This project contemplates the take of existing parklands and negative impacts to the remainder. Compensation is presented in the form of replacing or improving upon certain parklands via a reconfiguration deal with DPR. The DEIR, however, fails to clearly analyze the details of this scenario or recognize the severity of park impacts. As a result, we do not believe that the environmental documentation fulfills its legal mandate under CEQA to fully evaluate and inform decision makers and the public as to the merits of the Project.

47-5

We look forward to the continued dialogue regarding this important project.

Yours Truly,



Elizabeth Goldstein
President

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**California State Parks Foundation
Legal Comment Letter on the Draft Environmental Impact Report
for the Candlestick Point – Hunters Point Shipyard Phase II Development Plan Project;
SCH #2007082168**

We write on behalf of the California State Parks Foundation (“CSPF”) to comment on the Draft Environmental Impact Report (“DEIR”) for the Candlestick Point-Hunters Point Shipyard Phase II Development Plan Project (“Project”), a joint proposal of the San Francisco Redevelopment Agency (“Agency”) and San Francisco Planning Department (“Planning Department”).

As explained in detail below, the DEIR for the Project does not comply with the requirements of the California Environmental Quality Act (“CEQA”), Public Resources Code §§ 21000 *et seq.* (“CEQA”) and the CEQA Guidelines, California Code of Regulations, Title 14, §§ 15000 *et seq.* (“Guidelines”). Approval of the Project also threatens to violate several other state and federal laws. The Agency and Planning Department should not approve the Project or grant any permits for the Project until a revised DEIR is prepared and re-circulated for public review and comment.

These comments are prepared with the assistance of two technical experts, WRA, Inc. and Tom Brohard, P.E. The comments of each of these two experts are appended hereto as Exhibit A and Exhibit B, respectively. Please note that these expert comments supplement the issues addressed below and should be addressed and responded to separately.

I. INTRODUCTION

The California State Parks Foundation is a nonprofit organization whose mission is to protect, enhance, and advocate for California’s 278 magnificent State Parks. CSPF is therefore concerned with the Project’s negative impacts to the Candlestick Point State Recreation Area (“CPSRA” or “State Park”) and to ongoing efforts to revitalize the Yosemite Slough area of this park.

The massive scope of this project – over 10,000 residential units, over 1 million gross square feet (gsf) of retail and offices space, 2.5 million gsf of research and development uses, a new 49ers stadium, a 900-foot bridge, and a 19-year construction period – would have tremendous impacts on the State Park. Much of the Project’s development, including the Yosemite Slough Bridge, would occur on, or immediately adjacent to, existing state parklands. Despite this development’s obvious inconsistencies with park purposes, the DEIR consistently underestimates the full scope of significant recreational, visual, biological, and other impacts to CPSRA.

47-6

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Yosemite Slough Bridge is of major concern. Its imposing nature and surrounding landscaping will reduce CPSRA's attractiveness to the public. This bridge would decrease the recreational value of the state park by introducing unnatural and discordant visual elements intruding upon previously open vistas of the bay. The DEIR largely ignores these impacts.

Traffic justifications for the Yosemite Slough Bridge also are not persuasive. Our traffic expert finds that the bridge will not significantly alter traffic congestion, and that alternative transportation plans have not been adequately studied and considered. Moreover, if the new 49ers stadium is not built, which is a real possibility, the political impetus for the bridge evaporates. But the Project contains no contingencies for no-bridge alternatives if a new stadium never materializes. Equally disturbing, the DEIR fails to provide any legally enforceable mechanisms to ensure the Yosemite Slough Bridge will not be opened for automobile use on a year-round basis.

The DEIR's flaws extend to its treatment, more generally, of the Yosemite Slough – an integral part of the State Park. Most notably, the DEIR does not provide any analysis of Project inconsistencies with the Yosemite Slough Wetlands Restoration Project. Sponsored by the California Department of Parks and Recreation ("DPR") in collaboration with CSPF, this wetlands plan will enhance and restore Yosemite Slough's recreational and biological values. The DEIR's failure to consider significant inconsistencies with the wetlands restoration plan violates fundamental CEQA principles, and forecloses the possibility of adopting environmentally superior and feasible alternatives that would allow for the Project to move forward in concert with the wetlands restoration plan, rather than threaten its recreational and biological improvements.

The DEIR is replete with omissions and legal deficiencies with respect to impacts to other areas in CPSRA as well. For example, the DEIR operates under the flawed premise that improving the State Park in some areas justifies degradation elsewhere; and, as a result, the DEIR truncates its analysis of significant impacts to park resources. This violates CEQA requirements to fully disclose impacts.

Ultimately, the environmental documentation fails to achieve its fundamental purpose of informing the public under CEQA and its Guidelines. The project description is incomplete and misleading; a thorough analysis of significant environmental impacts separate from proposed mitigations is still needed; inconsistencies with other plans remain unidentified; a full discussion of alternatives has yet to be performed; and mitigation measures are insufficient, unenforceable, and often missing altogether. The ability of CSPF, decisionmakers, and the rest of the public to fully understanding Project impacts is therefore severely compromised.

II. THE DEIR IS INADEQUATE AND FAILS TO COMPLY WITH CEQA

The DEIR fails to realize two of the essential purposes of CEQA. First, CEQA is designed to inform decisionmakers and the public about potential, significant environmental effects of a project. Guidelines § 15002(a)(1). The EIR process is the "heart" of this requirement. *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 84. The EIR has been



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described as “an environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.” *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

Second, CEQA directs public agencies to avoid or reduce environmental damage when possible by requiring alternatives or mitigation measures. Guidelines § 15002(a)(2) and (3); see also *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564; *Laurel Heights Improvement Ass’n v. Regents of the University of California* (1988) 47 Cal.3d 376, 400.

As discussed below, the DEIR falls short of these mandates by failing to inform the public or decision makers about the Project’s significant impacts, examine an adequate range of alternatives, and propose adequate mitigation measures.

A. THE DEIR MUST DESIGNATE ONE LEAD AGENCY

The DEIR lists both the City’s Planning Department and the City’s Redevelopment Agency as essentially “co-lead” agencies for the Project. See, e.g., DEIR, I-10. This violates CEQA’s requirement that the EIR designate a single lead agency for a project. “If two or more agencies are involved in implementing or approving a proposed project, only one agency can be the lead agency. Guidelines § 15051(a). The Guidelines establish criteria for selecting a single lead agency amongst two or more contenders.” Remy, Thomas, *Guide to CEQA* (11th Ed.), 2007, p. 54. Although the Redevelopment Agency takes on projects exclusively within the City and County of San Francisco, it is a separate legal entity from the City and County. As explained on its website, “[t]he San Francisco Redevelopment Agency, incorporated August 10, 1948, is authorized and organized under the provisions of the California Community Redevelopment Law (“CCRL”). The Agency is an entity legally separate from the City and County of San Francisco, but existing solely to perform certain functions exclusively for and by authorization of the City and County of San Francisco.” See <http://www.sfredevelopment.org/index.aspx?page=22>. The Redevelopment Agency has its own Commissioners and is charged with its own mandate.

Failure to properly designate a single lead agency poses significant and unnecessary procedural burdens to the public and results in administrative waste for the relevant agencies. For instance, the DEIR states that there will be a separate EIR certification by the Redevelopment Agency and the Planning Commission. See, e.g., DEIR, ES-4 and Table ES-4. This creates confusion and additional procedural hurdles for the public in making its comments and for purposes of understanding the public’s exhaustion responsibilities and attendant appeal rights. The DEIR must be revised to repair this legal defect. One agency should be designated as lead with the other agency designated as a responsible agency. The lead agency must give the responsible agency the opportunity to comment on the project and provide the responsible agency with any and all procedural considerations to which any other responsible agency is entitled under CEQA. A revised DEIR must then be re-circulated for public review and comment.

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B. THE DEIR IS A PROGRAM-LEVEL EIR, NOT A PROJECT-LEVEL EIR

CEQA mandates the use of programmatic EIRs for individual projects with significant environmental effects that are implemented in phases. Guidelines § 15165. Program EIRs serve a vital function by allowing decisionmakers the opportunity to consider the wisdom in pursuing a project in its proposed form as early in the process as possible. *See Natural Resources Defense Council v. City of Los Angeles* (2002) 103 Cal.App.4th 268, 271 (City of Los Angeles was required to prepare a tiered EIR to address any new impacts related to Port of Los Angeles project in its more recent and detailed form.)

In this instance, the massive scope of the Project, its preliminary nature, and its phased 19-year construction period, make it inappropriate for project-level analysis. *See*, DEIR, Figure II-16 (timing for different phases). The uncertain nature of the Project is evident. For example, widely divergent plans for a new 49ers stadium include the possibility that the stadium may not be built at all, or that the stadium may be opened for expanded use by the Oakland Raiders. Uncertainties also exist with the Candlestick Point Tower Variants, which offer divergent configurations that could have notably different impacts on CPSRA (e.g., shade, wind, aesthetic impacts). DEIR, Figures IV-13 to IV-16. If the present DEIR is not treated as a programmatic EIR, these ambiguities in the scope of the Project would result in future phases of development avoiding environmental review as they take form.

47-11

As but one example of the anemic analysis of Project variants, the 49ers/Raiders shared stadium scenario entails almost double the number of game days (from 12 to 20 games) and up to 20 secondary smaller events, yet the DEIR provides no meaningful analysis of the impact of doubling the NFL use of the stadium to recreational values in CPSRA. *See Exhibit B*, p. 3; DEIR, IV-238 (less than two pages of analysis of recreational impacts states that “[i]n summary, impacts from the Shared Stadium Variant would be substantially similar to the Project”).

The DEIR cannot be a project-specific, comprehensive document aimed at full disclosure of impacts and mitigation while the Project is still conceptual in its present form. Either the DEIR must disclose the nature of the Project with greater specificity, or the present DEIR must be treated as a programmatic document that will be supplemented by tiered environmental review as the Project details unfold.

Ultimately, the public needs to understand how the Project will differ, including its environmental impacts, if the 49ers stadium is expanded in use, if the 49ers stadium is not built. The DEIR, as a project-level document, does not serve this function. The DEIR must be revised to make clear that it is a programmatic document that must be analyzed for sufficiency at each phase of Project development at which major decisions are ripe for review.

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C. THE DEIR FAILS TO ADEQUATELY DESCRIBE THE PROPOSED PROJECT

An accurate, stable, and finite project description is an indispensable prerequisite to a legally adequate EIR. *See County of Inyo, supra*, at 192 (“A curtailed or distorted project description may stultify the objectives of the reporting process.”). As one analyst notes:

“The adequacy of an EIR’s project description is closely linked to the adequacy of the EIR’s analysis of the project’s environmental effects. If the description is inadequate because it fails to discuss the complete project, the environmental analysis will probably reflect the same mistake.”

Kostka and Zischke, “Practice Under the California Environmental Quality Act,” p. 580 (2/09 update).

Here, the DEIR provides a project description that is unclear and inconsistent. The DEIR provides no explanation for excluding Yosemite Slough from the Project site and boundaries; no clear description of project objectives related to Yosemite Slough Bridge and the proposed 49ers stadium; no consistent and comprehensive listing of related laws and regulations that the Project must comply with; and no identification or description of reasonable foreseeable future activities. As a result of the DEIR’s failure to discuss key Project components, as well as the exclusion of Yosemite Slough from the Project site, potentially significant environmental impacts are not adequately analyzed or addressed.

1. Project Boundaries Are Inappropriately Designed to Exclude Yosemite Slough

Consistent with the DEIR’s many attempts to downplay impacts to Yosemite Slough, the Project boundaries, inexplicably, exclude the Yosemite Slough area, even though the rest of the State Park is included. The result is that the majority of CPSRA (120 acres) is included in Project boundaries, while Yosemite Slough, consisting of 34 acres (22% of the park), is excluded. This contradicts CEQA’s mandate to accurately describe the project. Lead agencies may not artificially narrow project descriptions to minimize project impacts and undercut public review. *Santiago County Water Dist. v. County of Orange* (1981) 118 CA3d 818, 829-830 (a project description that omits integral components of the project may result in an EIR that fails to disclose all of the impacts of the project); *see also Laurel Heights Improvement Ass’n, supra*, at 253.

The DEIR minimizes impacts to the State Park by fragmenting it for disparate treatment. In effect, the DEIR removes from the project site the area that may be most affected – Yosemite Slough – and then claims park impacts are less than significant. *See Orinda Ass’n v. Board of*

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Supervisors (1986) 182 CA3d 1145, 1171 (lead agency may not split a single large project into small pieces so as to avoid environmental review of the entire project). Park users are intended to recreate throughout the entire park, walking, hiking, and moving from one area to the next. The State Park's value is as a whole unit. Thus, the DEIR's oft-cited conclusion that Project improvements to the State Park will offset or somehow mitigate negative impacts is baseless if the State Park is artificially divided, or illegally "piecemealed," into segments for analysis.

Moreover, substantial portions of Yosemite Slough Bridge will be built on State Park property. Exhibit A, Figures 1 and 2. Land-based portions of the bridge, both on the north and south side, are located within CPSRA, and no justification exists to exclude Yosemite Slough from project boundaries. Guidelines § 15124. Ultimately, the public and decision makers are not fully informed that this is a bridge to be built on state park lands.

Excluding Yosemite Slough from the Project site also is inappropriate and nonsensical because Project road development would surround Yosemite Slough in all directions. *See* DEIR, Figure II-16. The DEIR categorizes transportation improvements to Carroll Avenue, Ingalls Street, Thomas Avenue, and Griffith Street – arterial routes that surround Yosemite Slough – as "offsite" improvements. *Id.* Treating Yosemite Slough as distinct from the rest of the park when it is surrounded by development is misleading and undercuts public review. *Santiago County Water Dist., supra*, at 829-830.

Deficiencies in the DEIR stemming from the exclusion of Yosemite Slough from Project boundaries include:

- Inconsistent Methodologies. The DEIR's treatment of Yosemite Slough is inconsistent. The DEIR's analytical methodology fluctuates in maps and diagrams between including and excluding Yosemite Slough as part of the State Park and/or other study areas. *See, e.g.*, Figure III.N-1 (Yosemite Slough included in watershed study area); Figure III.N-3 (only a portion of Yosemite Slough included in habitat study area); Figure III.P-1 (Yosemite Slough included with CPSRA); and Figure III.P-2 (Yosemite Slough excluded from park areas); *see also Exhibit A*, pp. 4-5. An EIR's project description and analysis must be consistent, otherwise public participation is stymied. *County of Inyo, supra*, at 197.
- Confusing Implications. The *Yosemite Slough* bridge – as the name itself denotes – runs across Yosemite Slough; yet the DEIR only includes the bridge and not the slough as part of the Project Site. Exhibit A, Figure 1. No logical reason exists to exclude the remainder of the Yosemite Slough area. Construction of the bridge will include abutments, footings, piers, bridge approaches, and revetment construction – all of which will affect and be intricately tied with the slough itself.

Simply put, the Project proposes to build a roadway through Candlestick State Recreation Area dividing Yosemite Slough from the balance of the park. Manipulating project boundaries to avoid this conclusion is fundamentally misleading to the public and decision-makers; wrongly

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implies that the Project and its impacts are not closely tied to Yosemite Slough; and flaunts the basic requirements of CEQA to fully inform the public. A revised DEIR must include Yosemite Slough in the project site.

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2. The DEIR Sets Forth Project Objectives That Are Inconsistent and Vague

The DEIR's project description fails to adequately discuss fundamental features of the Project with regard to the newly proposed 49ers stadium, related traffic plans, project variants, and the configuration of development in Candlestick Point. A revised and re-circulated DEIR is required to correct these deficiencies. *Mountain Lion Coalition v. California Fish and Game Comm'n* (1989) 214 Cal.App.3d 1043, 1052 (an agency cannot simply release a draft report "that hedges on important environmental issues while deferring a more detailed analysis to the final [EIR] that is insulated from public review").

The DEIR is unclear as to whether the 49ers Stadium will be built and the impacts and changes to the Project that would result if not. Rather than state clear Project objectives, the DEIR sets forth the vague goal of "encouraging the 49ers" to remain in San Francisco, including by providing the necessary transportation structure. DEIR, II-7. The result is a project that imparts no clear guidance on what is required, especially from a transportation perspective. Guidelines § 15124(b); *see also City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398, 406 (DEIR must contain a clear and comprehensive project description).

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47-14

The DEIR is inconsistent in its treatment of the 49ers stadium. While the Project objectives describe the 49ers stadium as merely a possibility, elsewhere in the DEIR the 49ers stadium is treated as a foregone conclusion. *See, e.g.,* DEIR, II-7 (project characteristics include 69,000-seat 49ers stadium); DEIR, Table II-3.

The inadequate treatment of the 49ers stadium is particularly troubling with respect to Yosemite Slough Bridge. The DEIR's assertion that a bridge is necessary to accommodate game-day traffic is unjustified even if a new 49ers stadium is built. Exhibit B, pp. 1 and 3-4. Moreover, given the uncertainty of a new stadium, the need for the Yosemite Bridge is even more attenuated.

Even more misleading, the DEIR's project description contains no mention of the scenarios listed as "project variants" elsewhere in the document. *See* DEIR, Chapter II, Project Description; IV-214 to IV-248. Such "variants," which find no basis in CEQA, include: the possibility of a stadium being jointly used by the 49ers and Oakland Raiders, and increased levels of development for housing or research and development should a stadium not be built. *Id.* The existence of these "variants" are a per se violation of CEQA's requirement that the project description be accurate, stable and finite. *See County of Inyo, supra*, at 192.



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The Executive Summary suffers from the same flaws and exclusions. See DEIR, Volume I, Executive Summary. No discussion of Project variants is presented in the Executive Summary.

Moreover, the DEIR's discussion of "Project Variants," when it does occur, is perfunctory and incomplete. For example, the DEIR devotes a mere 34 pages of analysis (in an enormous six-volume DEIR with thousands of pages) to specifically address the potential environmental effects should a new stadium be built for two NFL football teams, instead of just one. DEIR, IV-214 to IV-248.

The DEIR's description of project objectives does not comply with CEQA disclosure law. A revised DEIR must be re-circulated to the public that clearly, comprehensively, and consistently describes project objectives relative to the 49ers stadium and associated traffic, and to project variants. If these critical future decisions and uncertainties cannot be ascertained in more detail, the DEIR must address them on a programmatic-EIR level, as discussed above.

3. The DEIR Minimizes the Extent of the Project By Failing to Describe and Analyze Reasonably Foreseeable Future Activities

The DEIR fails to analyze several reasonably foreseeable aspects of the Project. Before undertaking a project, the lead agency must assess the environmental impacts of all reasonably foreseeable future activities that are a consequence of project approval. *Laurel Heights Improvement Ass'n, supra*, at 396. CEQA mandates that foreseeable future activities not be piecemealed, each only being analyzed for minimal potential impacts, but which cumulatively together may have disastrous consequences. *Bozung v. LAFCO* (1975) 13 Cal.3d 263, 283-84; *City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1452; see also *Natural Resources Defense Council v. City of Los Angeles* (2002) 103 Cal.App.4th 268 ("CEQA process is intended to be a careful examination, fully open to the public, of the environmental consequences of a given project, covering the entire project, from start to finish"). The court in *Laurel Heights* set forth a two-part test to determine whether an EIR must include an analysis of the environmental effects of future expansion or other action: "(1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects." *Laurel Heights Improvement Ass'n, supra*, at 396.

One reasonably foreseeable consequence of approving the Project would be heavy use of the Yosemite Slough Bridge by private automobiles during secondary game events and on a full-time basis by private automobiles, buses, and rail as population and transportation pressures grow. *Exhibit B*, pp. 5-8. The DEIR in fact identifies no legally enforceable restrictions in its transportation analysis that would prevent the Yosemite Slough Bridge from being used full-time, year-round by automobiles; and the DEIR admits that the bridge is designed to be "rail ready," but fails to analyze likely future impact from new rail infrastructure. *Id.*; see also DEIR, III.D-46. Greater use of the bridge by automobiles, buses, and rail would result in significant Project impacts to the environment and CSPRA.

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This is precisely the type of situation CEQA cautions lead agencies against. Environmental problems should be considered at a point in the planning process “where genuine flexibility remains.” *Mount Sutro Defense Committee v. Regents of University of California* (1978) 77 Cal.App.3d 20, 34. A revised DEIR must consider the masked environmental impacts that would result from foreseeable uses of the Yosemite Slough Bridge, as well as any associated mitigation measures and cumulative environmental impacts.

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4. The DEIR Fails to Identify Necessary Federal Approvals

Under CEQA, a project description must include “[a] list of related environmental review and consultation requirements required by federal, state, or local laws, regulations, or policies. To the fullest extent possible, the lead agency should integrate CEQA review with these related environmental review and consultation requirements.” Guidelines § 15124(d)(1)(C). The DEIR fails to appropriately identify and integrate the required approvals and environmental reviews for the Project.

47-16

Under Table ES-1, “Major Project Approvals,” there is no mention of the need for permits, approvals, and compliance with the National Environmental Policy Act, 42 U.S.C. §§ 4321 *et seq.* (“NEPA”), the Endangered Species Act, 16 USC §§1533, *et seq.* (“ESA”), Marine Mammal Protection Act, 16 USC §§ 1631 *et seq.* (“MMPA”), or the Magnuson–Stevens Fisheries Conservation and Management Act, 16 U.S.C. §§ 1801 *et seq.* (“MSA”). But under the heading “Regulatory Framework” for biological resources, the DEIR recognizes the need to comply with the ESA, MMPA, and MSA. DEIR, III.N-38-III.N-40. This is inconsistent. An accurate project description in the DEIR demands that all federal approval processes be clearly and comprehensively listed for major environmental laws.

5. The DEIR Fails to Describe the Project’s Connection to Mitigation Measures for SFO Airport Improvements and the BART Extension

The Yosemite Slough Wetlands Restoration Project fulfills mitigation obligations for (1) the various project and improvements by the San Francisco Airport (“Airport Improvements”) and (2) the San Francisco Bay Area Rapid Transit District (“BART”) San Francisco Airport Extension Project (“BART Extension”). Both of these projects required permits, certifications, and approvals from numerous public agencies, including the U.S. Army Corps of Engineers (“USACE”), and the California Regional Water Quality Control Board, San Francisco Bay Region (“RWQCB”). The wetlands restoration plan fulfills mitigation obligations related to a USACE Permit and RWQCB Waiver by providing mitigation offsets and credits for wetlands creation by the Airport Improvements and BART Extension.

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The DEIR fails to identify the Project’s connection to these mitigation efforts, and whether they would be frustrated, diminished, or altogether nullified by the Project. Particularly disturbing is the possibility that the City of San Francisco is filling in wetlands related to Airport

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Improvements, while weakening attendant mitigation efforts with superceding projects. Without any acknowledgement in the DEIR of these potential impacts, the legal status of the mitigation measures for both the Airport Improvements and BART Extension is unknown. The DEIR must be revised to address this deficiency.

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D. THE DEIR IS INCONSISTENT WITH THE YOSEMITE SLOUGH WETLANDS RESTORATION PROJECT

The DEIR fails to analyze and disclose Project inconsistencies with the Yosemite Slough Wetlands Restoration Project (“Wetlands Restoration Plan”). Avoiding conflicts with other land-use plans *before* development proposals are approved is one of CEQA’s principle purposes. *Sundstrom v. County of Mendocino*, 202 Cal.App.3d 296, 307 (1988) (CEQA requires that environmental problems be considered at a point in the planning process where “genuine flexibility remains.”); Guidelines §§ 15125(d) and (e) (DEIR must discuss any inconsistencies with other plans and any such analysis must discuss “potential future conditions discussed in the plan.”) As discussed below, the Project is inconsistent with both the biological and recreational goals of the Wetlands Restoration Plan.

Proposed by the California Department of Parks and Recreation and administered in collaboration with California State Parks Foundation, the Wetlands Restoration Plan already has been approved and obtained funding. DPR prepared a Final Initial Study and Mitigated Negative Declaration (April 2006, SCH# 2005122023). To date, over \$13 million has been raised to execute the wetlands and park improvements under the plan. All draft working drawings have been completed and reviewed by DPR, as well as supporting documentation. The project has also received Section 401 Water Quality Certification and Waste Discharge Requirements (July 2007), and San Francisco Bay Conservation and Development Commission Permit Amendments (March 2005 and September 2009). Only a few approvals remain before the Yosemite Slough restoration project is ready for construction.

47-18

The Wetlands Restoration Plan will transform Yosemite Slough both recreationally and biologically, but absolutely no analysis is provided in the DEIR of how the Project will significantly impact these efforts.¹ The massive development proposed by the Project – including the fragmentation of the slough by the Yosemite Slough Bridge – would undermine this multi-million dollar restoration effort and the values, resources, and recreational opportunities this plan was designed to enhance and protect. In consequence, the lead agencies are poised to approve a Project that will conflict with the Wetlands Restoration Plan. Exhibit A, pp. 2-4.

¹ The DEIR recognizes the existence of the Restoration Plan, and even some of the goals and objectives, but then fails to analyze or describe Project impacts to these goals and objectives. See DEIR III.N-46.

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As discussed below, the Project's inconsistencies with the Wetlands Restoration Plan constitute separate, undisclosed significant impacts under CEQA which must be disclosed in a revised DEIR that is re-circulated for public review and comment.

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1. The Project Conflicts with the Biological Goals of the Yosemite Slough Wetlands Restoration Plan

The DEIR omits any discussion of Project inconsistencies with the biological goals of the Wetlands Restoration Plan. A non-exhaustive list of biological benefits to be provided by the plan include:

- establishing the largest contiguous wetland area in the County of San Francisco, increasing existing tidally influenced area from 9 to 20 acres, restoring essential wildlife habitat, improving water quality, and preventing erosion along the shoreline of the City of San Francisco;
- creating two isolated bird nesting islands (including one designed specifically for special status species, e.g. western snowy plover and double-crested cormorants);
- providing nursery areas for fish and benthic organisms, as well as transitional and upland areas to buffer sensitive habitats;
- designing restoration to address soil contamination issues, arising from previous fill activities, that could affect human and wildlife health.

47-19

The DEIR omits any discussion of the significant biological impacts that inevitably will result from the Project's inconsistency with the wetlands plan. The Project, for example, would hinder the creation of restored wetlands, adversely impact improved habitat and newly planted wetlands vegetation, and impede or alter currents entering and existing Yosemite Slough that sustain fisheries and other wildlife. Exhibit A, pp. 2-4. These inconsistencies (and others that remain unanalyzed) would have a significant impact on biological resources and must be fully disclosed and analyzed in a revised DEIR.

2. The Project Conflicts with the Recreational Goals of the Yosemite Slough Wetlands Restoration Plan

The DEIR omits any discussion of Project inconsistencies with the recreational goals of the Wetlands Restoration Plan. A non-exhaustive list of recreational benefits to be provided by the plan include:

- providing park visitors with public access to Yosemite Slough, including by serving Bayview Hunters Point, a community unfairly impacted by environmental degradation;

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- building more than 5,000 feet of new interpretive trails, including connections between the restored wetlands area and the remainder of CPSRA;
- creating five vista points;
- constructing an approximately 1,200 square foot multi-use interpretive center;
- adding 2.5 acres of passive public use areas; and
- providing additional amenities including fencing, lighting, benches and drinking fountains.

The Project is inconsistent with these recreational elements. The Yosemite Slough Bridge, for example, would be built directly on two scenic vista sites under the plan. Exhibit A, Figure 1. The bridge also would significantly impede other views of the Bay from the newly created recreational areas. *Id.*, p.3. And proposed trail improvements under the Project directly conflict with those of the Wetlands Restoration Plan. *Id.*, p. 8. These inconsistencies (and others that remain unanalyzed) would have a significant impact on recreational resources under the Wetlands Restoration Plan and must be fully disclosed and analyzed in a revised DEIR.

Analyzing inconsistencies with the Wetlands Restoration Plan also necessitates a revised DEIR that includes Yosemite Slough within the Project boundaries. In its current form, the DEIR gives disparate treatment to areas within CPSRA by excluding the slough from the project site, and as a result, the DEIR underestimates significant recreational impacts to planned improvements under the Wetlands Restoration Plan. As but a few examples, the DEIR (1) fails to provide adequate photos depicting views from Yosemite Slough and (2) fails to analyze the effects of the Yosemite Slough Bridge on boaters' ability to utilize the slough. Exhibit A, pp. 4 and 8. A revised DEIR therefore must fully reanalyze recreational impacts with Yosemite Slough as part of the Project Site.

3. The DEIR Treats Yosemite Slough Wetlands Restoration Plan In a Different Manner Than Other Plans

The DEIR's treatment of the Wetlands Restoration Plan is inconsistent with the DEIR's treatment of other plans. Specifically, the DEIR considers how the Project will affect future improvements planned by the U.S. Navy on lands located within the project site. Exhibit A, p. 3; DEIR, III.N-49. No explanation is given as to why a similar analysis was not provided for the Restoration Plan.

E. THE DEIR FAILS TO ADEQUATELY ANALYZE THE PROJECT'S SIGNIFICANT AND POTENTIALLY SIGNIFICANT IMPACTS

1. Biological Impacts Are Not Fully Addressed



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The DEIR fails to fully analyze the Project's significant impacts to biological resources. The attached expert report, prepared by WRA, Inc. details but a few of the flaws in the Project's treatment of biological impacts. See Exhibit A. Among the conclusions of WRA are that the DEIR: (i) failed to identify numerous significant and potentially significant biological impacts; (ii) underestimated the extent of many of the biological impacts that were identified; (iii) incorrectly analyzed and overestimated the extent to which mitigation would render impacts less-than-significant; and (iv) failed to incorporate feasible mitigation measures to protect biological impacts.

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a. The DEIR Uses Inconsistent, Vague, and Flawed Methodology to Analyze Biological Impacts

The DEIR is inconsistent in its treatment of impacts to biological resources. An EIR must be "organized and written in a manner that will be meaningful and useful to decisionmakers and to the public." Pub. Res. Code § 21003(b). The DEIR downplays impacts to the State Park and Yosemite Slough by using inconsistent study areas. Yosemite Slough is only partially included in the H.T. Harvey study (2009)²; yet the entire Yosemite Slough area is included in the Yosemite Slough Watershed Wildlife Study (2004).³ See Figures III.N-1 and III.N-2. The DEIR's failure to include the entire Yosemite Slough area in the H.T. Harvey study precludes a meaningful evaluation of biological impacts to the State Park.

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The DEIR also excludes from its analysis of off-site aquatic resources the "area of construction" within Yosemite Slough. DEIR, III.N- 1 ("[t]he off-site aquatic resources discussed include Yosemite Slough (except the area of construction)..."). No explanation is given for the exclusion of this "area of construction" from the Yosemite Slough analysis. By refusing to define, or justify this area of exclusion, the DEIR fails to adequately inform the public and analyze the full scope of impacts to biological resources in Yosemite Slough.

The above flaws preclude the public and decisionmakers from properly responding to the DEIR.

b. The DEIR Fails to Analyze Biological Impacts to Yosemite Slough

Yosemite Slough, even in its presently unimproved condition, is a special area as part of a state park and due to its biological importance to wildlife. See, e.g., Exhibit A, pp. 4-7 (discussing Project impacts to biologically important resources in Yosemite Slough). Under CEQA, "[s]pecial emphasis should be placed on environmental resources that are rare or unique

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² H.T. Harvey & Associates, Hunters Point Shipyard and Candlestick Point State Recreation Area Final Delineation of Wetlands and Other Waters, San Francisco, California, February 2009 and revised July 13, 2009 and October 13, 2009.

³ Golden Gate Audubon Society, *Final Report Yosemite Slough Watershed Wildlife Survey 2003-2004*, prepared by LSA, July 27, 2004.

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to that region and would be affected by the project.” Guidelines § 15125(c); *Bozung v. Local Agency Formation Comm’n* (1975) 13 Cal.3d 263, 283 (an EIR must describe “environmental resources peculiar to the region.”) Rather than give special attention to Yosemite Slough, however, the DEIR does the opposite and glosses over impacts. See Exhibit A, pp. 4-7.

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2. Recreational Impacts from the Project Are Significantly Underestimated

The DEIR fails to adequately analyze and mitigate impacts to recreational facilities. The DEIR’s recreational analysis violates the basic CEQA requirement that EIRs be “organized and written in a manner that will be meaningful and useful to decision makers.” Pub. Res. Code § 21003(b). The DEIR glosses over and minimizes the impacts to recreational resources without providing sufficient detail for a meaningful analysis, and ignores other significant impacts altogether.

47-25

a. The DEIR Underestimates Potentially Significant and Significant Impacts to the State Park from the Yosemite Slough Bridge

CSPF is particularly concerned with the lack of consideration given to impacts from the proposed Yosemite Slough Bridge to CPSRA. Yosemite Slough Bridge is undeniably a proposal to build a road through a park. It carries with it all the negative recreational impacts that roads have on parks. The sense of place and park experience in CPSRA would be drastically altered by a massive intrusion of steel and concrete – carrying buses and cars, and possibly rail – all of which will diminish park connectivity and forever alter the presently open vistas to the Bay.

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The DEIR offers no justification for concluding that potentially significant or significant impacts would not result to the recreational resources of the State Park where the bridge would be located. The analysis is incomplete and uninformative, especially as to those areas of the park that will be directly taken for bridge construction or are immediately adjacent to the proposed bridge. See Exhibit A, Figure 1 (showing areas of park directly occupied by and adjacent to proposed bridge). It violates commonsense to conclude that a bridge running through a park would not significantly diminish its recreational worth. Much of CPSRA’s value and extraordinary significance lies in its location abutting the open Bay, an increasingly rare resource for urban settings. The proposed Yosemite Slough Bridge would unquestionably and significantly diminish the quality of this park experience. *Id.*, pp. 4 and 8 (discussing aesthetic and recreational impacts to State Park).

b. The DEIR Must Analyze Impacts to Various Recreational Users

The DEIR fails to analyze the impacts of the Project to specific park users, including bicyclists, kayakers, canoeists, water-dependent recreators, picnickers, beach goers, hikers,

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walkers, bird watchers, and other recreational enthusiasts (with the exception of impacts to windsurfers), all of whom will be adversely affected by the Project. An EIR may conclude that impacts are insignificant *only* if it provides an adequate analysis of the magnitude of the impacts and the degree to which they will be mitigated. See *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 306-07. Thus, if an agency fails to investigate a potential impact, its finding of insignificance simply will not stand.

The Project is massive and involves, among other things, new residential towers, expanded and new roadways, a 81-foot wide and 900-foot long bridge, vegetation and tree removal, and construction activities with building demolitions, pile driving, heavy trucks, ground disturbance, and grading. The massive scope of the project, with buildings in Candlestick Point as high as 420 feet (or 42 stories), and its development encroaching on parklands presently slated for recreational use, will undoubtedly have significant impacts to recreational users.

The DEIR must be revised and re-circulated to analyze Project impacts to different user groups within CPSRA.

c. The DEIR Fails to Adequately Analyze Impacts Resulting from the Loss of Parklands

The DEIR fails to provide substantial evidence for the conclusion that the loss of 29.2 acres of CPSRA parklands, albeit currently underutilized, is less than significant.

First, the standards of significance adopted by the DEIR related to recreational resources are vague and lack any objective criteria. The DEIR states, for example, that an impact is significant if it is to “adversely affect existing recreational resources.” DEIR, III.P-11. The DEIR’s application of this criteria to the loss of 29.2 acres is too vague to have any import; in fact, under this meaningless standard, the take of any number of parkland acres could be deemed insignificant. The lead agency may deem a particular impact to be insignificant only if it produces rigorous analysis and concrete substantial evidence justifying the finding. *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692. The DEIR must not only identify the impacts, but must also provide “information about how adverse the impacts will be.” *Santiago County Water Dist., supra*, at 831.

Second, the DEIR confuses significant impacts and mitigation. In effect, the DEIR argues the take of 29.2 acres is not significant because the remainder of CPSRA would be improved. This turns the CEQA analysis on its head by using proposed mitigation as the basis for avoiding a significant impact finding. Indeed, the proposed improvements to the park, if anything, are mitigation for the DEIR’s implied significant impact associated with the take of parklands. Taking parklands for development has a significant impact on recreational resources, and the DEIR must be revised to disclose the significant recreational impact of taking 29.2 acres of the CPSRA. *Exhibit A*, p. 8. If the DEIR is proposing to mitigate that impact by improving the remaining parkland, the DEIR must propose this improvement as a mitigation measure that is subject to public review and comment.

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d. The DEIR Fails to Adequately Analyze Impacts from Increased Park Visitation

The DEIR omits any meaningful analysis of the impacts of increased park users on CPSRA. The DEIR simply concludes that “[i]ncreased visitation to CPSRA would not significantly and adversely affect the park’s existing recreational facilities and opportunities,” and that “while the number of additional visitors cannot be accurately predicted at this time, the Project’s improvement will increase the amount of land at CPSRA that provides recreational opportunities (as discussed above), and will thus enable the park to accommodate the new demand.” DEIR, III.P-32. These bare conclusions are insufficient. *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 568 (DEIR must contain facts and analysis). The Project’s impacts resulting from the increased use of parklands must be analyzed and considered for protecting parklands and providing necessary infrastructure. This analysis should recognize the number of acres of the State Park currently in use, those that will be brought into use, and the impacts of increased users on both.

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More generally, the DEIR criteria for what constitutes a significant increase in the use of parklands is unjustified. The DEIR selects 5.5 acres of parkland per 1,000 residents as a baseline condition from which to evaluate impacts. DEIR, III.P-11. But the San Francisco General Plan states that *the City should increase the per capita supply of public open space* from the parkland-population ratio at the time of the General Plan’s adoption in 1986, which back then was 5.5 acres per 1,000 residents. *Id.* There is no justification for *decreasing* the Project area’s current ratio of 108 acres of parkland per 1,000 residents back to the City General Plan’s baseline level in 1986. A revised DEIR must recognize significant impacts from a decrease in available parklands per resident.

e. The DEIR’s Recreational Analysis Is Inconsistent, Contradictory, and Vague

The DEIR’s recreational analysis section is contradictory. The DEIR initially concludes that there will be “no potentially significant or significant impacts and therefore no mitigation measures are included,” DEIR, III.P-1; but later in the section the DEIR identifies significant impacts and mitigation measures. *See*, DEIR, III.P-12 (potentially significant impacts from construction purportedly analyzed and referenced throughout other sections of DEIR); DEIR, III.P-31 (mitigation measure identified for recreational impacts). This is inconsistent and confusing for the public and decisionmakers.

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Further, the analysis of construction impacts to recreational resources is flawed with numerous incorrect references to other sections of the DEIR. The DEIR claims to analyze noise impacts from construction in the “Section III.I (Noise),” DEIR III.P-12; however, the referenced section contains *absolutely no analysis of noise impacts to recreational resources*. (*See* detailed discussion on noise analysis below). Another example is Figure 11-21, erroneously cited in the recreational section as the location of new marshland, which actually depicts flood zones and

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potential sea level rises. These flaws must be remedied.

3. The DEIR Fails to Adequately Analyze and Mitigate Impacts to Transportation and Traffic

The DEIR's traffic analysis is flawed and fails to justify the conclusion that Yosemite Slough Bridge is necessary to meet project objectives. The attached expert report, prepared by Tom Brohard, P.E., details the flaws in the transportation analysis. Exhibit B. As outlined in this report, the bridge would be ineffective at alleviating traffic congestion and transportation alternatives to constructing a bridge have not been adequately explored. Accordingly, a revised DEIR must be prepared to fully evaluate and disclose the necessity for the bridge and fully examine feasible alternatives for transportation.

As detailed in Mr. Brohard's report, the DEIR fails to substantiate the basis for its conclusions regarding the need for, and impacts from, the Yosemite Slough Bridge. Specifically including:

- the bridge is not necessary to accommodate Project traffic, with or without the new 49ers stadium;
- the project description is too vague to support the traffic analysis relative to the bridge (including with regard to the bridge's relationship with future foreseeable conditions and Project variants);
- the bridge is not necessary for the BRT System; and
- the DEIR fails to analyze bridge impacts on bicyclists and pedestrians, attendant Caltrans safety standards, and conflicts with already planned bicycle and pedestrian trails.

See Exhibit B.

One of the justifications for the Yosemite Slough Bridge is to facilitate efficient handling of game day traffic for the newly proposed 49er's Stadium. But building a proposed 81-foot wide, 900-foot long bridge through a park – especially through and over Yosemite Slough – should be a measure of last resort. The DEIR fails to justify the conclusion that traffic from game days could not be served as well, if not better, with non-bridge alternatives. *Id.*, pp. 3-5. The DEIR is remiss in not analyzing and determining the degree to which traffic could be routed around the CPSRA and Yosemite Slough, rather than build a bridge through a state park. *Id.*

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4. The DEIR Fails to Disclose All Potentially Significant and Significant Aesthetic Impacts of the Project

Aesthetic impacts to CPSRA from the Project are clear-cut, significant, and unmitigable. The DEIR's analysis of aesthetic impacts is glaringly deficient and violates the intent of CEQA to fully disclose environmental impacts.

The park offers stunning views of San Francisco Bay, including from picnic areas, fishing areas (including two fishing piers), and hiking trails (including a fitness course for seniors and a bike trail). CPSRA is a unique resource, being the first state parkland purposely acquired to bring the State Park System into an urban setting. Yet, the DEIR underplays the park's significance and fails to treat CPSRA as the rare and unique resource it is. Candlestick is the largest park in the Bayview Hunters Point area by far, even in its current configuration. When fully built out, it will dwarf all other park resources in the area. Guidelines §15125(c) ("Special emphasis should be placed on environmental resources that are rare or unique to that region and would be affected by the project. The EIR must demonstrate that the significant environmental impacts of the proposed project were adequately investigated and discussed and it must permit the significant effects of the project to be considered in the full environmental context"); *Kings County Farm Bureau, supra, at 720* (guidelines are to be interpreted broadly in order to "afford the fullest possible protection to the environment").

47-32

a. Simulations of Yosemite Slough Bridge Are Uninformative and Inadequate

Yosemite Slough Bridge, as currently envisioned, will be a visual blight on the State Park. Yosemite Slough Bridge is a massive new structure – 81 feet wide and 900 feet long – across a previously open vista, and the new bridge will forever alter the panoramic vistas, as well as the visual character and scenic value of the State Park. The DEIR, however, provides only two simulations of the bridge, both of which are deficient. See Figure III.E-20 and III.E-24. The limited information presented in the DEIR on the bridge's aesthetic impacts is grossly inadequate to allow a meaningful evaluation by the public.

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CEQA requires that an EIR be detailed, complete, and reflect a good-faith effort at full disclosure. Guidelines § 15151. Yet, the primary simulation depicting the bridge, Figure III.E-24, fails to provide a level of information necessary to analyze or comment on its aesthetic impacts. First, the depiction of the bridge is too far away to give a sense of its size. The bridge frame, truss, and/or beam are indiscernible; only three of the supporting legs (of the more than 10) are displayed; and the simulation gives absolutely no sense of the bridge's width of 81 feet. Second, the Bay View depicted is hazy, failing to present the Oakland skyline, one of the more stunning aspects on a clear day. Finally, the bridge simulation is unrealistic because it is devoid of any typical activities; there are no buses, cars, bicyclist, or pedestrians shown on the bridge, which will significantly affect aesthetics.

The other primary simulation of the Yosemite Slough Bridge, Figure III.E-20, is even

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less informative. The simulation is at such a distance as to render the bridge less than a 1/2" x 1/2" depiction on the page, a minor part of the 6" x 3.5" simulation, which fails to convey any sense of bridge's massive structure and imposition on the park. Both depictions of the bridge are at long-range. See Figure III.E-20 and III.E-24. Mid- and short-range depictions are necessary to analyze aesthetic impacts, especially considering the bridge runs through the State Park, imposing itself within a few feet of recreational users.

Other simulations of Yosemite Slough Bridge were produced by the project applicant, Lennar Urban, and by consultants; however, these other simulations were not included in the analysis of aesthetics or elsewhere in the DEIR. See Exhibit A (reference to and attachment of various simulations and graphics that were produced but not included or discussed in the DEIR). These undisclosed simulations show the bridge in greater detail. Two of these simulations depict panoramic views from the southside bay trail and northside plaza; several show the bridge width and use of lanes for buses, cars, and pedestrians from a birds-eye view; others appear to depict the bridge at mid- to short-range distances. An EIR must disclose all potentially significant adverse environmental impacts of a project. Pub. Res. Code § 21100(b)(1); Guidelines § 15126(a). The DEIR must be revised and re-circulated to include these more accurate simulations.

To provide an accurate sense of the visual impacts to the State Park, the DEIR must include additional photo surveys (along with those noted above that are known to have been produced by Lennar Urban and consultants but not provided in the DEIR) to demonstrate the magnitude of the bridge by depicting the Bay view clearly from the Yosemite Slough area. A full analysis of aesthetic impacts requires depicting a view of the bridge from short-distances in the immediately adjacent State Park, both within Yosemite Slough and along the Candlestick Point shoreline. The DEIR must be revised and re-circulated to include all such relevant information.

b. The DEIR Selects an Deficient Number and Range of Viewpoints of the State Park

Consistent with ongoing attempts to downplay impacts to Yosemite Slough, the DEIR selects a limited number of views of and into Yosemite Slough. See, e.g., Exhibit A, p. 4.

c. The DEIR Erroneously Concludes that Aesthetic Impacts from Construction Will Be Less Than Significant to the State Park

The DEIR admits that "construction of the Yosemite Slough Bridge would change the appearance of the Slough," including with bulldozer, trenching equipment, generator, truck, etc. DEIR, III.E-51. But the DEIR concludes without any explanation that the impact would be less than significant to scenic vistas and scenic resources because the equipment is "not tall enough to interfere with views" and "the overall view of the Slough would remain as a scenic resource." *Id.* This conclusion has no support. *Citizens of Goleta Valley, supra, at 568* (DEIR must contain both facts and analysis, not just an agency's bare conclusions.) Construction of major



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infrastructure in a state park is highly significant to recreational users, would change the scenic resource value of Yosemite Slough, and would impede views of the Bay.

Similarly, the DEIR glosses over potential significant impacts from construction light and glare to the State Park. As but one example, the DEIR admits the need for security lighting after hours without analyzing impacts to the State Park from having the Yosemite Slough Bridge illuminated. DEIR, III.E-52. The DEIR must be revised to show potentially significant and significant aesthetic impacts to CPSRA associated with construction of the bridge, and to include mitigation measures for such impacts.

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d. The DEIR Erroneously Concludes that Aesthetic Impacts from Operations Will Be Less Than Significant to the State Park

The DEIR's analysis of aesthetic impacts from operations is replete with errors and fails to identify, analyze, or support with substantial evidence, its conclusions. The DEIR must contain both facts and analysis, not just an agency's bare conclusions. *Citizens of Goleta Valley, supra, at 568*. Below is a non-exhaustive list of the most glaring deficiencies:

47-36

- No meaningful analysis is provided to address the effect Yosemite Slough Bridge will have on scenic vistas. DEIR, 111.E-53 (Impact A-4).
- The DEIR admits that Yosemite Slough Bridge would change the appearance of the Slough and replace views of open water. DEIR, III.E-58. But the DEIR sites Figure III.E-8, two photographs of Yosemite Slough's existing conditions that do nothing to show how the appearance of the Slough would change or views of open water would be obstructed. The DEIR then erroneously concludes, without any pertinent analysis, that the "bridge would not substantially damage a resource that contributes to a scenic public setting." *Id.* This conclusion has no support, let alone the foundational substantial evidence required by CEQA.
- The DEIR admits that "Yosemite Slough bridge would limit some foreground views of the Slough," but no simulations are provided to show the limited foreground impacts. DEIR, III.E-61. The DEIR then dismisses these impacts as insignificant by concluding that "however, overall views of the Bay would remain." *Id.* The Project's significant impact on foreground views must be disclosed and mitigated in a revised DEIR. Furthermore, claimed preservation of "overall views" is not mitigation for significant impacts to foreground views.
- The DEIR admits that "[s]hort- and mid-range views of the Slough would be somewhat altered with the inclusion of the proposed bridge," and states the obvious: that "short- and mid-range views of the remainder of the Slough would remain as under current conditions." *Id.* The DEIR then erroneously concludes that the Project would not substantially degrade the existing visual character or

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quality of the State Park and Yosemite Slough. This conclusion fails CEQA's substantial evidence test for the sufficiency of an EIR's analysis.

- The DEIR admits "[t]he Project would alter the scenic nature of the Project site in that it would create a dense urbanized setting where one does not currently exist." Then, with no explanation or quantitative or qualitative analysis, it concludes that "this change in character would not represent a degradation of scenic quality." DEIR, III.E-64. The DEIR contains no evidence to support this bare conclusion. To clarify, CSPF does not object to parks in urban settings; to the contrary. However, in the context of a DEIR, all impacts that will result in a change in character must be fully analyzed.
- The DEIR admits that "Yosemite Slough bridge would change the open water character along the bridge route across a relatively narrow portion of the Slough" but erroneously concludes that "[t]his would not be considered a substantial adverse change in the overall visual character of Yosemite Slough, as the bridge would occupy only a small footprint relative to the entire Slough." DEIR, III.E-64. No analysis is provided as to the nature of and how adverse the change in the open water character would be. *Santiago County Water Dist., supra*, at 831 (an EIR must not only identify the impacts, but must also provide "information about how adverse the impacts will be").

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A revised DEIR must be re-circulated to address the foregoing deficiencies.

e. The DEIR Fails to Adequately Analyze and Mitigate Impacts of Light and Glare to the State Park

The DEIR fails to analyze the impacts of light and glare to the State Park. The State Park – as open space area for recreating and with minimal artificial lighting – is not strictly urban in character, though it is located in an urban area. The Project will change an area of low-level illumination into an area of moderate- to high-illumination and will result in a substantial increase in the ambient light from structures and vehicle headlights. *See* DEIR, III-E-58. But the DEIR makes no effort analyze the impact of light and glare specific to *parklands*. Fundamental information such as the hours the State Park is open and will have visitors is missing. The DEIR also fails to analyze the impact of headlights from buses and other vehicles on the Yosemite Slough Bridge, as well as impacts from general operational lighting on the bridge. "[A]n agency must use its best efforts to find out and disclose all that it reasonably can." Guidelines § 15144. The light and glare from vehicle headlights, and the urbanization of Candlestick point, will have significant impacts to biological resources as well as aesthetics in the Project area.

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5. The DEIR Fails to Adequately Examine Potentially Significant and Significant Impacts from Noise and Vibration

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The DEIR's evaluation of potential noise impacts is seriously flawed on three counts: (1) the selection of sensitive noise receptors does not include areas within the State Park; (2) Yosemite Slough Bridge is not analyzed as a source of noise; and (3) no potentially significant or significant impacts from noise to recreational users are identified.

a. Sensitive Noise Receptors Must Include Locations in the State Park

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The DEIR does not provide the legally required disclosure on noise and vibrational impacts to the State Park. Not a single noise measurement location is selected within the State Park. DEIR, Figures III.1-1 and III.1-2. The DEIR categorizes parks and open space as noise-sensitive land areas. See Figure III.1-5. However, the DEIR provides no significance threshold and absolutely no quantitative or qualitative analysis for measuring the Project's noise impacts to these noise-sensitive land uses.

An EIR must disclose all potentially significant adverse environmental impacts of a project. Pub. Res. Code § 21100(b)(1); Guidelines § 15125(c); *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, 874 (EIR's analysis of significant effects, under CEQA Guidelines § 15125(c), must be as accurate as possible). The DEIR must be revised to include an analysis of the impacts of noise and vibration, both from construction and operation of the Project, to the State Park, including Yosemite Slough. Should the revised analysis show a potentially significant or significant impact associated with noise to the State Park, the DEIR must be further revised to include enforceable mitigation to prevent those impacts.

b. Yosemite Slough Bridge Is Not Analyzed in Traffic Noise Modeling

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The DEIR inappropriately excludes Yosemite Slough Bridge from the analysis of roadway noise levels. DEIR, Figure III.1-7. This oversight is especially troubling considering that the bridge is likely to have numerous and significant noise impacts to the immediately adjacent Yosemite Slough and State Park areas, including from bus and automobile traffic on a long-term basis, as well as noise impacts from constructing the bridge (e.g. pile driving). And such activities would diminish the recreational value of these areas. A revised DEIR must be re-circulated to analyze traffic noise impacts from the proposed Yosemite Slough Bridge.

c. Significant Noise Impacts to Parklands Are Underestimated

47-41

The DEIR's significance thresholds include any permanent increases in the ambient noise levels in the Project vicinity above levels existing without the Project. DEIR, III.1-21 (Significance Criteria I.d). Additionally, the San Francisco Noise Ordinance, which also

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contains significance thresholds, relies on and incorporates World Health Organization (“WHO”) guidelines that require existing quiet outdoor areas to be preserved and that the ratio of intruding noise to natural background sound to be kept low.⁴ DEIR, Table III.I-2. Under both these significance thresholds, noise impacts to the State Park would be significant, assuming they are similar to projected noise levels identified in the DEIR to surrounding neighborhoods of the State Park and Yosemite Slough. *See* DEIR, III.I-10. Noise impacts to the park from the construction and operation of Yosemite Slough Bridge will be significant, and a revised DEIR must be re-circulated to analyze these impacts.

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6. The DEIR Fails to Adequately Analyze Project Impacts to Air Quality

a. The DEIR Fails to Quantify and Properly Mitigate Significant Fugitive Dust Emissions Due to Construction

The DEIR erroneously concludes that the Project’s fugitive dust emissions during construction are less than significant without identifying any significance thresholds or explaining the basis for this conclusion. DEIR, III-H-16. This violates CEQA. “[A]n agency must use its best efforts to find out and disclose all that it reasonably can.” Guidelines § 15144. The DEIR then defers mitigation to a “site-specific dust control plan” and concludes that these yet-to-be disclosed mitigated emissions are not significant, again, without referring to any significance thresholds or other bases for this conclusion and without any supporting calculations, e.g., mitigated emissions. DEIR, III-H-17. The DEIR thus reaches contradictory conclusions; namely, that these emissions are not significant, yet will require mitigation in the form of a site-specific dust control plan. *Id.* Without any significance thresholds and post-mitigation quantification, it is impossible to determine if the deferred mitigation will reduce construction emissions of fugitive dust to insignificance.

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The DEIR attempts to find refuge in the lack of significance thresholds in BAAQMD’s outdated 1999 CEQA Guidelines and in the City’s Health Code. BAAQMD’s significance thresholds (or lack thereof) do not save the lead agency from conducting an impact analysis that complies with CEQA. Indeed, the lead agency is fully authorized to develop its own threshold. Guidelines § 15064.7. (“Each agency is encouraged to develop and publish thresholds of significance that the agency uses in the determination of the significance of environmental effects”); Pub. Res. Code § 21082 (directing agencies to adopt procedures and criteria for evaluating projects). There are a number of approaches the DEIR could have taken to determine the significance of the Project’s construction emissions. The DEIR must be revised to provide an analysis of air quality impacts that complies with CEQA’s basic disclosure requirements.

⁴ Claimed compliance with the San Francisco Noise Ordinance does not excuse the DEIR from a fully analysis of the Project’s noise impacts to the park. Consistency with local standards or general plans is not enough, by itself, to demonstrate that noise impacts will not be significant. *Oro Fino Gold Mining Corp. v. County of El Dorado* (1990) 225 Cal.App.3d 872, 881-882 (compliance with 50 dB county general plan standard does not necessarily mean noise impacts are insignificant).

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The DEIR's deferral of mitigation, in contradiction of CEQA, is particularly troublesome in this case in light of the high levels of contamination known to exist in the soil in the Project area. DEIR, III.H-17. The DEIR must be revised to specifically describe the mitigation measures that will be employed to reduce the Project's fugitive dust emissions.

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b. The DEIR Cannot Rely on Outdated Significance Criteria that The BAAQMD has Replaced

For purposes of determining the air quality impacts from construction and operation of the Project, the DEIR relies on the outdated BAAQMD CEQA Guidelines published in December 1999. The BAAQMD recently updated its CEQA guidelines in a publicly-available document that is readily accessible on the BAAQMD's website.⁵ The new guidelines will be in effect within the next few months and are therefore applicable to this Project. The DEIR's failure to use the appropriate significance thresholds for air quality has resulted in a failure to disclose the full extent of the Project's impacts. As the DEIR admits, under the new, relevant BAAQMD CEQA guidelines, the Project's construction-related emissions of ROG and NOx will be potentially significant and unavoidable. DEIR, III.H-40. Additionally, the DEIR admits that "it is possible that the Project will contribute considerably to a cumulative impact" in the zone of influence of the Project. DEIR, III.H-41. Yet, the DEIR does not attempt to quantify this impact, let alone mitigate it. This violates CEQA's disclosure requirements. The DEIR must be revised to disclose these significant impacts. And, as a consequence of any significant, unavoidable impacts, the lead agency must first identify all possible mitigation for these impacts and prepare a statement of overriding considerations before it may approve the Project.

47-43

c. The DEIR's Analysis of DPM from Construction Must Be Revised to Provide Full Disclosure to the Public

The DEIR claims that DPM emissions from construction activities "were estimated assuming the following mitigation were in place: Construction equipment used for the Project will utilize a phased-in emission control technology in advance of a regulatory requirement such that 50 percent of the fleet will meet USEPA *Tier 4* engine standards for particulate matter control (or equivalent) during 2010 and 2011 construction activities..." DEIR, III.H-24 (emphasis added). The document then states that as mitigation for the significant DPM emissions from construction, the Project Applicant shall require construction equipment used for the Project to utilize "emission control technology such that 50 percent of the fleet will meet USEPA *Tier 2* standards . . . for particulate matter control (or equivalent) during 2010 and 2011 construction activities. . ." DEIR, III.H-25 (emphasis added). These statements contradict each

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⁵ These new guidelines are scheduled for approval by the BAAQMD Board of Directors on April 7, 2010, long before project construction would commence. See <http://www.baaqmd.gov/Divisions/Planning-and-Research/Planning-Programs-and-Initiatives/CEQA-GUIDELINES.aspx>.

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other (one claims USEPA Tier 4 engine standards will be used, the other claims that US EPA Tier 2 engine standards will be used.) *Id.*

Furthermore, the DEIR may not “assume” any type of mitigation in making its initial significance determination. In so doing, the DEIR, in violation of CEQA, “double counts” the same mitigation measure (first by using it to artificially reduce the initial DPM emission estimate from construction, then by counting it as mitigation to claim that the impact is less than significant). The DEIR plainly admits that if it did not double-count this mitigation “the impacts would be potentially significant.” DEIR, III.H-25. The DEIR makes precisely the same mistake in analyzing DPM emissions from construction on Alice Griffith Public Housing. DEIR, III.H-26. The DEIR also makes the same mistake in analyzing DPM emissions from operation of the Project. DEIR, III.H-34. The DEIR must be revised to correct these deficiencies.

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d. The DEIR Illegally Avoids Any Quantification of Toxic Air Contaminant Impacts from Construction

Instead of quantifying the cancer risk associated with TACs from construction, the DEIR states that an “analysis was not conducted to determine the impact of Project construction activities without the dust control mitigation measures described [above]. However, due to the scale of the construction activities and proximity to adjacent receptors, without these dust control measure[s], the impacts from TACs bound to soil PM10 would likely be above the BAAQMD’s significance threshold and would therefore be potentially significant.” *See, e.g.*, DEIR, III.H-30. As noted above, this discussion turns CEQA’s requirements on their head. Instead of quantifying the impact, then comparing it to a significance threshold, making a significance determination, and finally proposing mitigation to reduce the impact to less than significant, the DEIR uses proposed mitigation as the basis to avoid all of the preceding analytical steps. This fails to comply with CEQA.

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7. The DEIR Fails to Adequately Examine Impacts to Cultural and Paleontological Resources

As WRA, Inc. notes, Double Rock is culturally significant to the local community, and the proposed project, including the bridge, would disrupt views of Double Rock from CPSRA and areas within the surrounding community. Exhibit A, p. 4. A revised DEIR must analyze these cultural impacts.

47-46

8. The DEIR Fails to Adequately Examine the Project’s Hydrological Impacts

The DEIR omits analysis of whether the construction of the proposed bridge pilings may impede or alter currents entering and exiting Yosemite Slough, thereby impacting the function of Yosemite Slough and its biological habitats. Exhibit A, p. 7. These impacts must be addressed in a revised DEIR.

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9. The DEIR Fails to Adequately Examine Impacts to the State Park from Shadows

Shadow studies indicate that during the winter months CPSRA would be impacted by shadows from noon onward. But the DEIR erroneously fails to identify this impact as significant.

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The significance of shadow impacts is informed by the City of San Francisco planning ordinances. See City of San Francisco Planning Code 295 (shadow allowance not to exceed 1% for large City parks).⁶ The DEIR should adopt a significance threshold for examining shadow impacts to CPSRA with standards equally as rigorous as those provided by the City in Planning Code 295. But regardless, even under existing significance standards, the DEIR should recognize that exceeding a shadow allowance of 1% for CPSRA will substantially affect outdoor recreational activities in the park. The DEIR should fully analyze this issue and disclose significant shadow impacts. Additionally, the DEIR should analyze steps to minimize these impacts through modified residential tower locations and designs.

Shading impacts from the Yosemite Slough Bridge to biological resources also are inadequately analyzed in the DEIR. Exhibit A, pp. 4-7. A revised DEIR must fully analyze negative impacts to Yosemite Slough's biological resources from the bridge's shading.

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F. THE DEIR FAILS TO IDENTIFY AND INCORPORATE EFFECTIVE MITIGATION MEASURES

CEQA requires that an EIR propose and describe mitigation measures sufficient to minimize the significant adverse environmental impacts of a project. Pub. Res. Code §§ 21002.1(a), 21100(b)(3); see also Guidelines § 15370 (mitigation measures must be designed to minimize, reduce or avoid an identified environmental impact or to rectify or compensate for that impact). Lead agencies must adopt feasible mitigation measures that will substantially lessen or avoid the Project's potentially significant environmental impacts. Pub. Res. Code §§ 21002, 21081(a). "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors. Guidelines § 15364. Mitigation measures also must be fully enforceable through permit conditions, agreements, or other legally binding instruments. Guidelines § 15126.4(a)(2); *Kings County Farm Bureau, supra*, 727 (a public agency may not rely on mitigation measures of uncertain efficacy or feasibility).

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The DEIR identifies numerous significant and potentially significant environmental impacts of the Project. DEIR, Table ES-2. However, the DEIR lacks effective mitigation for virtually all categories of impacts related to the State Park. Many of the mitigation measures are

⁶ If this standard is applied to CPSRA, the park would fall into the large park category with less than a 20% shadow loading factor currently. That would allocate a 1% increase allowance to CPSRA.

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ineffective, deferred, or unenforceable, and feasible mitigation measures are overlooked for several significant impacts. Numerous defective mitigation measures are identified in the attached expert letters. See Exhibit A and Exhibit B. Defective mitigation measures include:

MM BI-4a.1: "Wetlands and Jurisdictional/Regulated Waters Mitigation for Temporary and/or Permanent Impacts." The DEIR states that wetlands and jurisdictional waters shall be avoided to "the maximum extent possible." DEIR, III.N-59. This criteria is vague, unenforceable, and ineffective. The mitigation measure further states that where avoidance of existing wetlands and drainages is not possible such impacts will be mitigated by compliance with other environmental laws. DEIR, III.N-59 to III.N-60. Merely citing compliance with other laws is insufficient as a mitigation measure. *Californians for Alternatives to Toxics v. Dept. of Food & Agric.* (2005) 136 CA4th 1, 38 (EIR defective because it simply presumed compliance with California Department of Pesticide Regulation would prevent adverse impacts from pesticide use.) The DEIR must independently analyze impacts to wetlands and not simply rely on compliance with other laws. The DEIR must be revised to recognize that the impacts MM BI-4a.1 purports to mitigate will be significant and unavoidable, even with mitigation.

MM B1-4c: "Mitigation for Shading Impacts to Jurisdictional/Regulated Waters." This mitigation measure is not sufficiently detailed to allow the public to review its effectiveness. DEIR, III.N-68. Further, the creation or restoration of mitigation for permanent shading from the Yosemite Slough Bridge is not specifically identified and deferred to the future. *Id.*

MM RE-2: "Phasing of parkland with respect to residential and/or employment generated uses." This mitigation measure strives to keep the parkland-to-population ratio at 5.5 acres per 1,000 residents. DEIR, III.P-31. As discussed above (analysis of significant impacts to recreational resources), the provision of 5.5 acres per 1,000 residents is not less than significant; and therefore this mitigation measure fails.

More generally, all DEIR mitigation measures related to limiting the use of Yosemite Slough Bridge by private automobiles are ineffective and unenforceable. Exhibit B, pp. 5-8. No legally enforceable restrictions are identified in the DEIR to prevent the bridge from ultimately being used year round by private automobiles.

The DEIR also fails to identify feasible mitigation measures for Project impacts. For example, the DEIR fails to identify mitigation measures to offset the numerous operational impacts, as discussed above, to recreational facilities in the State Park. See DEIR, Section III.P.

G. THE DEIR FAILS TO ADEQUATELY ANALYZE CUMULATIVE IMPACTS

An EIR must discuss significant "cumulative impacts." Guidelines § 15130(a). To be legally adequate, the cumulative impacts analysis must examine the project over time and in

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conjunction with other related past, present, and reasonably foreseeable probable future projects whose impacts might compound or interrelate with those of the project at hand. "Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time." Guidelines § 15355(b).

Here, the DEIR fails to analyze the Project's numerous cumulative impacts, including, but not limited to:

- cumulative recreational impacts with the Yosemite Slough Wetlands Restoration Project. Exhibit A, pp. 2-3; and
- cumulative impacts with the Mitigation Measures for SFO Airport Improvements and the BART Extension. As discussed above, the Yosemite Slough Restoration Project fulfills mitigation obligations for Airport Improvements and the BART Extension. The DEIR fails to analyze the cumulative impacts of the Project and the Project's impediments to these mitigation efforts.

A revised DEIR must fully address all cumulative impacts from the Project.

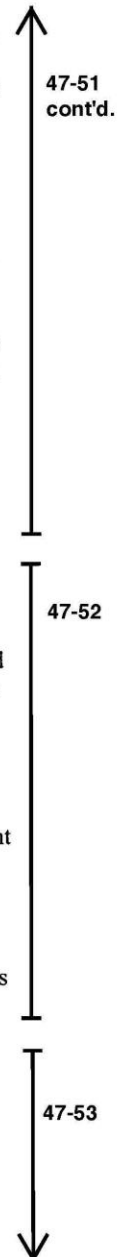
H. THE DEIR DOES NOT ADEQUATELY ANALYZE PROJECT ALTERNATIVES

A proper alternatives analysis is critical for achieving CEQA's goal of fostering informed decision-making. Pub. Res. Code § 21061; Guidelines § 15126.6(a). An EIR must evaluate the comparative merits of the alternatives. Guidelines § 15126.6(d). And project objectives under CEQA must not be defined overly narrowly so as to preclude a meaningful analysis of alternatives. See *City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438.

The serious flaws in the DEIR's project objectives and treatment of potentially significant impacts to CPSRA, as discussed above, preclude a proper analysis of Project alternatives. A comparative analysis of alternatives is impossible unless the Project's vague objectives to "encourage" the 49ers to build a stadium are clarified – including the attendant need for the Yosemite Slough Bridge – and until the full scope of impacts to Yosemite Slough and CPSRA are examined. The entire alternatives section needs to be reexamined after the DEIR's numerous other deficiencies are rectified.

1. The DEIR Fails to Provide Substantial Evidence to Reject Project Alternatives without Yosemite Slough Bridge

If alternatives are rejected, an EIR must explain in meaningful detail why such alternatives do not satisfy the goals of the proposed project, do not offer substantial environmental advantages, or cannot be accomplished. *Laurel Heights Improvement Assn., supra*, at 405; see also *City of Santee, supra*, at 1438.



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Our traffic expert concludes that the DEIR (1) contains serious flaws and fails to consider all reasonable and viable alternatives and (2) fails to justify the traffic need for the bridge, regardless of whether a new 49ers stadium is constructed. Exhibit B, pp. 3-5. A revised DEIR therefore must reanalyze and fully consider the Project alternatives without the Yosemite Slough Bridge.

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2. The DEIR Fails to Consider A Reasonable Range of Alternatives to Minimize Environmental Impacts

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An EIR must analyze a reasonable range of alternatives to the project that would feasibly attain most of the basic project objectives. The consideration of alternatives must be judged against a rule of reason to ensure that *all reasonable alternatives* to proposed projects are thoroughly assessed by responsible officials. Guidelines § 15126.6(f); *Citizens of Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564 (citing, *Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 197; *Laurel Heights at 399*). Alternatives must be adequately discussed, "even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly." Guidelines § 15126.6(b).

The DEIR should consider less environmentally damaging options to building the Yosemite Slough Bridge, which would significantly impact CPSRA, presents inconsistencies with the Yosemite Slough Wetlands Restoration Project, and significantly impact irreplaceable marsh lands and other waters of the United States. See DIER, Table III.N-4. A reasonable range of alternatives for the Project is informed by the scope of the project, its location next to CPSRA and Yosemite Slough, and concerns expressed by the public. Significant environmental impacts that are overlooked in the DEIR are attributable, in many instances, to the Yosemite Slough Bridge. The DEIR therefore should examine the following alternatives to the bridge:

- a tunnel under Yosemite Slough;
- a no bridge alternative if the newly proposed 49ers Stadium is not built; and
- improvements to arterial routes as a traffic alternative to accommodate any game-day traffic.

See Exhibit B (DEIR fails to fully examine alternatives to the Yosemite Slough Bridge that would be equally or more effective at meeting transportation needs).

I. THE DEIR IS INCONSISTENT WITH NUMEROUS OTHER LAND PLANS AND POLICIES

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In addition to inconsistencies with the Yosemite Slough Wetlands Restoration Project (discussed above), the DEIR fails to identify inconsistencies with other plans. Avoiding conflicts with other land-use plans *before* development proposals are approved is one of CEQA's



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fundamental purposes. *Sundstrom v. County of Mendocino*, 202 Cal.App.3d 296, 307 (1988) (CEQA requires that environmental problems be considered at a point in the planning process where “genuine flexibility remains.”); Guidelines §§ 15125(d) and (e) (DEIR must discuss any inconsistencies other plans and any such analysis must discuss “potential future conditions discussed in the plan.”)

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1. The Project Is Inconsistent with the Candlestick Point State Recreation Area General Plan

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The DEIR does not disclose the Project’s many inconsistencies with the CPSRA General Plan. The CPSRA plan states:

“It is the policy of the department to protect the scenic values and to enhance, manage, and protect the biotic and natural resources of the area, while fully realizing the potential of the area for fulfillment of outdoor recreation needs.”

See DEIR, III.N.44. However, as discussed above, the Project would degrade scenic values, threaten natural resources, and, in many ways that could be avoided, reduce the recreational value of the park. These inconsistencies are significant.

The DEIR is not forthright in its analysis. The DEIR vaguely asserts that “[t]o the extent that the final improvements to the reconfigured CPSRA would be inconsistent with the CPSRA General Plan, these improvements would be addressed through the State Parks General Plan amendment process.” DEIR, III.B-12. This is not full disclosure. No analysis is provided disclosing the extent to which the Project is actually inconsistent with the CPSRA General Plan. The Project’s proposed land swap and reconfiguration agreement with DPR must be described and analyzed in more detail to fully inform the public of impacts to the park.

A revised DEIR needs to fully describe and identify inconsistencies with the CPSRA General Plan to comply with CEQA.

2. The DEIR Must Identify All Inconsistencies with Senate Bill 792

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The DEIR must identify all inconsistencies with Senate Bill 792, including conflicts with provisions designed to protect CPSRA. Section 26(a)(3), for example, requires that any agreement to reconfigure the State park will “provide an overall benefit to the state recreation area and will further the objective of preserving the park’s natural, scenic, cultural and ecological values for present and future generations.” The Project’s significant impacts to CPSRA, as discussed herein, raise inconsistencies with SB 792. The DEIR must provide a direct analysis of the Project’s inconsistencies with all park-protective provisions within S.B. 792.

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3. The Project Is Inconsistent with the San Francisco Bay Plan and Violates the McAteer-Petris Act

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The McAteer-Petris Act of 1965, Government Code §§ 66600, *et seq.*, and the San Francisco Bay Plan (“Bay Plan”) set forth policies to protect the shoreline of the Bay and minimize Bay fill. The San Francisco Bay Conservation and Development Commission (“BCDC”) is authorized to issue or deny permit applications for placing fill, extracting materials, or changing the use of any land, water, or structure within the area of its jurisdiction, in conformity with the provisions and policies of both the McAteer-Petris Act and the Bay Plan. Projects inconsistent with the Bay Plan may not be approved. *See* Gov. Code § 66632(f).

The Project would violate the McAteer-Petris Act requirement that Bay fill only be authorized by BCDC if there is no feasible upland location to the project. Gov. Code § 66605. As discussed herein, the DEIR did not adequately discuss feasible traffic alternatives to constructing the Yosemite Slough Bridge that would involve improvements to upland locations. Exhibit B, pp. 3-5.

The Project is inconsistent with Bay Plan policies on “Appearance, Design, and Scenic Views.” These policies state:

- “all bayfront development should be designed to enhance the pleasure of the user or viewer of the Bay”;
- “maximum efforts should be made to provide, enhance, or preserve views of the Bay and shoreline, especially from public areas, from the Bay itself, and from the opposite shore”;
- “towers, bridges or other structures near or over the Bay should be designed as landmarks that suggest the location of the waterfront when it is not visible especially in flat areas”;
- and
- “additional bridges over the Bay should be avoided, to the extent possible, to preserve the visual impact of the large expanse of the Bay.”

Bay Plan, pp. 61-63. The DEIR fails to fully analyze and disclose the visual impacts from the Yosemite Slough Bridge that would violate these policies. Exhibit A, p. 4.

The Project also is inconsistent with Bay Plan policies protecting wildlife, wetlands, and other biological resources. These policies state:

- “to the greatest extent possible, the Bay’s tidal marshes, tidal flats, and subtidal habitat should be conserved, restored and increased.” Bay Plan, p. 16 (“Fish, Other Aquatic Organisms, and Wildlife”);
- “[t]idal marshes and tidal flats should be conserved to the fullest possible extent,” and

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projects that substantially harm tidal marshes or tidal flats are allowed “only if there is no feasible alternative.” Bay Plan, p. 23 (“Tidal Marshes and Tidal Flats”); and

- “[s]ubtidal areas that are scarce in the Bay or have an abundance and diversity of fish, other aquatic organisms and wildlife... should be conserved,” and “[f]illing, changes in use, and dredging projects in these areas should therefore be allowed only if... there is no feasible alternative.” Bay Plan, p. 27 (“Subtidal Areas”).

The DEIR must analyze inconsistencies with these policies that would result from the Project’s significant impacts to biological resources. See Exhibit A, p. 7.

Finally, the proposal to build the Yosemite Slough Bridge is inconsistent with Bay Plan Transportation policies because (1) the bridge would not provide adequate clearance for vessels that normally navigate the waterway beneath the bridge, Bay Plan, p. 47 (policy 3b); see Exhibit A, p. 8; and (2) the DEIR does not adequately explore other feasible traffic alternatives (discussed above) to a building a bridge. Bay Plan, p. 47 (policy 2); see Exhibit B, p. 9. The DEIR must be revised to recognize these transportation inconsistencies with the Bay Plan.

4. The Project Is Inconsistent with the Bayview Hunters Point Redevelopment Plan

The Bayview Hunters Point Redevelopment Plan sets forth the explicit policy to create a “restored and redeveloped Yosemite Slough on CPSRA land.” DEIR, III.B-24. Yet, the DEIR erroneously concludes that “[a]lthough the construction of the Yosemite Slough bridge would change this area, it would not detract from its use in the CPSRA or its biological and other resource utility.” *Id.* As discussed above, the Project threatens to impede the restoration and redevelopment of Yosemite Slough, and therefore is also significantly inconsistent with the objectives of the Bayview Hunters Point Redevelopment Plan to support restoration of the Slough. A revised DEIR must recognize this inconsistency.

J. THE DEIR MUST BE REVISED AND RE-CIRCULATED

A supplemental or revised DEIR must be prepared and re-circulated for public review. CEQA requires a lead agency to re-circulate an EIR when significant new information is added to the EIR following public review but before certification. Pub. Res. Code § 21092.1. CEQA Guidelines clarify that new information is significant if “the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project” including, for example, “a disclosure showing that ... [a] new significant environmental impact would result from the project.” Guidelines § 15088.5. Lead agencies cannot rely on an DEIR “that hedges on important environmental issues while deferring a more detailed analysis to the final [EIR] that is insulated from public review.” *Mountain Lion Coalition v. California Fish and Game Comm’n* (1989) 214 Cal.App.3d 1043, 1053. As explained by a recent CEQA decision:

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“The EIR must demonstrate that the significant environmental impacts of the proposed project were adequately investigated and discussed and it must permit the significant effects of the project to be considered in the full environmental context.” (Guidelines, § 15125(c)) We interpret this Guideline broadly in order to ‘afford the fullest possible protection to the environment.’ (*Kings County Farm Bureau, supra*, 221 Cal.App.3d 692, 720) In so doing, we ensure that the EIR’s analysis of significant effects, which is generated from this description of the environmental context, is as accurate as possible. (See also Remy et al., *Guide to the California Environmental Quality Act (CEQA)* (10th ed. 1999), pp. 374-376.)

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cont'd.

Friends of the Eel River v. Sonoma County Water Agency, (2003) 108 Cal. App. 4th 859, 874.

Here, the DEIR is fundamentally inadequate and precludes a meaningful public review of Project impacts, including impacts related to the State Park, the Yosemite Slough Wetlands Restoration Project, recreational users, and biological resources. Substantial new information will be needed to adequately assess the proposed Project’s environmental impacts, re-examine feasible alternatives, and identify effective mitigation. A revised DEIR is required to provide the public and decisionmakers with meaningful opportunity to understand the full scope of Project impacts, mitigation measures, and alternatives. Guidelines § 15088.5(b)(4).

III. THE PROJECT MUST COMPLY WITH THE NATIONAL ENVIRONMENTAL POLICY ACT

47-61

The Project has a “federal nexus” that demands review under the National Environmental Policy Act. A federal nexus attaches to a CEQA project when it requires major federal action, including discretionary permits, entitlements, or authorizations. All agencies of the federal government must, to the fullest extent possible, comply with NEPA. *See* 42 U.S.C. § 4332. In particular, if a federal agency’s actions may affect wetlands and other important habitats, including critical habitat under the Federal Endangered Species Act the federal agency must comply with NEPA and further produce an Environmental Impact Statement (“EIS”). *See* 40 C.F.R. § 1508.27.

Here, federal approvals or permits are required from the U.S. Navy, Army Corps of Engineers, Department of the Interior, Coast Guard, and Department of Housing and Urban Development, *see* DEIR, ES-6, and the Project proposes to fill wetlands and potential impact critical habitat under the FESA. The DEIR, however, omits any discussion of NEPA requirements. Under CEQA, when a project also is subject to NEPA review, lead agencies should try to prepare a combined environmental review document and, “[t]o avoid the need for the federal agency to prepare a separate document for the same project, the Lead Agency must involve the federal agency in the preparation of the joint document.” Guidelines § 15222.

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The Project must comply with NEPA, and the DEIR must be revised to comply with the CEQA Guidelines by listing NEPA among the Project's necessary environmental review processes.

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cont'd.

IV. THE PROJECT CONFLICTS WITH SECTION 404 OF THE CLEAN WATER ACT

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As currently configured, the Project does not meet the requirements of Section 404 of the Federal Clean Water Act, 33 U.S.C. §§ 1344, *et seq.* ("CWA"). Under Section 404, a permit must be obtained from the USACE prior to the discharge of dredged or fill materials into any "waters of the United States or wetlands." *Id.* § 1344(b).

The DEIR concedes that a permit from the USACE would be required for the Project. DEIR, III.N-37. However, there is no meaningful discussion regarding the standards for obtaining such a permit or whether the Project can meet those standards. Under the CWA, no permit to fill or discharge into U.S. waters is permitted if there is a "practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences." 40 C.F.R. § 230.10(a). A "practicable" alternative is one that is "available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes." *Id.* at § 230.10(a)(2).

A "practicable alternative" exists to building the proposed Yosemite Slough Bridge that would avoid impacts from the bridge to Section 404 waters. *See* Figure III.N-3 and III.N-5 (impacts to wetlands and other waters). As discussed above, the DEIR fails to adequately consider project alternatives that would avoid construction of the Yosemite Slough Bridge, *see also Exhibit B*, and therefore the Project falls short of Section 404 permit requirements to demonstrate that no "practicable alternative" exists to constructing a through the sensitive waters of Yosemite Slough.

V. THE PROJECT POTENTIALLY CONFLICTS WITH NUMEROUS OTHER PROVISIONS OF LAW

47-63

A. THE PROJECT POTENTIALLY VIOLATES THE LAND AND WATER CONSERVATION FUND ACT OF 1965

Pursuant to the Land and Water Conservation Fund Act of 1965 ("LWCFA"), DPR received three grants between 1979 and 1981 to assist with the development of trails, picnic areas, and other amenities on the CPSRA. The DEIR, however, fails to demonstrate how development and the take of lands on the CPSRA would comply with LWCFA. Instead, the DEIR summarily concludes that the "reconfiguration of the CPSA, discussed below, would comply with LWCFA." DEIR, III.P-6. This bare conclusion is insufficient to demonstrate compliance.

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B. THE PROJECT POTENTIALLY VIOLATES THE CALIFORNIA PUBLIC PARK PRESERVATION ACT

47-64

The Public Park Preservation Act, Pub. Res. Code § 5400 *et seq.*, restricts the ability of public agencies to use parklands for other purposes. The Act provides that a public agency that acquires public parkland for non-park use must either pay compensation sufficient to acquire substantially equivalent substitute parklands or provide substitute parklands of comparable characteristics. Pub. Res. Code § 5401. The DEIR should assess the applicability of this provision of State Code given the Project proposes transfers of parklands between public agencies.

C. THE PROJECT POTENTIAL VIOLATES CALIFORNIA PUBLIC RESOURCES CODE SECTION 5096.516

47-65

Public Resources Code (“PRC”) section 5096.516 prohibits the transfer of any land being used as a public park unless: the selling or transferring agency prepares a detailed report and specific finding that the land no longer serves a needed conservation purpose; a public hearing is held; and the transfer gains Legislative approval. Pub. Res. Code § 5096.516(a). Several exceptions apply, including for the sale or transfer of property with less than \$1 million in fair market value; however, parklands with high scenic values, like areas in CPSRA, likely have market values in excess of this minimum requirement. (The general rule in California for establishing just compensation is the market value of the property determined by the highest and most profitable use for which the property is adaptable.)

To date, CSPF is not aware of any efforts to ensure the Project meets the requirements of PRC 5096.516. The DEIR should identify PRC 5096.516 as a pertinent state law and disclose the time and schedule for Project compliance.

VI. CONCLUSION

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Development projects should avoid impacting State parklands if at all possible, and we are not convinced that this Project, in its present iteration, is designed in a park-friendly manner. CPSRA is a unique resource meriting the utmost protection of our environmental laws.

For the reasons set forth above, the DEIR violates CEQA’s fundamental mandates of informing the public and decisionmakers of significant environmental impacts, fails to identify

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all feasible mitigation measures, and fails to analyze a reasonable range of alternatives to the Project. To comply with CEQA and rectify these deficiencies, we request that a revised DEIR be re-circulated for public review.

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cont'd.

Sincerely,



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**California State Parks Foundation
Hunters Point Shipyard Phase II
Development Plan Project; SCH
#2007082168**

EXHIBIT A

WRA

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California State Parks Foundation
**Hunters Point Shipyard Phase II
Development Plan Project; SCH
#2007082168**

EXHIBIT B

Tom Brohard, P.E.

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January 5, 2010

James Birkelund, Esq.
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San Francisco, CA 94108

Re: Technical Comment on the Candlestick Point-Hunter's Point Shipyard Phase II DEIR

Dear Mr. Birkelund,

At the request of the California State Parks Foundation, WRA is preparing this technical review of the Candlestick Point-Hunter's Point Shipyard Phase II DEIR. The purpose of this letter is two-fold:

47-67

- 1.) To provide an analysis of potential impacts the Candlestick Point-Hunter's Point Shipyard Phase II Project ("project") may have on the current conditions within Yosemite Slough and impacts the project may have to the Yosemite Slough Wetlands Restoration Project; and
- 2.) To provide technical review of the DEIR from a CEQA compliance and biological resources perspective.

WRA has been involved in the Yosemite Slough Restoration Project since 2003, providing restoration site design, biological resources surveys, and permitting assistance. At the date of this letter the Yosemite Slough restoration Project has completed a Final Initial Study and Mitigated Negative Declaration (California Department of Parks and Recreation, April 2006, SCH# 2005122023). The project has also received Section 401 Water Quality Certification and Waste Discharge Requirements (July 2007), and San Francisco Bay Conservation and Development Commission Permit Amendments (March 2005 and September 2009). The U.S. Army Corps of Engineers (Corps) Section 404 permit application has been submitted and is nearing completion. The Restoration Project's regulatory permit application requirements will be fulfilled upon the issuance of the Corps permit.

Aspects of the proposed Candlestick Point-Hunter's Point Shipyard Phase II redevelopment project, in particular, the Yosemite Slough Bridge, will have significant impacts to restored wetlands and to recreational values of the Yosemite Slough Restoration Project. These significant impacts could result in the need to at least partially revise the already completed and almost fully permitted Restoration Project design, causing significant delays and at least partial re-application for permits that have already been granted for the project. These potential design and permit revisions would come at great cost to this California State Parks project at a time of limited funding availability.

47-68

In addition, much of the cost for the Yosemite Slough Restoration Project was funded by wetland impact in-lieu fee funds provided by Bay Area Rapid Transit (BART) and City and County of San Francisco Airport Commission as mitigation for wetlands that have been impacted as part of permitted projects undertaken by these public agencies. If the proposed Candlestick Point-Hunter's Point Shipyard Phase II redevelopment project would impact the

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wetlands to be created as part of the Yosemite Slough Restoration Project, the wetland impacts could affect both the regulatory permits of these public agencies and the funding agreements that have been made with the California State Parks Foundation to provide wetland mitigation in Yosemite Slough.

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cont'd.

In addition to these potential impacts on the Yosemite Slough Restoration Project, the Yosemite Slough bridge has the potential to impact current conditions within the State Park and especially to Yosemite Slough. Based on overlays of the proposed bridge using topographic maps and GIS technology, the proposed Yosemite Slough bridge overlaps with the California State Parks operating boundary, with portions of Parks-owned property, and with significant portions of the planned restoration, including planned viewpoints and created wetlands (see Figures 1 and 2, attached). These impacts were not analyzed in the DEIR. More specific comments on the proposed Candlestick Point-Hunter's Point Shipyard Phase II DEIR are described in detail below in relation to the Yosemite Slough Restoration and current conditions within the DEIR Study Area.

A) Significant and Potentially Significant Impacts of the Candlestick Point-Hunter's Point Shipyard Phase II Redevelopment Project on the Yosemite Slough Restoration

47-69

Comment A1. A comment letter dated September 12, 2007 from the California Department of Parks and Recreation (DPR) was submitted in response to the circulated Notice of Preparation (NOP) for the Candlestick Point-Hunter's Point Shipyard Phase II redevelopment project (Appendix A of the DEIR, NOP Comment Letters). The DPR comment letter on the NOP raised concerns that the proposed redevelopment project (especially the Yosemite Slough bridge) could compromise the Yosemite Slough Restoration. The DEIR failed to analyze these impacts, which were raised by the DPR in its role as a Responsible Agency under CEQA. The potential impacts of the Yosemite Slough Bridge, raised by the DPR as a Responsible Agency under CEQA, should have been analyzed in the DEIR as required by Section 21080.4(a) of the Public Resources Code. The DEIR made every effort to *exclude* an analysis of these potential impacts to Yosemite Slough, repeatedly stating that Yosemite Slough was excluded from the project site and failing to analyze direct, indirect, and cumulative impacts that the bridge could have on the restoration project particularly with regard to Recreation, Aesthetics, and Biological Resources.

Comment A2. The DEIR fails to acknowledge inconsistencies with the Yosemite Slough Restoration Plan as a pertinent local plan and policy in the Recreational, Land Use, and Aesthetics sections, among others, and fails to analyze the potential conflicts of the project with the established goals of the restoration plan as required by Section 15125(d) of the Public Resources Code. The DEIR recognizes the Yosemite Slough Restoration Plan as a pertinent local plan in the Biological Resources section, but does not include any analysis of inconsistencies with the Yosemite Slough Restoration Plan, including the project's physical impacts to the planned environment and related mitigation. The Candlestick Point-Hunter's Point Shipyard Phase II project would have potential significant impacts because it is inconsistent with the Yosemite Slough Restoration Plan.

47-70

Comment A3. A portion of the DEIR Study Area in the vicinity of the Yosemite Slough bridge overlaps with the Yosemite Slough Restoration Plan, and therefore would have direct impacts to the restoration (see Figure 2, attached). In addition, the Yosemite Slough bridge would conflict with many of the goals of the Yosemite Slough Restoration

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Plan, blocking scenic vistas, affecting recreational opportunities, and impacting portions of the restored wetlands. These impacts and potential impacts were not discussed in the DEIR.

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Comment A4. The DEIR does not analyze inconsistencies that would be caused by direct, indirect, and cumulative impacts of the project on wetlands that have been designed as part of the Yosemite Slough Restoration Project (Figure 2).

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Comment A5. Additionally, the DEIR's treatment of the Yosemite Slough Restoration Project is inconsistent with the methodology used in the DEIR to analyze potential impacts of the redevelopment on Navy remediation efforts. On pages III.N-48 and 49 of the DEIR an analysis methodology is discussed for the Navy remediation efforts in which impacts to baseline conditions as they existed at the time of the NOP as well as impacts to baseline conditions as they will exist after completion of the Navy remediation efforts and mitigation planned as part of the remediation. This analysis is appropriate for the Navy remediation efforts because the planned and approved remediation efforts effectively alter the baseline conditions that the Candlestick Point-Hunters Point Shipyard redevelopment project are likely to impact. This methodology is further supported in section III.A-2 which states "*While the baseline condition is generally the physical conditions that existed at the time the NOP is published, which was August 2007, there may be reasons why a different baseline condition should be used for the analysis*". We agree with the above methodology and it should be applied evenly and consistently to other approved projects within and adjacent to the proposed redevelopment area. The Yosemite Slough Restoration Plan is set to begin construction prior to implementation of the Hunters Point redevelopment. The analysis of impacts should specifically address impacts of the redevelopment project on the baseline conditions that would be present at the time of completion of the approved Yosemite Slough Restoration Plan.

47-73

Comment A6. Based on the extent of the DEIR Study Area, the project will cause significant impacts to wetlands created as part of the Yosemite Slough Restoration. These potential impacts should be considered in the same way the Navy mitigation wetland impacts have been considered. These potential impacts should be addressed in sections III.B and III.N of the DEIR.

47-74

Comment A7. The Yosemite Slough Bridge will have noise related impacts on the users of the Yosemite Slough Restoration area. The potential impacts to Yosemite Slough Restoration park users from introducing new sources of noise on the Yosemite Slough Bridge should be analyzed in section III.I of the DEIR.

47-75

Comment A8. The Yosemite Slough Bridge will have aesthetic impacts on the users of the Yosemite Slough Restoration area in the form of blocking viewpoints of Double Rock, the East Bay skyline, and open water of the Bay from the planned Vista Points. The bridge would also have a potential significant impact on views of the restored Yosemite Slough from open water areas and land-based viewpoints to the east of the proposed bridge. These are potential significant impacts, and should therefore be addressed in section III.E of the DEIR.

47-76

Comment A9. Shading as a result of the Yosemite Slough Bridge has the potential to significantly impact the establishment of wetland vegetation to be planted as part of the

47-77

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Yosemite Slough Restoration. These potential impacts should be analyzed in sections III.F and III.N of the DEIR.

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The following comments are not related to the consideration of the completed Yosemite Slough Restoration Project in the baseline conditions for the DEIR. These comments stand alone and should be addressed regardless of inconsistencies with the wetlands restoration plan.

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B) Technical review of the DEIR from a CEQA compliance and biological resources perspective

1) *Aesthetics, Section III.E*

Comment B1a) The analysis of impacts to aesthetics did not adequately address impacts of the Yosemite Slough Bridge on views from Yosemite Slough and the State Park. Yosemite Slough and other areas of the park provide views of Double Rock, the East Bay Skyline, and open water of the Bay. The viewshed analysis should have included viewpoints, for example, from Yosemite Slough looking east toward the Bay. The only viewpoint that was analyzed in the DEIR from within Yosemite Slough did not incorporate the views of Double Rock, San Francisco Bay, or the East Bay skyline. The proposed Yosemite Slough Bridge will have potentially significant impacts on the views from Yosemite Slough and other areas of the state park out onto the San Francisco Bay, Double Rock, and East Bay skyline. These significant impacts should be analyzed in section III.E of the DEIR. Examples of views from within Yosemite slough that will be significantly impacted due to the Yosemite Slough bridge are shown in the photographs attached to this letter. Two viewpoint graphics developed by Lennar Urban are also attached showing the impact the bridge would have on views from Yosemite Slough. These viewpoints were not included in the aesthetics analysis in the DEIR.

Comment B1b) Double Rock is a defining element of the local community, with many businesses, churches and housing developments bearing the name Double Rock. The proposed project, including the proposed bridge, could limit or entirely block views of Double Rock from portions of the surrounding community (see Figure III.E-20). The blocking of views of Double Rock may be considered a potentially significant impact from an aesthetics well as from a cultural resources perspective. These potential significant impacts should be analyzed in sections III.E and III.J of the DEIR.

47-79

Comment B1c) Blocking the aesthetic viewpoint from Yosemite Slough with the proposed Yosemite Slough bridge is inconsistent with BCDC San Francisco Bay Plan Appearance, Design, and Scenic Policies 2, 4, 6, and 10 (pp 62-63 of the Bay Plan). This inconsistency with the Bay Plan was not disclosed or analyzed as part of the DEIR.

47-80

2) *Biological Resources, Section III.N*

Comment B2a) Figure III.N-2 does not indicate any mapped habitat types within the portion of the Study Area that overlaps with the Yosemite Slough Restoration Project area. Therefore, it is unclear if this area was included in the analysis of potential impacts to biological habitats. All habitat types located within the Study

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Area should be identified and impacts should address all of these habitat types affected by the proposed project. Figure III.N-2 should be revised to show the habitat types that exist within this portion of the Yosemite Slough Restoration Area, as the project could have significant impacts to biological habitats in this area.

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Comment B2b) The Study Area for the Biological Resources analysis is not clearly defined and not clearly maintained throughout the analysis. As an example see the following unclear sentence from page III.N-1: "*The off-site aquatic resources discussed include Yosemite Slough (except the area of construction), the open water area between Candlestick Point and HPS Phase II (known as South Basin), and adjacent open waters that would be impacted by Project components (i.e., breakwaters, gangways, floats, etc.).*" This sentence appears to state that aquatic impacts in the area proposed for construction at Yosemite Slough are not analyzed. The Study Area needs to be clearly defined and all impacts within the Study Area need to be adequately addressed. This is especially true of areas where construction is proposed.

47-82

Comment B2c) The regulatory setting does not discuss NMFS regulation of eelgrass as Essential Fish Habitat. The NMFS does consider eelgrass Essential Fish Habitat (EFH).

47-83

Comment B2d) Table III.N-4 is referred to as a reference point for viewing potential self mitigating impacts that are discussed as part of the impacts to wetlands and waters in Impact BI-4a through BI-4c. This table does not clearly show which impacts were determined to be self mitigating, and there is also no figure that shows which impacts have been determined to be self-mitigating. Therefore, the impacts that have been identified as self mitigating are not adequately disclosed. It should be clearly shown which areas of wetland and the extent of wetlands impacted that are considered to be self mitigating and those that will require compensatory mitigation.

47-84

Comment B2e) The wetland mitigation and monitoring plan requirements (MM BI-4a.1) are inadequate and not consistent with standard wetland mitigation and monitoring plans based on Corps San Francisco District regulatory policy (Corps 2004). There is no requirement for a long term management component of the mitigation and monitoring plan, which is clearly required in Corps guidance. Also, the requirement that mitigation wetlands contain at least 65 percent cover by native species leaves open the possibility that as much as 35 percent of the created mitigation wetlands could be comprised of non-native or invasive species, if the total vegetative cover was 100 percent. This poses a direct conflict with the monitoring requirements of the Yosemite Slough Restoration by allowing higher cover of invasive species in areas directly adjacent to the restoration area. This requirement should be changed to allow no more than 5 percent cover by non-native invasive plant species, independent of the total vegetative cover, to be consistent with commonly applied requirements for invasive species cover in mitigation wetlands.

47-85

Comment B2f) In the Impact BI-4c it is stated that the proposed bridge would be 81 feet wide by 902 feet long and that 0.94 acres of open water/mudflat habitats would be impacted as a result. A bridge of these dimensions would cover an area approximately 1.7 acres. The DEIR does not clearly identify which other habitat types would be directly shaded by the remaining 0.8 acres of the proposed bridge.

47-86

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The DEIR should identify and analyze the potential impacts to all habitat types shaded by the bridge.

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Comment B2g) Shading impacts associated with construction of the new bridge (Impact BI-4c) were not analyzed consistently with the methods that were utilized for impacts from buildings. The shade from the proposed bridge will impact areas adjacent to the bridge in addition to the aerial footprint of the bridge. Solar aspect was considered in the analysis for buildings and should also have been considered in analyzing impacts caused by the bridge. These shading impacts would affect subtidal and intertidal areas in Yosemite Slough, with potential impacts to subtidal and tidal marsh vegetation. Impacts from shading on subtidal and tidal marsh vegetation have been well documented (Kelty and Bliven 2003). Therefore the project would have significant and potentially significant impacts on subtidal habitats due to the proposed bridge.

47-87

Comment B2h) Though no eelgrass was observed in the area of the Yosemite Slough bridge, this area has been identified as habitat that could potentially support eelgrass (Merkel and Associates 2004), and therefore should be identified as an area for application of eelgrass mitigation measures as part of mitigation measures MM BI-5b.1 through MM BI-5b.4. The previously known locations of eelgrass were identified and analyzed as part of the DEIR, but the evaluation did not account for the fact that the location, areal coverage, and density of shows extremely wide variation from year to year in San Francisco Bay. Therefore, the location, areal coverage, and density of eelgrass in the DEIR Study Area may have changed since the time of the baywide eelgrass survey. No new eelgrass survey of the area was performed to evaluate how the eelgrass distribution may have changed since the time of the baywide eelgrass survey. Given the established tendency of eelgrass to vary widely in location, areal coverage, and density in San Francisco Bay, and the fact that the area of Yosemite Slough has been identified as an area with suitable habitat conditions for eelgrass, the DEIR should require surveys and mitigation as needed for the construction of the Yosemite Slough Bridge. There is potential that eelgrass could occur in the Yosemite Slough bridge area, and therefore potential significant impacts may occur.

47-88

Comment B2i) The DEIR Impact BI-6 does not consider potentially significant noise impacts of the Yosemite Slough Bridge on potential bird roost and nest sites on Double Rock. Double Rock was identified as an area of potential nesting habitat as part of the *Yosemite Slough Watershed Wildlife Survey*, which was specifically referenced as background documentation in the DEIR. Therefore, there could be significant impacts to the use of Double Rock by birds as a result of noise on the Yosemite Slough bridge.

47-89

Comment B2j) Potential impacts to Western Red Bat (Impact BI-8), including displacement, injury, or kill of live individuals, are identified but then determined to be less than significant with no mitigation. Western Red Bat has been identified as a California Species of Special Concern and "High Priority" species by the Western Bat Working Group. Based on this designation, impacts to Western red bat, including displacement, injury, or kill of an individual are considered significant under Section 15380(d) of the Public Resources Code, and mitigation should be proposed for this significant impact.

47-90

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Comment B2k) The noise from construction equipment is cited as being sufficient to rouse Western Red Bat in time for this species to vacate the area of construction (Impact BI-8). However, low frequency noise emitted by machinery is often not detectable to bats. Therefore, the noise related to removal of potential roost sites may not be sufficient to alert the bats to the disturbance in sufficient time to flee the area. The project could therefore result in potential significant impacts to Western Red Bat during construction. 47-91

Comment B2l) Temporal loss of Oyster habitat was not analyzed as part of Impact BI-10 in the DEIR. New hard substrate material takes time to become suitable for oyster establishment so there will be significant temporal impacts to oysters while the hard substrate develops sufficient biotic material coverage to allow oyster attachment. Additional mitigation is necessary to compensate for these significant temporal impacts. 47-92

Comment B2m) The potential impacts on EFH and special status fish species of shading from the Yosemite Slough bridge were not discussed as part of the discussion in Impact BI-11 or BI-12. Several studies have demonstrated that shaded structures can have significant impacts on fish behavior, affecting EFH (see Southard, et al. 2006 and Hanson 2003). These significant impacts should be discussed and mitigation proposed as part of the DEIR. 47-93

Comment B2n) Mitigation measure BI-4a.1, referenced for EFH impacts (Impact BI-12), which includes creation of EFH as a potential mitigation measure, has not been demonstrated to be feasible. Creating EFH habitat in San Francisco Bay is complicated and not well established as a feasible mitigation measure. Most attempts to accomplish creation of EFH within San Francisco Bay have not been successful. This mitigation has not been proven feasible. 47-94

Comment B2o) Long term impacts on EFH as a result of the operation of the marina that are not related to maintenance dredging are not discussed as part of Impact BI-12b. All potentially significant long term operational impacts of the marina on EFH, such as fuel spillage, motorized boat use, and other factors, should be analyzed in the DEIR. 47-95

Comment B2p) The project is inconsistent with the BCDC San Francisco Bay Plan Fish, Other Aquatic Organisms, and Wildlife Policies 2 and 4 (pg 16 of the Bay Plan), with Bay Plan Tidal Marshes and Tidal Flats Policies 1 and 3 (pg 23 of the Bay Plan), and with Subtidal Areas Policies 1 and 2 (pg 27 of the Bay Plan). These inconsistencies were not disclosed or analyzed as part of the DEIR. 47-96

3) *Hydrology, Section III.M, and Biological Resources, Section III.N* 47-97

Comment B4a) The DEIR does not address whether the construction of the proposed bridge pilings may impede or alter currents entering and exiting Yosemite Slough, thereby impacting the functioning of the Slough and the biological habitats within Yosemite Slough. Potential impacts from altered currents within Yosemite Slough should be analyzed in the DEIR to determine whether or not the impacts would be significant.

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4) *Recreation, Section III.P*

Comment B4a) There is no discussion as to whether construction of the bridge will impede the ability of small boat traffic, such as kayaks and zodiacs, to travel between Yosemite Slough and the Bay. Yosemite Slough is a Traditional Navigable Waterway and the proposed bridge over the slough will have a low overhead clearance during high tides and may impede navigation into or out of Yosemite Slough during the tides when this slough would be accessible to boaters. The DEIR should discuss and analyze potentially significant impacts associated with the restricted use of this area. The bridge is inconsistent with BCDC San Francisco Bay Plan Transportation Policy 3(b) if it does not provide adequate clearance for vessels that normally navigate the waterway beneath the bridge. Based on the bridge specifications, the bridge allows a minimum of 4 feet of clearance, which may not allow small watercraft adequate clearance.

47-98

Comment B4b) Impact RE-3 in the DEIR discusses the fact that 29 acres of park land would be lost, but dismisses this as a less than significant impact with no mitigation because of the assumption that use of the remaining parks after the redevelopment project implementation would be improved. This appears to be a mixture of an impact and mitigation measure, with the decrease in park land being the impact, and increased use as the mitigation measure. The analysis does not differentiate between these two aspects. The loss of parkland is a significant impact that must be recognized and should have a complete associated mitigation measure.

47-99

Comment B4c) The project would have significant impacts on recreational trails in the State Park. Figure III.B-3 and the respective sections of the Land Use Chapter show the proposed Bay Trail crossing the proposed Yosemite Slough Bridge, thereby bypassing the portion of the trail that is planned for construction as part of the Yosemite Slough Restoration Plan. This divergence from the Bay Trail Plan and the Yosemite Slough Restoration Plan would realign the trail away from the natural shoreline and may be inconsistent the intent of the bay trail. The recreational analysis in the DEIR does not adequately address the new trail alignment's significant impact on adjacent park lands.

47-100

Our review disclosed serious flaws and several significant unaddressed issues regarding the Yosemite Slough Bridge.

47-101

The analysis above provides a non-comprehensive list of defects in the DEIR. WRA's analysis was necessarily limited given the massive scope of the Candlestick Point-Hunter's Point Shipyard Phase II Project and DEIR and given the time constraints that are part of this CEQA review process. Please let me know if you have any questions or comments regarding the above analysis.

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Sincerely,



Justin Semion
Associate Aquatic Ecologist
WRA, Inc.

References Cited:

Hanson, Jeanne, M. Helvey, and R. Strach, eds. *Non-Fishing Impacts to Essential Fish Habitat and Recommended Conservation Measures*. National Marine Fisheries Service (NOAA Fisheries) Alaska Region, Northwest Region, Southwest Region. August 2003.

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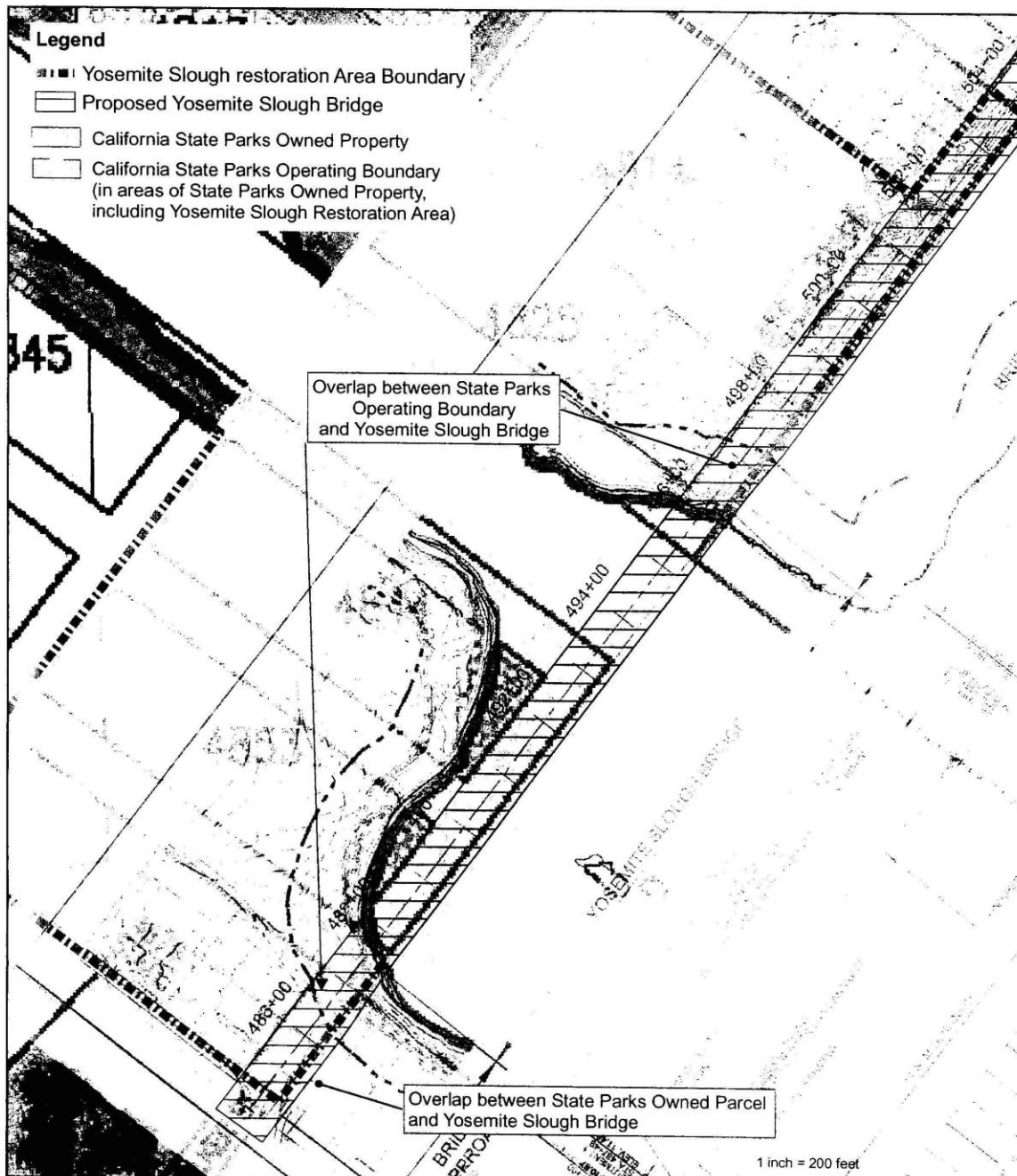


Figure 1. Proposed Yosemite Slough Bridge in Relation to the California State Parks Yosemite Operating Boundary and Parks Owned Parcels



ENVIRONMENTAL CONSULTANTS
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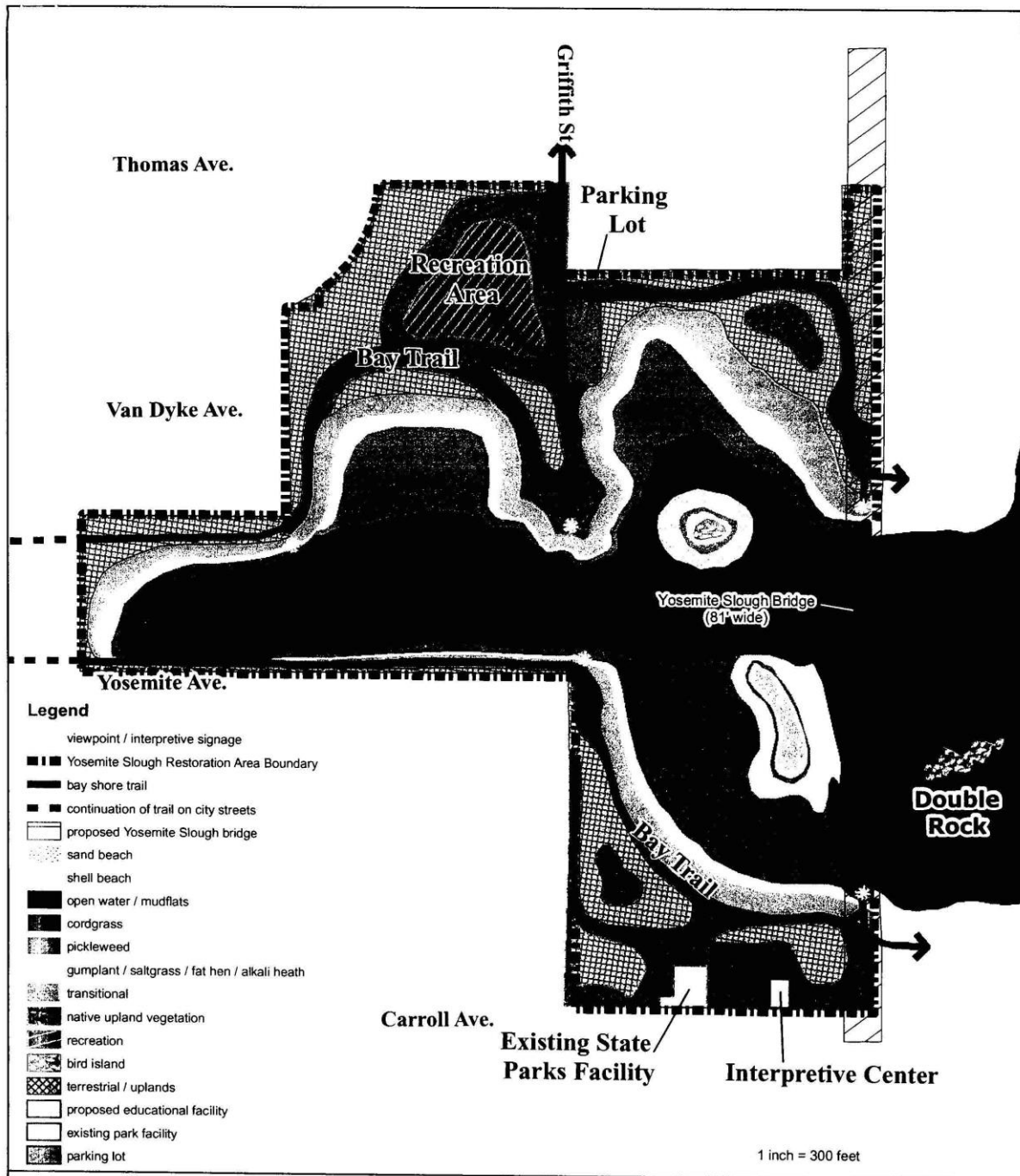
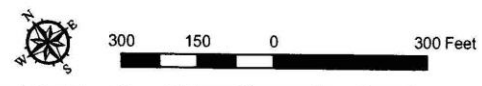
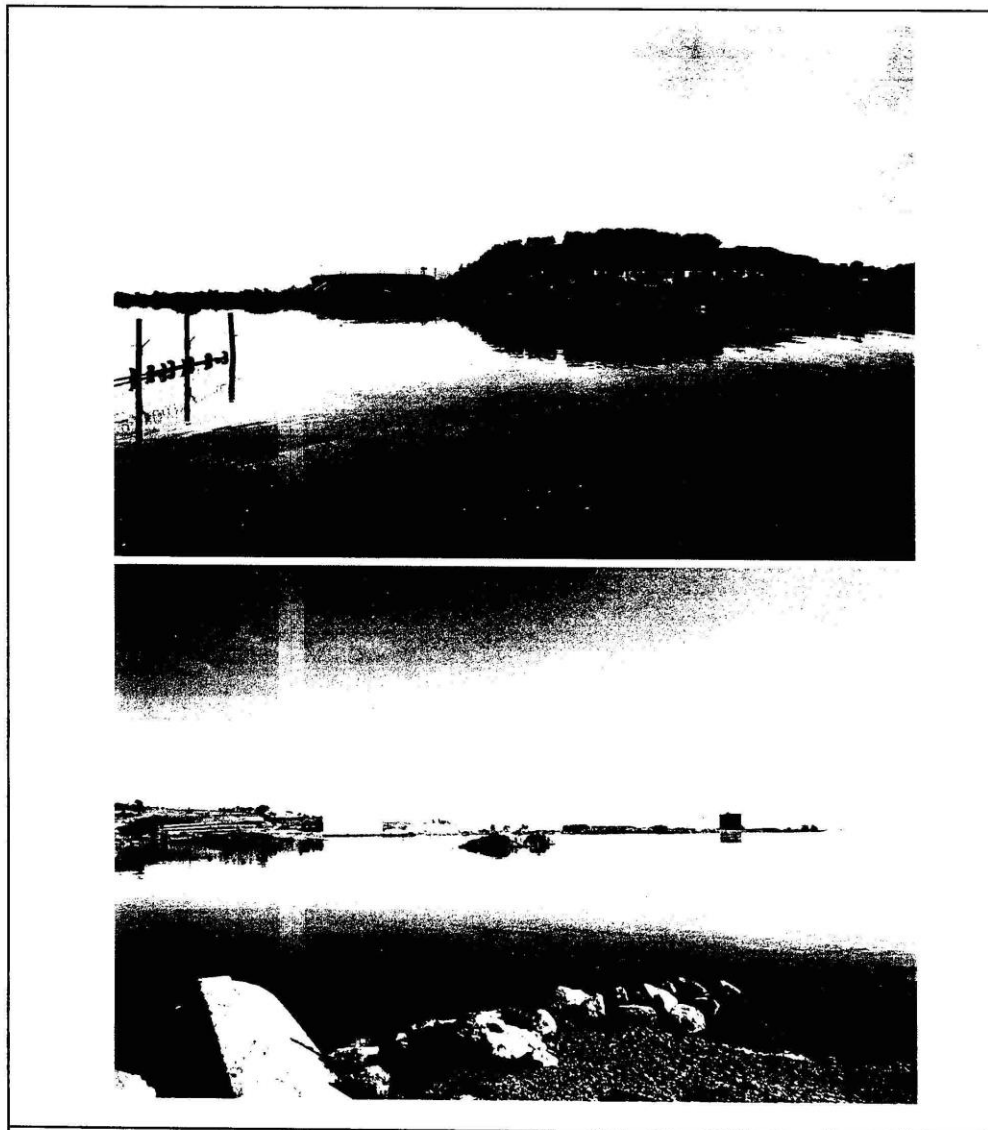


Figure 2. Proposed Yosemite Slough Bridge in Relation to the Yosemite Slough Restoration Project



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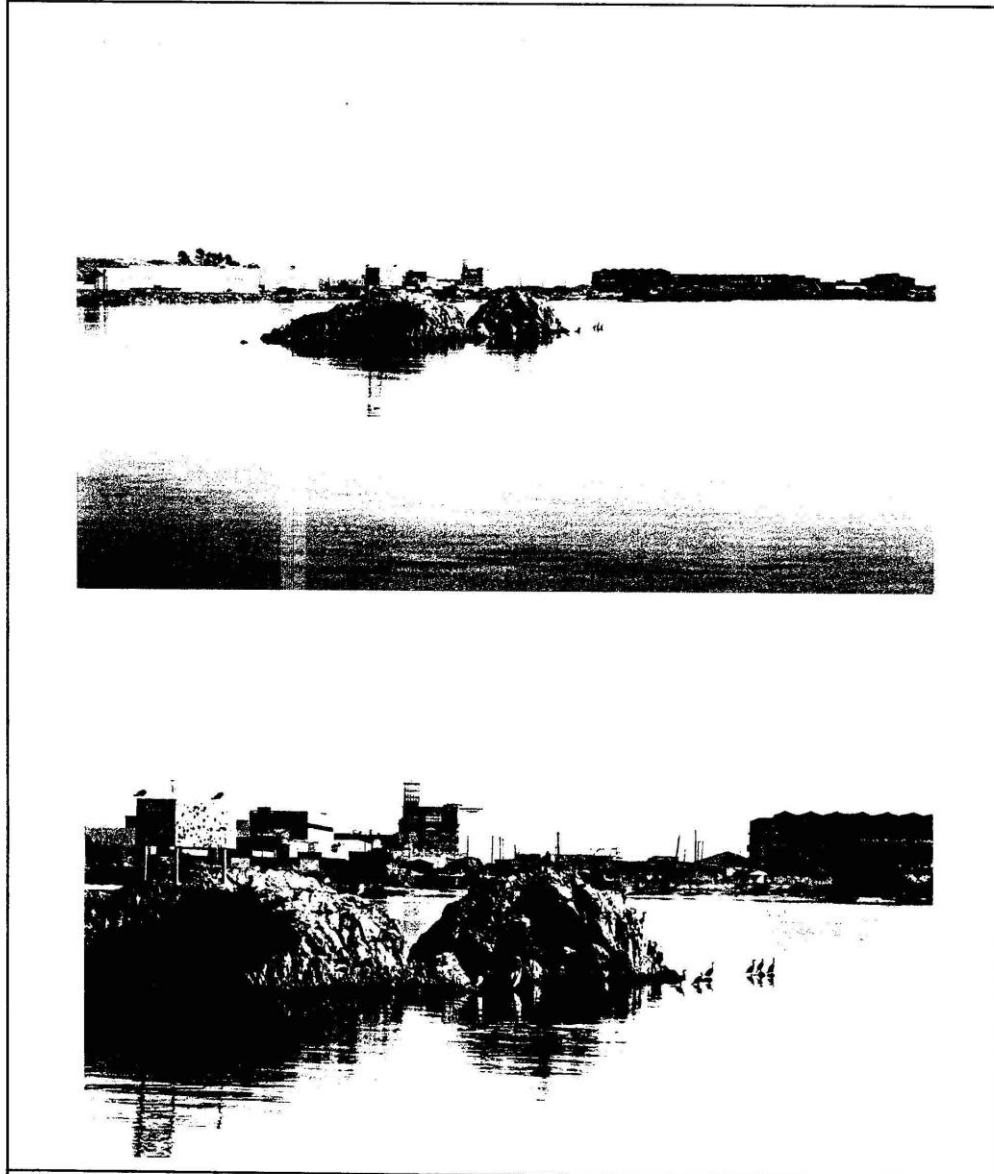


Top: View looking south from a viewpoint planned as part of the Yosemite Slough Restoration, near north side of proposed bridge.

Bottom: View looking northeast from a viewpoint planned as part of the Yosemite Slough Restoration, with Double Rock visible in background.



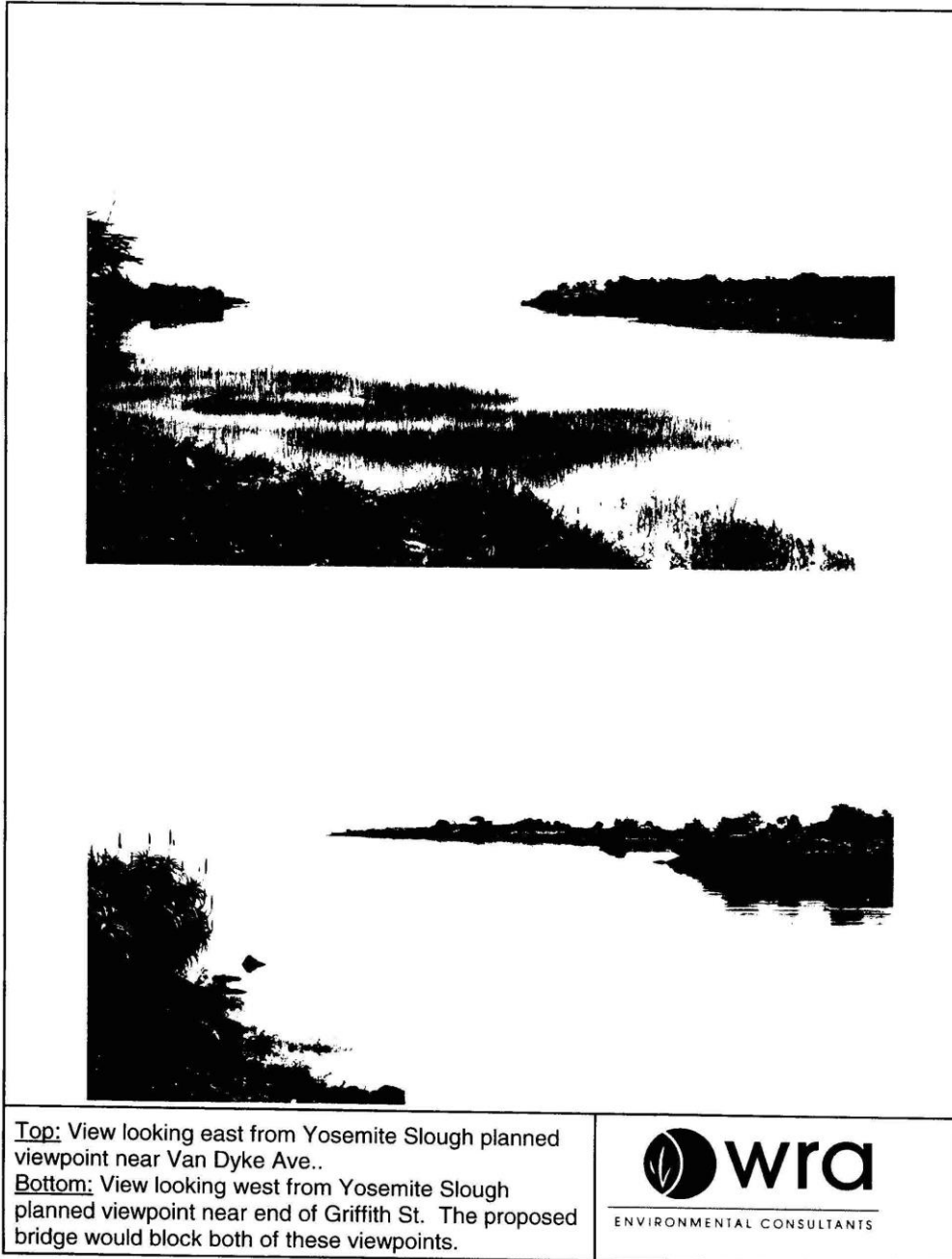
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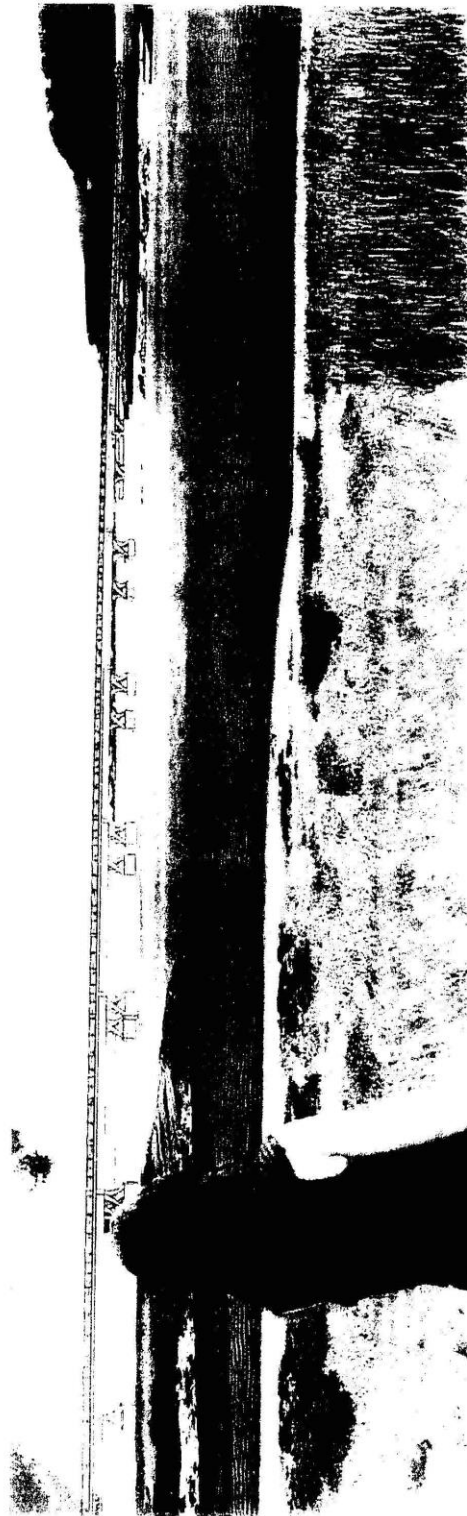
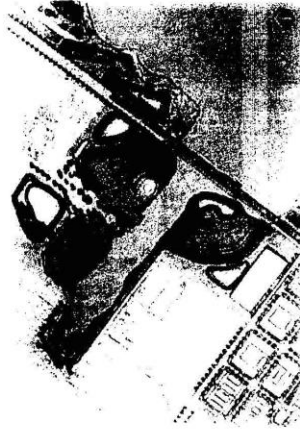
Top: View of Double Rock from planned Yosemite Slough viewpoint near existing parks facility, west of the proposed bridge.
Bottom: Wildlife Viewing at Double Rock from Yosemite Slough planned viewpoint near existing Park Facility. The Proposed Bridge would directly block this viewpoint.



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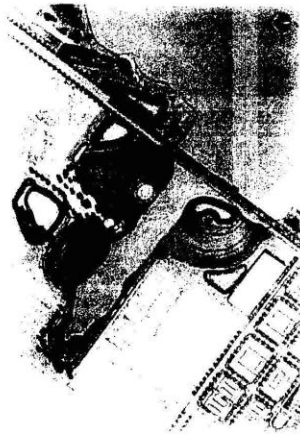


YOSEMITE SLOUGH BRIDGE: Panoramic view from northside plaza

January 28, 2018

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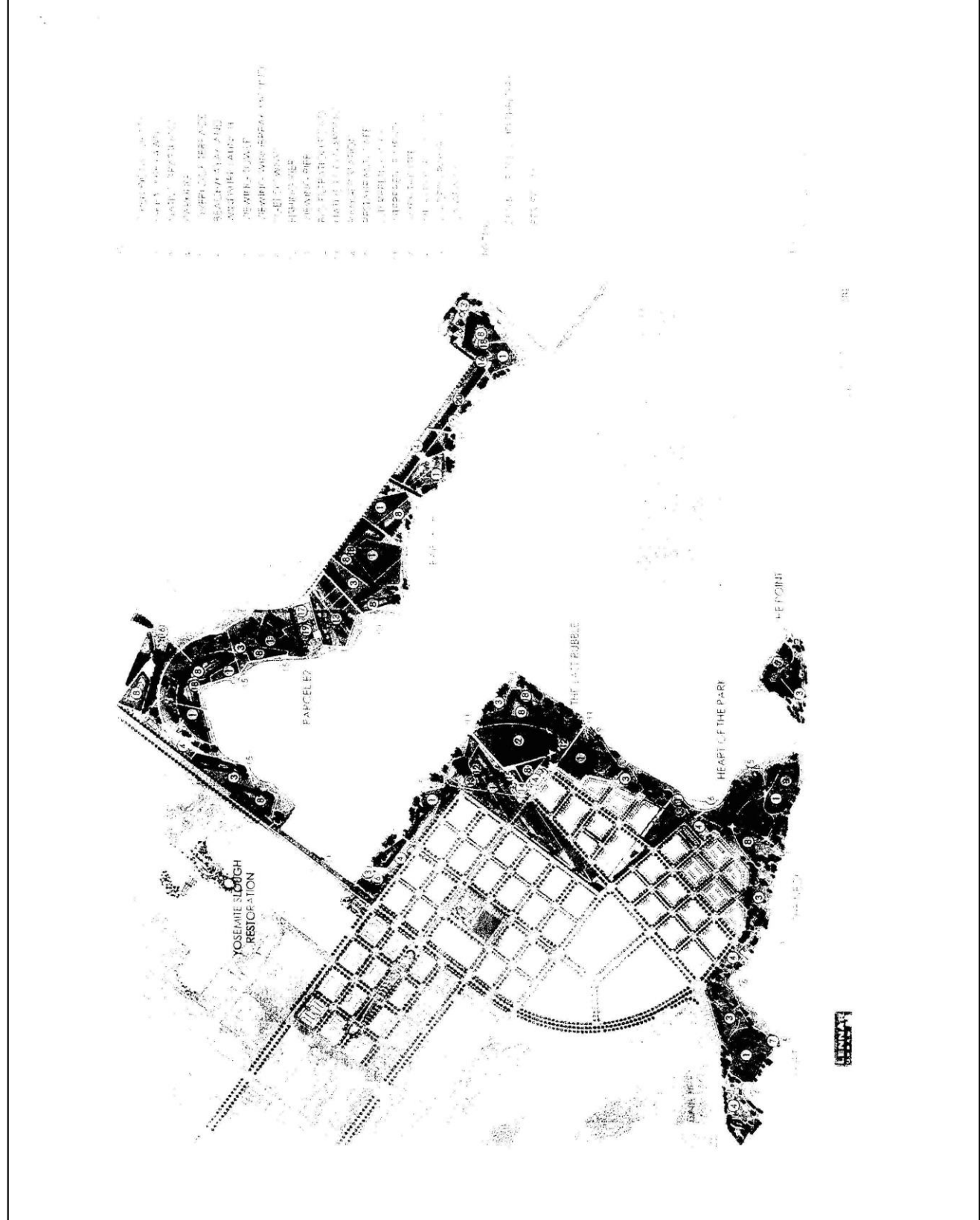


YOSEMITE SLOUGH BRIDGE: Panoramic view from southside bay trail

January 26, 2016

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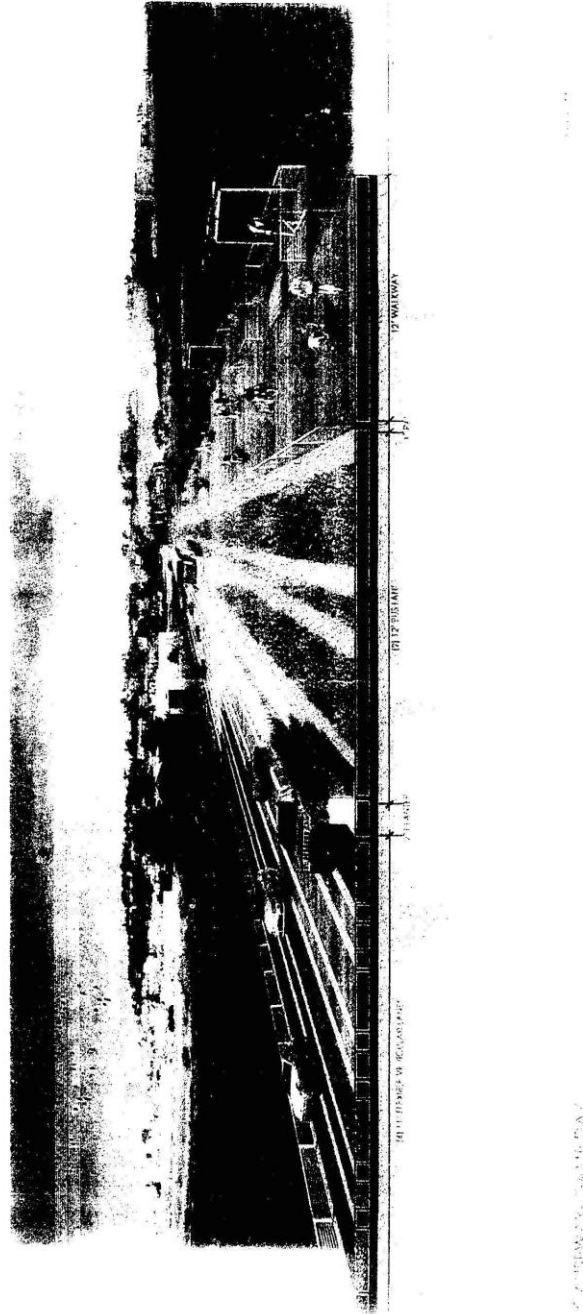


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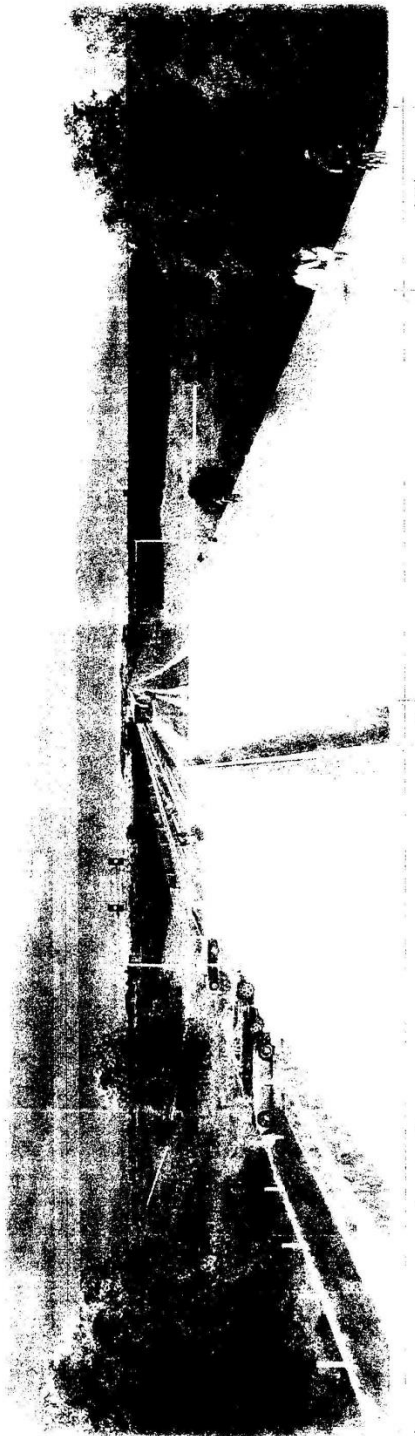


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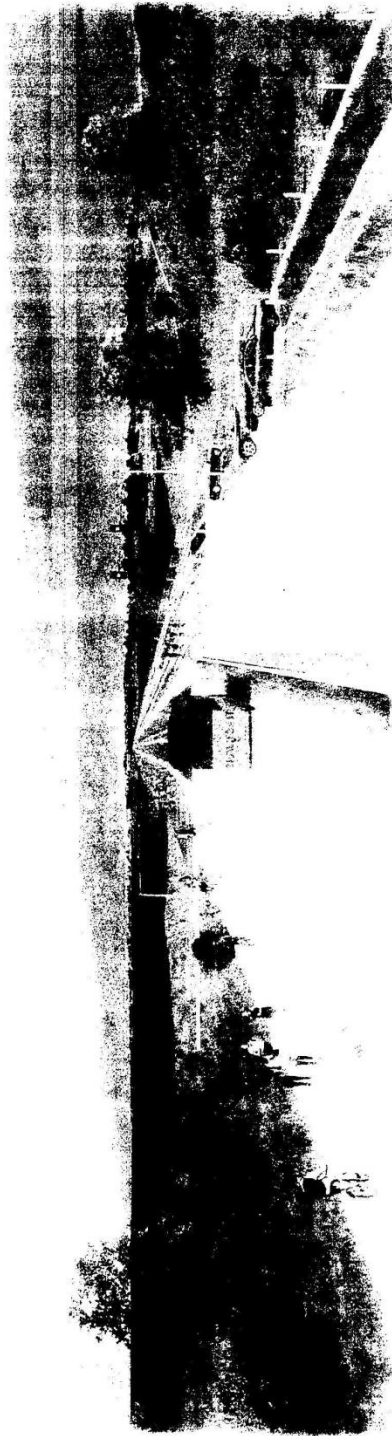
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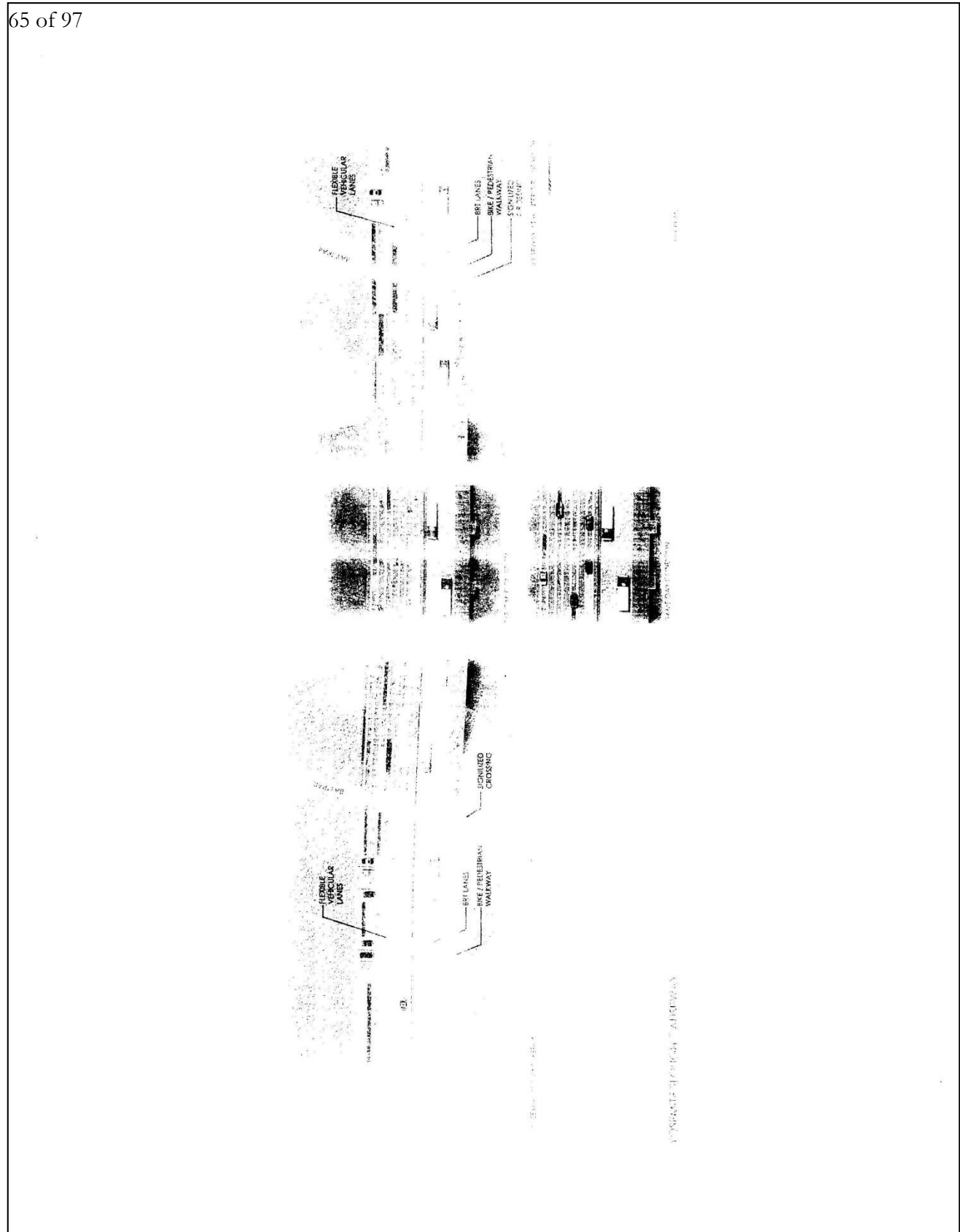
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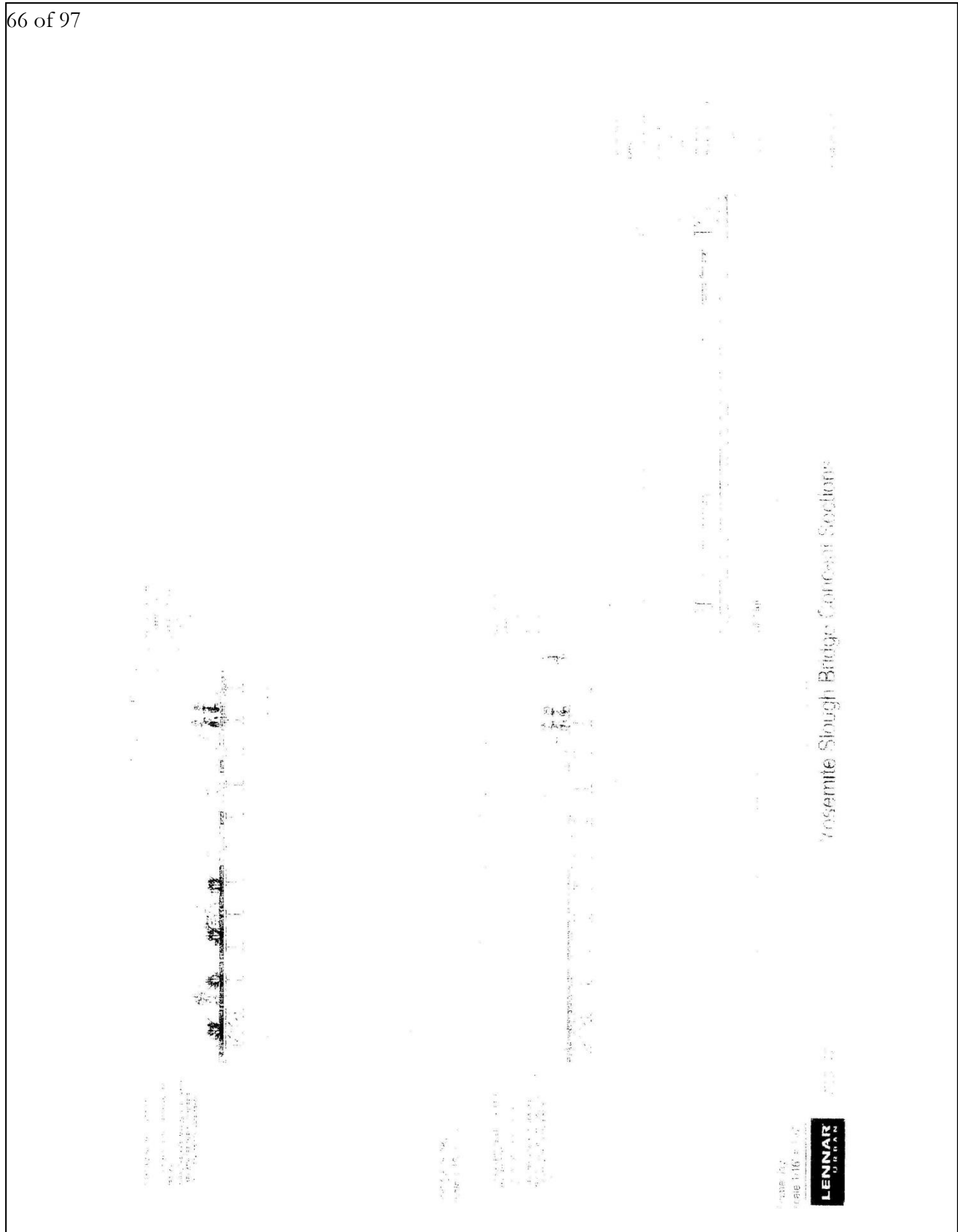


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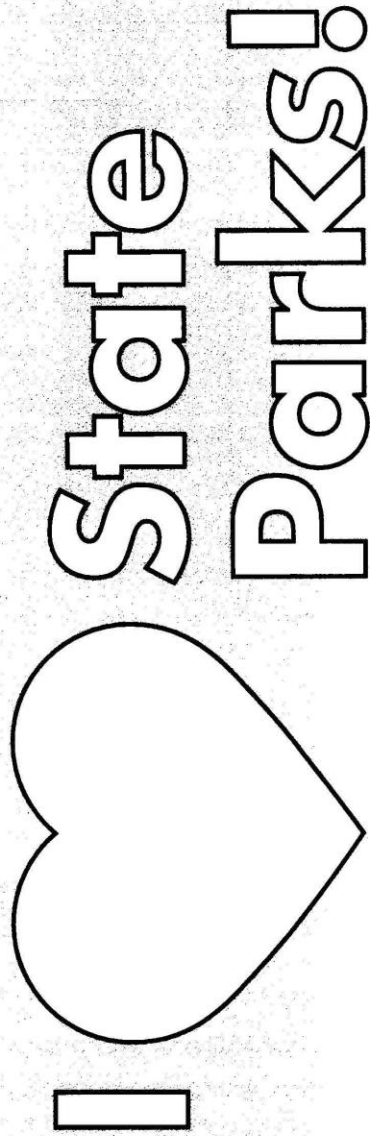


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**Please use this decal to
show your support for
California's State Parks!**

Tom Brohard and Associates

January 7, 2010

Mr. James Birkelund
Law Offices of James Birkelund
840 California St., Suite 45
San Francisco, CA 94108

SUBJECT: Review of the Draft Environmental Impact Report (Draft EIR) for the Candlestick Point-Hunters Point Shipyard Phase II Development Plan in the City of San Francisco – Yosemite Slough Bridge Traffic Issues

Dear Mr. Birkelund:

Tom Brohard, P.E., has reviewed various portions of the November 2009 Draft Environmental Impact Report (Draft EIR) for the Candlestick Point-Hunters Point Shipyard Phase II Development Plan in the City of San Francisco. Other documents including Appendix D, the November 2009 Hunters Point Shipyard Development Plan Transportation Study as well as various appendices to the Transportation Study, have also been reviewed. My review of these documents has focused on the transportation analysis of the seven-lane Yosemite Slough Bridge that has been proposed as part of the Project

47-102

The analysis presented in Chapter VI of the Draft EIR for “No Bridge” (Alternative 2) concludes the seven lanes and various transportation modes proposed on the Yosemite Slough Bridge can be provided elsewhere with no additional impacts. While I generally concur, construction of the bridge creates a number of other issues. As examples, opening the four reversible auto lanes on only 49ers game days will be difficult to continue to restrict during other sell-out secondary events at the stadium and at the arena. Once opened for traffic access to the stadium and the arena, it will not be possible to keep the four lanes closed at all other times as traffic and transit conditions continue to deteriorate in the area with construction and occupancy of the Proposed Project.

The Draft EIR contains serious flaws and fails to consider all reasonable and viable alternatives. The Yosemite Bridge is not required to accommodate “game day” traffic. Other vehicle access opportunities on surface streets on game days have not been analyzed, and all four of the “game day” lanes may be deleted. No justification is provided to construct the bridge as “rail-ready” to accommodate future light rail service. The Draft EIR fails to analyze a tunnel under Yosemite Slough in lieu of the two bus rapid transit lanes on the bridge. Impacts on bicycle and pedestrian access to the California State Parks with the bridge have not been properly assessed. The issues and concerns in this letter must be carefully considered in a recirculated EIR for the Proposed Project.

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Email tbrohard@earthlink.net

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Mr. James Birkelund
Candlestick Draft EIR – Yosemite Slough Bridge Issues
January 7, 2010

Education and Experience

Since receiving a Bachelor of Science in Engineering from Duke University in Durham, North Carolina in 1969, I have gained over 40 years of professional engineering experience. I am licensed as a Professional Civil Engineer both in California and Hawaii and as a Professional Traffic Engineer in California. I formed Tom Brohard and Associates in 2000 and now serve as the City Traffic Engineer for the City of Indio and as Consulting Transportation Engineer for the City of Big Bear Lake and City of San Fernando. I have extensive experience in traffic engineering and transportation planning. During my career in both the public and private sectors, I have reviewed numerous environmental documents and traffic studies for various projects. Several recent assignments are highlighted in the enclosed resume.

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Description of the Proposed Yosemite Slough Bridge

Page II-38 of the Project Description in the Draft EIR describes the proposed 81-foot wide, 900-foot long Yosemite Slough Bridge as having "...two dedicated 11-foot wide BRT lanes and a separate 12-foot wide Class I bicycle and pedestrian facility which would be open at all times. The bridge would also have a 40-foot wide greenway which would be converted to four peak direction auto travel lanes on 49ers game days only. Those four lanes would be open on game days to vehicle traffic in the peak direction of travel. The roadway would be planted with grass and would serve as an open space amenity on all non-game days."

47-103

Page III.D-46 of the Transportation and Circulation Section of the Draft EIR provides further information regarding this facility by stating:

- "The Yosemite Slough Bridge would not be used for vehicular traffic at any other time, including secondary events at the new stadium."
- "The Yosemite Slough Bridge is a fundamental component of the proposed BRT service between Hunters Point Shipyard and points to the west including Candlestick Point, the Bayshore Caltrain station, and the Balboa Park BART station. It... is designed to be "rail ready" (not to preclude possible conversion to light-rail)."
- "The bridge sidewalk and Class I bicycle path would provide a direct connection between Candlestick Point and Hunters Point Shipyard for pedestrians and bicyclists at all times, and would reduce the potential conflicts between BRT vehicles and motorists, pedestrians and bicyclists."
- During game days, the 40-foot wide landscaped median would serve as the primary and most direct route between the stadium parking areas and US-101. This would... reduce the duration of post-game congestion."

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This project description, as discussed further below, is inadequate as it (i) fails to indicate that the alleged traffic need for the bridge would change if the new 49ers stadium is not built; (ii) omits reasonably foreseeable future uses of the bridge; and (iii) fails to indicate that the bridge might be used for two NFL teams or otherwise change under project variants.

47-103
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Yosemite Slough Bridge Issues

Based on the information provided in the Draft EIR and the Transportation Study, my review indicates the following traffic issues and areas of concern regarding the proposed Yosemite Slough Bridge component of the Proposed Project:

47-104

- 1) Yosemite Slough Bridge Is Not Necessary to Accommodate Project Traffic
 - a) Eleven Exiting Game Day Traffic Lanes Can Be Provided in Other Ways -
In addition to the 11 reversible lanes shown on Figure II.D-13, two contra-flow lanes are proposed on surface streets to provide access to the area in the opposite direction during the 2 two-hour periods of peak demand to and from the new stadium. While the contra-flow lanes provide a convenience, they are not required for other purposes such as providing emergency services.

On 49ers game days, emergency vehicle access in to and out of the area is planned to occur in the two transit lanes on Palou Avenue. Localized police and fire/emergency medical services within the Project are also proposed. According to Page VI-49 of the Draft EIR analysis of "No Bridge" (Alternative 2), additional police facilities would be funded by the applicant and "...the SFPD would maintain acceptable levels of police service... This impact is considered less than significant, similar to the project." According to Page VI-49 of the Draft EIR analysis of "No Bridge" (Alternative 2), additional fire and emergency medical facilities would be funded by the applicant and "...access strategies for game day and non-game day scenarios would be required pursuant to the SFFD's plan review requirements. Therefore, development under Alternative 2 would not require new or physically altered fire protection facilities to maintain acceptable response times. Additionally, compliance with all applicable provisions of the *San Francisco Fire Code* would ensure that this impact is considered less than significant."

The Draft EIR has not analyzed removal of the two contra-flow lanes for 2 two-hour periods on game days from the Stadium Game Day Traffic Control Plan together with conversion of these two lanes to provide two additional reversible lanes. Eliminating the two contra-flow lanes and using the space for two more reversible lanes would improve the exiting time significantly over conditions at the existing stadium and would achieve 50

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percent of the parking lot exiting time reduction from the proposed traffic control plan.

Other opportunities also exist to provide additional lanes on surface streets. While most of the 10 AM to 6 PM game day parking prohibitions in the vicinity of Candlestick Park shown in Table 24 on Page 92 of the Transportation Study would be eliminated, restrictions should continue on Carroll Avenue, Gilman Avenue, and Ingerson Avenue between 3rd Street and Ingalls Street as well as on the north side of Paul Avenue from San Bruno Avenue to 3rd Street. To ease the impact on the adjacent properties, only restrictions on the north side of these streets would be needed to facilitate game day exiting conditions, and the hours could be reduced to only 3 PM to 6 PM on game days. It may also be possible to add a directional 49ers game day lane on Carroll Avenue and other portions of the route that will be improved to a "Modified" four-lane roadway as shown in Figure II-16 on Page II-51 of the Draft EIR. Additionally, there could certainly be similar opportunities on other streets that the Draft EIR has not evaluated or analyzed.

When discussing the elimination of all four reversible lanes on the Yosemite Slough Bridge, Page 342 of the Transportation Study concludes that "... the lower exit capacity would likely render the proposed new stadium site infeasible as a desirable option for an NFL football team." No evidence is presented to support this broad statement.

It appears feasible to provide at least nine of the 11 proposed reversible lanes, and there are other opportunities to spread exiting traffic to other streets. At the same time, the impacts that the adjacent properties have experienced with the existing stadium can be significantly reduced by prohibiting parking only from 3 PM to 6 PM rather than from 10 AM to 6 PM. The Draft EIR must evaluate the viable alternatives presented above before concluding that 11 reversible lanes are required for egress from the stadium.

- b) Eleven Game Day Traffic Lanes Are Not Necessary - Figure III.D-13 of the Draft EIR provides an illustration of the Stadium Game Day Traffic Control Plan. As shown on this plan and as described in the Draft EIR, 11 reversible lanes for vehicles are proposed to access the stadium, with these lanes operating inbound for about two hours before the game begins and then operating outbound for about two hours after the game ends.

In describing Pre-Game Conditions, Page II.D-22 of the Draft EIR states that "For a typical Sunday football game starting at 1:00 PM, vehicle arrival is spread over about six hours with approximately 40 percent of the

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vehicles arriving between one and two hours prior to the game start time, and 60 percent within the other five hours prior to the game. Since the arrival is spread out over a period of time, the game-related traffic does not substantially affect traffic flow... some localized congestion... The vehicles accessing the stadium from Third Street contribute to congestion and queues on the local residential streets..."

While conditions are analyzed after 4 PM following the end of a 49ers game, the Draft EIR does not analyze conditions before the 49ers game starts at 1 PM. The Draft EIR recommends 11 reversible game day vehicle lanes operating inbound to the stadium for two hours before the game begins. Without analysis supporting this recommendation, operating 11 reversible lanes inbound to the stadium for two hours before 1 PM on 49ers game days does not appear to be justified.

Page 331 of the Transportation Study states that "One result of providing additional egress routes for the proposed new stadium is that traffic congestion is expected to clear the area quicker." Table 94 on Page 332 indicates the existing stadium has a clearance capacity of 7,700 vehicles per hour. The table assumes the new stadium would have a clearance capacity of 11,000 vehicles per hour with a new US101 Interchange at Geneva Avenue/Harney Way. The new stadium's clearance capacity would only be constrained by the parking lot exit gates. Table 94 provides clearance times for the existing and new stadiums, with clearance times under various attendance and departure scenarios reduced by about 40 percent.

While the parking lots will clear quicker at the new stadium, traffic congestion at intersections and freeways in the area will continue long after the parking lots clear. The lower exiting capacity at the existing stadium tends to meter traffic exiting the facility. Even with this metering effect at the existing stadium, congestion continues long after the event has ended, particularly on the US101 Freeway to the north as noted on Page III.D-23 of the Draft EIR. Unless the freeway is widened (and that is not planned), traffic leaving the stadium will experience about the same overall travel times to reach their destination when an additional 3,300 vehicles per hour are released and try to access facilities already operating at LOS "F" as shown in the Draft EIR.

- 2) Reasonably Foreseeable Future Conditions Include Opening the Yosemite Bridge to Private Automobiles Year Round

 - a) Secondary Events Will Create Intense Pressure to Open Bridge to Vehicles - While the Draft EIR proposes to open the four vehicle lanes across the bridge only to expedite traffic to and from up to 12 49ers

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47-106

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football games during the year, Page III.D-61 states “It is anticipated that other types of events, such as soccer games or concerts, may also be scheduled at the stadium. A typical secondary event at the new stadium could occur at any time of day and on any day of the week, with an expected crowd ranging from 15,000 (e.g., monster truck rally) to sell-out conditions. For purposes of the transportation analysis, an event with 37,500 spectators was analyzed, which reflects events such as a Metallica concert... Secondary events would be limited to 20 total occurrences per year.”

For a sell-out secondary event at 7 PM on a weekday, the Draft EIR assumes there would be a small percentage of private charter busses and that most of the 25% transit mode share would be accommodated by Muni with its regularly scheduled service. According to the Draft EIR, this leaves nearly 4,700 private vehicles attempting to reach the stadium between 5 PM and 6 PM during the peak of the normal weekday afternoon commute hour.

Page III.D-145 of the Draft EIR indicates the one-way transit demand in the weekday PM peak hour when a special event is being held at the stadium could be up to 5,725 riders. At the same time, the one-way transit capacity serving the stadium site would be only 3,100 passengers per hour, leaving 2,625 riders that would not be accommodated. While MM TR-47 requires an increase in transit frequency to the maximum with five-minute headways, only an additional 828 passengers to the stadium can be carried, leaving a shortfall of almost 1,800 passengers in the weekday PM peak hour. From the bus loading data on Page III.D-66 of the Draft EIR, on the order of 40 50-passenger busses would be needed during the weekday PM peak hour to accommodate the shortfall. Page III.D-145 indicates that “Generally, the capacity of the express service should compensate for the shortfall...”

Traffic impacts caused by the additional 4,700 vehicles trying to reach the stadium between 5 PM and 6 PM during the peak of the normal weekday afternoon commute will be significant. According to Page III.D-142 of the Draft EIR, special event traffic will add trips to three freeway segments and two off-ramps already operating at LOS “E” or “F” and will cause one additional off-ramp to operate at LOS “F”. Special event traffic will also add trips to eleven intersections already operating at LOS “E” or “F” and will cause nine more intersections to operate at LOS “E” or “F”.

MM TR-47 requires implementation of a stadium transportation systems plan similar to that developed for game-day operations, and restates that “the Yosemite Slough Bridge shall not be available for private automobiles.” However, with special events during the weekday PM peak

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hour causing grid-locked vehicle traffic together with inadequate transit capacity as an alternative to driving, it is reasonably foreseeable that there will be significant pressure to open the traffic lanes on the Yosemite Slough Bridge before and after many of the 20 annual special events.

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- b) Arena Events Will Create Further Pressure to Open Bridge to Vehicles - Once exceptions are made for opening the traffic lanes on the bridge to facilitate traffic for many of the special events at the stadium, other interests will call for opening the lanes for other causes such as events at the proposed arena.

According to Page III.D-147 of the Draft EIR, one-half of the vehicle trips generated by a weekday evening sell-out event at the 10,000 seat arena would arrive between 5 PM and 6 PM during the peak of the normal weekday afternoon commute hour. These additional 1,333 vehicles will add arena trips to three freeway segments and one off-ramp already operating at LOS "E" or "F". Arena traffic will also add trips to eleven intersections already operating at LOS "E" or "F" and will cause one more intersection to operate at LOS "F".

47-107

MM TR-51 requires implementation of an arena transportation systems plan. With arena events causing additional significant traffic impacts during the weekday PM peak hour, it is reasonably foreseeable that there will be further pressure to open the traffic lanes on the Yosemite Slough Bridge before and after many of the arena events.

- c) Project Traffic Will Create Additional Pressure to Open Bridge to Vehicles - Once exceptions are made for opening the traffic lanes on the bridge to facilitate traffic for special events at the stadium and events at the arena, the public will call for opening the lanes on the bridge at all times.

47-108

According to Page III.D-72 in the Draft EIR, the Proposed Project will cause 39 of the 60 intersections studied to operate at unacceptable levels during at least one of the peak traffic hours studied. No feasible mitigation measures have been identified in the Draft EIR for nine of the ten intersections where specific project-related impacts are forecast to occur. Page III.D-83 of the Draft EIR indicates no feasible mitigation measures have been identified for 16 of the 20 intersections where specific project-related cumulative impacts are forecast. The streets in the area will experience severe congestion.

With so many intersections in the project area forecast to operate at grid-locked conditions during peak hours together with the lack of feasible mitigation measures at nearly half of the impacted study intersections, it is

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reasonably foreseeable that there will be additional pressure from the public to open the traffic lanes on the Yosemite Slough Bridge at all times.

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The Draft EIR, moreover, lacks any enforceable mechanisms for ensuring the bridge is not opened for use by private automobiles at all times.

- 3) No Justification Is Provided for Constructing the Bridge to be "Rail Ready" – Page III.D-46 of the Draft EIR states that the two BRT lanes on the Yosemite Slough Bridge are "...designed to be 'rail ready' (not to preclude possible conversion to light-rail)."

The Draft EIR fails to provide any evidence that conversion of the BRT lanes to light-rail will be needed in the future. According to Table 16-20 on Page 756 of the Transportation Planning Handbook published by the Institute of Transportation Engineers, BRT has a vehicle capacity of 120 persons in seats plus standees. With 60 seconds headway between vehicles, a total of 7,200 persons in both directions can be accommodated each hour. With light rail running with 40 seconds headway between vehicles, 14,400 persons in both directions can be accommodated each hour if two vehicles per train unit are used, and 21,600 persons in both directions can be accommodated each hour if three vehicles per train unit are used.

47-109

Page 288 of the Transportation Study states: "If the Yosemite Slough Bridge were not in place, only one transit route (the 28L-19th Avenue/Geneva BRT route) would be affected." Under game-day conditions, Table III.D-24 on Page III.D-134 of the Draft EIR indicates the BRT lanes carrying transit line 28L across the Yosemite Slough Bridge will carry only 800 passengers in the peak hour per direction before and after the 49ers football games. From Footnote a) to Table III.D-24, the Sunday peak hour capacity is 75 percent of the weekday peak hour capacity, and the weekday peak hour capacity in the peak direction would be about 1,100 passengers. With this, only one-third of the theoretical BRT directional capacity of 3,600 passengers in the peak direction will be utilized in 2030 with full development of the area including the stadium. With parallel rail service nearby provided by Caltrain and Bart, conversion of the BRT lanes to light rail across the Yosemite Slough Bridge will not be needed.

Certainly, the structural support for future light rail carried by the bridge will need to be greatly enhanced in comparison to providing a bridge designed to carry only the BRT lanes. As such, more structural members and their bulk that are designed for light rail create additional aesthetic impacts as well as significant unnecessary cost for the Yosemite Slough Bridge.

- 4) The Bridge is Not Necessary for the BRT System - Alternatives to BRT Lanes on the Bridge have not been fully analyzed. In discussing Alternative 2 (No

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Bridge), Page 288 of the Transportation Study states: “Although the alternate route around Yosemite Slough would be technically feasible, it would not be the optimal configuration for a BRT system... BRT travel times, particularly between major development and the regional transit connections (e.g., Caltrain and BART) would increase by approximately five minutes. As a result, BRT ridership to and from the Hunters Point Shipyard would decrease by approximately 15 percent to the forecasts presented for the Project. However, because this represents a relatively small portion of the overall transit ridership, the additional traffic generated by the Project Alternative 2 would be minimal... As with the Project, Alternative 2 impacts on transit capacity would be *less than significant*.”

47-110
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In lieu of BRT lanes on the Yosemite Slough Bridge (and assuming the other proposed lanes on the bridge can be adequately accommodated elsewhere as indicated throughout this letter), the Draft EIR fails to consider or analyze the use of a tunnel for the two BRT lanes under Yosemite Slough. Policy 2 of the San Francisco Bay Plan states “If any additional bridge is proposed across the Bay, adequate research and testing should determine whether feasible alternative route, transportation mode or other operational improvement could overcome the particular congestion problem without placing an additional route in the Bay and, if not, whether a tunnel beneath the Bay is a feasible alternative.” The Draft EIR is flawed as it fails to analyze a tunnel as an alternative to BRT lanes on the bridge deck.

- 5) Bicycle/Pedestrian Lane on Bridge Duplicates Bay Trail Facility – Page III.D-19 of the Draft EIR states: “The San Francisco Bay Trail is designed to create recreational pathway links to the various commercial, industrial, and residential neighborhoods that surround San Francisco Bay.” Figure III.D-10 on Page III.D-51 of the Draft EIR, Project Bicycle Network and Bay Trail Improvements, shows a proposed Class I multi-use path across the bridge as part of the Project as well as the proposed California State Parks Bay Trail Yosemite Slough Project around the perimeter of the slough. Figure III.D-11 on Page III.D-53 of the Draft EIR, Project Pedestrian Circulation Plan, shows a proposed pedestrian multi-use path across the bridge as part of the Project as well as pedestrian facilities on the proposed California State Parks Bay Trail Yosemite Slough Project around the perimeter of the slough.

47-111

The San Francisco Bay Trail is intended to provide recreational opportunities rather than to be a facility designed to accommodate bicycle commuters. While providing an amenity on the Yosemite Slough Bridge with turnouts for viewing, the need to accommodate bicyclists and pedestrians is well served by the planned California State Parks Bay Trail Yosemite Slough Project that is planned around the perimeter of the slough.

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As concluded on Page VI-34 of the Draft EIR in the discussion of the “No Bridge” alternative, “The Alternative 2 bicycle trips would be accommodated within the proposed street and network... impacts on bicycle circulation would be less than significant.” As concluded on Page VI-35 of the Draft EIR in the discussion of the “No Bridge” alternative, “The Alternative 2 pedestrian trips would be accommodated within the proposed sidewalk and pedestrian network... impacts on pedestrian circulation would be less than significant.”

47-111
cont'd.

- 6) Joint Use Bicycle/Pedestrian Lane on Bridge Violates Caltrans Guidelines – Page 1000-4 of the Highway Design Manual published by the California Department of Transportation (Caltrans) states “Class I bikeways (bike paths) are facilities with exclusive right of way, with cross flows by motorists minimized. Section 890.4 of the Streets and Highways Code describes Class I bikeways as serving ‘the exclusive use of bicycles and pedestrians’. However, experience has shown that if significant pedestrian use is anticipated, separate facilities for pedestrians are necessary to minimize conflicts. Dual use by pedestrians and bicycles is undesirable, and the two should be separated wherever possible.”

47-112

The multi-use path across the bridge is proposed to be 12 feet wide, barely enough for a minimum 8-foot wide two-way bicycle facility and a minimum 4-foot wide area for pedestrians. While the Draft EIR does not quantify the number of bicyclists and pedestrians expected to use the multi-use facility on the bridge, certainly significant pedestrian and bicycle use can be expected on this recreational facility, especially with turnouts for viewing. The Draft EIR fails to address and analyze the conflicts that will occur in the proposed combined facility which has each component designed to barely meet the minimum guidelines for separate bicycle paths and sidewalks.

- 7) Bicycle/Pedestrian Crossings of Bridge Approaches Have Not Been Analyzed – To reach the proposed California State Parks Bay Trail Yosemite Slough Project around the perimeter of the slough from the Bay Trail, it will be necessary to cross the approaches to the bridge at both ends of this facility. Crossings will involve the BRT lanes at all times and will also include the four reversible auto lanes on 49ers game days. While the BRT crossing could be signalized in a conventional fashion, the crossing of the four reversible auto lanes will be especially challenging, even with traffic signals installed at both ends of the bridge. Traffic signals will also impede the BRT operation as well as the auto traffic in the four reversible lanes.

47-113

Page III.D-137 of the Draft EIR states “...during game days, access to state park facilities for vehicles, bicyclists, and pedestrians would be constrained, and heavy traffic congestion could discourage use of the park. However, access for vehicles, bicyclists, and pedestrians would be maintained.” The

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conclusion that this condition results in a “less than significant” impact is not supported by evidence in the Draft EIR.

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47-113
cont'd.

The Draft EIR fails to analyze bicycle and pedestrian crossings from the Bay Trail across the bridge approaches to and from the proposed California State Parks Bay Trail Yosemite Slough Project. There would be no safe way to connect these facilities without either a traffic signal for the at-grade crossings or via a grade separated facility with bicyclists and pedestrians going under the bridge approaches. Without analyzing these conditions, the Draft EIR cannot conclude that the Project has “less than significant” impacts to bicyclists and pedestrians trying to connect between the Bay Trail and the California State Parks Bay Trail, particularly during 49ers game days at the proposed stadium. Only with the elimination of the Yosemite Slough Bridge in Alternative 2 can the Draft EIR conclude that there are “less than significant” impacts to bicyclists and pedestrians for the state park access.

- 8) Incomplete Analyses of Post Football Game Conditions – With the sole exception of traffic conditions following a 49ers football game, each of the other analyses in the Draft EIR utilizes standard transportation planning methodology to identify the intersection levels of service during the peak hour as well as the locations that will be significantly impacted.

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47-114

The Draft EIR did use traditional methodology for the analyses of all other scenarios including a secondary event at the new stadium beginning at 7 PM on a weekday as well as a weekday evening event at the proposed arena. After quantifying the additional significant traffic impacts that will occur during these scenarios, the Draft EIR includes identical mitigation as will be used after 49ers football games such as the preparation of a Transportation Management Plan including “...deploying traffic control officers in the Project vicinity to increase efficiency of pre- and post- event traffic...” In each of these cases, the Draft EIR was able to calculate intersection levels of service.

In attempting to justify why the traditional approach was not used for conditions following 49ers games, Page III.D-131 of the Draft EIR states: “...due to the unique circumstances following a football game, including manual and dynamic control of intersections by traffic control officers and complex travel patterns, traditional methods of calculating intersection levels of service are not appropriate. Instead, for post-game conditions, traffic impacts associated with the new stadium are described in terms of the magnitude, duration, and expected locations of congestion.”

The Draft EIR fails to explain why it is inappropriate to calculate levels of service and determine significant traffic impacts after 49ers games. By only listing “Locations of Congestion following San Francisco 49ers Football Games” in Table III.D-23 on Page III.D-132, the Draft EIR then fails to

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disclose, quantify, analyze, and mitigate the significant traffic impacts that will occur following 49ers football games.

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47-114
cont'd.

My review disclosed serious flaws and several significant unaddressed traffic issues regarding the Yosemite Slough Bridge, a major component of the Candlestick Point-Hunters Point Shipyard Phase II Development Plan. The various concerns outlined throughout this letter must be carefully considered in a recirculated environmental impact report. If you have questions regarding these comments, please call me at your convenience.

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47-115

Respectfully submitted,

Tom Brohard and Associates

Tom Brohard

Tom Brohard, PE
Principal

Enclosures



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TRANSPORTATION PLANNING HANDBOOK 3RD EDITION

Institute of Transportation Engineers

Table 16-20 Typical Vehicle and Line Capacities of Different Modes

Mode	TU size n [veh/TU]	Vehicle capacity C_v [sps/veh]	Minimum headway h_{min} [s]	Maximum frequency f_{max} [TU/h]	Max offered line capacity C [sps/h]
1. Standard bus, single stops	1	75	70 – 50	51 – 72	3,800 - 5,400
2. Articulated bus, single stops	1	120	80 – 60	45 – 60	5,400 - 7,200
3. 50% standard, 50% articulated bus, 4-lanes and multiple berthing	1	75 - 120	40 – 20	90 – 180	8,800 - 17,500
4. Streetcar, ROW C, double stops	2	180	60	60	10,800
5. BRT, North America	1	120	60	60	7,200
6. BRT, developing countries	1	180	30	120	21,600
7. Light rail transit, ROW B, single track, double stops	2 - 3	180	90	40	14,400 - 21,600
8. AGT, rubber-tired - Siemens, Bombardier	2	100	90 – 60	40 – 60	8,000 - 12,000
9. AGT – Rail	6	100	100 - 75	36 – 48	21,600 - 28,800
10. Rapid Transit	8	180	100 - 90	36 – 40	51,800 - 57,600
11. Rapid Transit	10	240	150 - 120	24 – 30	67,200 - 72,000
12. Regional rail, diesel	10	200	240 - 180	15 – 20	30,000 – 40,000
13. Regional rail, electric	10	200	180 - 120	20 – 30	40,000 - 60,000

Source: Vuchic, V.R. *Urban Transit Operations Planning and Economics*. Hoboken, NJ, USA: John Wiley & Sons, 2005.

Transit Impacts on the Communities Served

As discussed earlier, transit systems influence a region’s mobility, accessibility, economic vibrancy and character. The following considerations influence how well transit systems achieve their regional goals.

Passenger attraction and service quality. The main goal for a transit operator, providing service to passengers, is also the most direct impact of transit on the community or city served. Ridership in a region may be measured by mode split (the percent of trips by transit), which can be further differentiated by peak or off-peak periods. Additional measures of transit ridership are unlinked trips or passenger-miles (-km) traveled. High passenger volumes and high riding habits in a city (measured by the average number of annual trips per resident) reflect the role transit has in providing high population mobility and reducing the pressures of highway congestion and parking requirements, thus, improving quality of life in the city.

Economic, social and environmental impacts on population. The role of transit in supporting regional economies, promoting social objectives (accessibility) and enhancing the environmental health of the city is a direct result of attracting many passengers. Often, these impacts are measured qualitatively, described by the phrase “livability of cities.” However, certain quantitative measures exist, including the following.

- Congestion is a measure of overall transportation system performance and can be correlated to regional competitiveness.
- The ratio of the composite cost of travel by transit compared to other modes (walking, private auto) for certain origin destination pairs (low income residences to high employment growth areas, for example) can measure how well transit service provides accessibility.
- Regional air quality (ozone levels, for example) is a measure of transportation impacts on environmental health.

1000-4

HIGHWAY DESIGN MANUAL

September 1, 2006

Topic 1003 - Design Criteria

1003.1 Class I Bikeways

Class I bikeways (bike paths) are facilities with exclusive right of way, with cross flows by motorists minimized. Section 890.4 of the Streets and Highways Code describes Class I bikeways as serving "the exclusive use of bicycles and pedestrians". However, experience has shown that if significant pedestrian use is anticipated, separate facilities for pedestrians are necessary to minimize conflicts. Dual use by pedestrians and bicycles is undesirable, and the two should be separated wherever possible.

Sidewalk facilities are not considered Class I facilities because they are primarily intended to serve pedestrians, generally cannot meet the design standards for Class I bikeways, and do not minimize motorist cross flows. See Index 1003.3 for discussion relative to sidewalk bikeways.

By State law, motorized bicycles ("mopeds") are prohibited on bike paths unless authorized by ordinance or approval of the agency having jurisdiction over the path. Likewise, all motor vehicles are prohibited from bike paths. These prohibitions can be strengthened by signing.

- (1) *Widths.* **The minimum paved width for a two-way bike path shall be 8 feet. The minimum paved width for a one-way bike path shall be 5 feet. A minimum 2-foot wide graded area shall be provided adjacent to the pavement (see Figure 1003.1A).** A 3-foot graded area is recommended to provide clearance from poles, trees, walls, fences, guardrails, or other lateral obstructions. A wider graded area can also serve as a jogging path. Where the paved width is wider than the minimum required, the graded area may be reduced accordingly; however, the graded area is a desirable feature regardless of the paved width. Development of a one-way bike path should be undertaken only after careful consideration due to the problems of enforcing one-way operation and the difficulties in maintaining a path of restricted width.

Where heavy bicycle volumes are anticipated and/or significant pedestrian traffic is expected, the paved width of a two-way path should be

greater than 8-feet, preferably 12 feet or more. Another important factor to consider in determining the appropriate width is that bicyclists will tend to ride side by side on bike paths, necessitating more width for safe use.

Experience has shown that paved paths less than 12 feet wide sometimes break up along the edge as a result of loads from maintenance vehicles.

Where equestrians are expected, a separate facility should be provided.

- (2) *Clearance to Obstructions.* **A minimum 2-foot horizontal clearance to obstructions shall be provided adjacent to the pavement (see Figure 1003.1A).** A 3-foot clearance is recommended. Where the paved width is wider than the minimum required, the clearance may be reduced accordingly; however, an adequate clearance is desirable regardless of the paved width. If a wide path is paved contiguous with a continuous fixed object (e.g., block wall), a 4-inch white edge line, 2 feet from the fixed object, is recommended to minimize the likelihood of a bicyclist hitting it. **The clear width on structures between railings shall be not less than 8 feet.** It is desirable that the clear width of structures be equal to the minimum clear width of the path (i.e., 12 feet).

The vertical clearance to obstructions across the clear width of the path shall be a minimum of 8 feet. Where practical, a vertical clearance of 10 feet is desirable.

- (3) *Signing and Delineation.* For application and placement of signs, see the Manual on Uniform Traffic Control Devices (MUTCD), Section 9B.01 and the MUTCD and California Supplement Section 9B.01 and Figure 9B-101. For pavement marking guidance, see the MUTCD, Section 9C.03.
- (4) *Intersections with Highways.* Intersections are a prime consideration in bike path design. If alternate locations for a bike path are available, the one with the most favorable intersection conditions should be selected.

Tom Brohard, PE

- Licenses:** 1975 / Professional Engineer / California – Civil, No. 24577
1977 / Professional Engineer / California – Traffic, No. 724
2006 / Professional Engineer / Hawaii – Civil, No. 12321
- Education:** 1969 / BSE / Civil Engineering / Duke University
- Experience:** 39 Years
- Memberships:** 1977 / Institute of Transportation Engineers – Fellow, Life
1978 / Orange County Traffic Engineers Council - Chair 1982-1983
1981 / American Public Works Association - Member

Tom is a recognized expert in the field of traffic engineering and transportation planning. His background also includes responsibility for leading and managing the delivery of various contract services to numerous cities in Southern California.

Tom has extensive experience in providing transportation planning and traffic engineering services to public agencies. Since May 2005, he has served as Consulting City Traffic Engineer three days a week to the City of Indio. He also currently provides “on call” Traffic and Transportation Engineer services to the Cities of Big Bear Lake and San Fernando. In addition to conducting traffic engineering investigations for Los Angeles County from 1972 to 1978, he has previously served as City Traffic Engineer in the following communities:

- Bellflower..... 1997 - 1998
- Bell Gardens..... 1982 - 1995
- Huntington Beach..... 1998 - 2004
- Lawndale..... 1973 - 1978
- Los Alamitos..... 1981 - 1982
- Oceanside..... 1981 - 1982
- Paramount..... 1982 - 1988
- Rancho Palos Verdes..... 1973 - 1978
- Rolling Hills..... 1973 - 1978, 1985 - 1993
- Rolling Hills Estates..... 1973 - 1978, 1984 - 1991
- San Marcos..... 1981
- Santa Ana..... 1978 - 1981
- Westlake Village..... 1983 - 1994

During these assignments, Tom has supervised City staff and directed other consultants including traffic engineers and transportation planners, traffic signal and street lighting personnel, and signing, striping, and marking crews. He has secured over \$5 million in grant funding for various improvements. He has managed and directed many traffic and transportation studies and projects. While serving these communities, he has personally conducted investigations of hundreds of citizen requests for various traffic control devices. Tom has also successfully presented numerous engineering reports at City Council, Planning Commission, and Traffic Commission meetings in these and other municipalities.

Tom Brohard and Associates

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In his service to the City of Indio since May 2005, Tom has accomplished the following:

- ❖ Oversaw preparation and adoption of the Circulation Element Update of the General Plan including development of Year 2035 buildout traffic volumes, revised and simplified arterial roadway cross sections, and reduction in acceptable Level of Service criteria under certain constraints
- ❖ Oversaw preparation of plans and provided assistance during construction of a \$1.5 million project to install traffic signals and widen three of four ramps at the I-10/Jackson Street Interchange under a Caltrans encroachment permit issued under the Streamlined Permit Process
- ❖ Oversaw preparation of traffic impact analyses for Project Study Reports evaluating different alternatives for buildout improvement of the I-10/Monroe Street and the I-10/Golf Center Parkway Interchanges
- ❖ Oversaw preparation of plans and provided assistance during construction of 10 new traffic signal installations
- ❖ Reviewed and approved temporary traffic control plans as well as for signing and striping for all City and developer funded roadway improvement projects
- ❖ Oversaw preparation of a City wide traffic safety study of conditions at all schools
- ❖ Prepared over 300 work orders directing City forces to install, modify, and/or remove traffic signs, pavement and curb markings, and roadway striping
- ❖ Reviewed and approved traffic impact studies prepared for more than 15 major development projects

Since forming Tom Brohard and Associates in 2000, Tom has reviewed many traffic impact reports and environmental documents for various development projects. He has provided expert witness services and also prepared traffic studies for public agencies and private sector clients. Significant accomplishments during the last eight years include the following:

- ❖ Prepared critique of traffic and parking impacts identified in the Initial Study and Traffic Study for the 1960-1998 Market Street Project in the City of San Francisco for Adams Broadwell Joseph & Cardozo (12/2008)
- ❖ Prepared critique of traffic and circulation impacts identified in the Supplemental Draft EIR for the US Gypsum Wallboard Plant Project in the Port of Stockton for Lozeau/Drury LLP (11/2008 to 12/2008)
- ❖ Prepared critique of traffic and parking impacts identified in the Draft EIR for the Bentley School Major Conditional Use Permit in the City of Oakland for Veneruso & Moncharsh (11/2008 to 12/2008)

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- ❖ Prepared critique of the traffic impacts identified in the Addendum to the Master EIR and Initial Study for the Lane Field Development Project in the City of San Diego for Adams Broadwell Joseph & Cardozo (12/2007); prepared critique of parking and transit impacts for the Project's Coastal Development Permit Amendment (11/2008)
- ❖ Prepared critique of the traffic impacts identified in the Draft EIR and Traffic Impact Study for the Delta Shores Project in the City of Sacramento for Adams Broadwell Joseph & Cardozo (10/2008)
- ❖ Served as an expert witness regarding work area traffic control during roadway construction at a traffic signal on State Route 111 in the City of Palm Desert for Workman Law Office (9/2008)
- ❖ Prepared Data Requests for traffic issues associated with the Application for Certification from the California Energy Commission for the Avenal Energy Power Plant in the City of Avenal for Adams Broadwell Joseph & Cardozo (9/2008)
- ❖ Prepared critique of traffic and parking impacts identified in the Initial Study and Traffic Study for the 5050 Mission Street Mixed Use Project in the City of San Francisco for Lozeau/Drury LLP (8/2008)
- ❖ Prepared critique of traffic and circulation impacts identified in the Draft EIR for the Altamont Motorsports Park Rezoning Project in the County of Alameda for Mark R. Wolfe & Associates (8/2008)
- ❖ Prepared critique of the traffic impacts identified in the Draft EIR and Traffic Impact Study for the Fulcrum Property Development Project in the City of West Sacramento for Adams Broadwell Joseph & Cardozo (7/2008 to 8/2008)
- ❖ Conducted studies for STOP signs on Plumley Road at two intersections for the City of Cathedral City (5/2008 to 8/2008)
- ❖ Prepared critique of traffic and circulation impacts identified in the Draft EIR for the Concord Community Reuse Plan Project in the City of Concord for Lozeau/Drury LLP (6/2008 to 7/2008)
- ❖ Prepared critique of the Traffic Impact Study for the Sky Harbor Ranch Project for the Town of Yucca Valley (6/2008 to 7/2008)
- ❖ Prepared critique of the traffic impacts identified in the Revised Draft EIR and Traffic Impact Analysis for the Chula Vista Bayfront Master Plan in the City of Chula Vista for Adams Broadwell Joseph & Cardozo (7/2008)
- ❖ Prepared critique of traffic and circulation impacts identified in the Draft and Final EIRs for the River Oaks Crossing Specific Plan Project in the City of Oakley for Mark R. Wolfe & Associates (10/2007 to 5/2008)

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- ❖ Prepared critique of the Traffic Impact Study for the Downtown Revitalization Project (Bisno Development) for the City of Baldwin Park (4/2008 to 5/2008)
- ❖ Prepared critiques of traffic and circulation impacts identified in the Draft EIR, Final EIR and various supporting technical studies for the Bakersfield Winco in the City of Bakersfield for Mark R. Wolfe & Associates (4/2007 to 3/2008)
- ❖ Prepared critique of traffic and circulation impacts identified in the Draft and Final EIRs and Traffic Study for the Soledad Shopping Center Project in the City of Soledad for Weinberg, Roger & Rosenfeld (3/2008)
- ❖ Prepared critique of the traffic impacts identified in the Initial Study for the Columbus Salami Manufacturing Plant Project in the City of Fairfield for Adams Broadwell Joseph & Cardozo (3/2008)
- ❖ Prepared critique of traffic and parking impacts identified in the Draft EIR and Traffic Impact Study for the Sherwin Project in the Town of Mammoth Lakes for Shute, Mihaly, & Weinberger (1/2008 to 2/2008)
- ❖ Prepared critiques of traffic and parking impacts identified in the Draft EIR and various supporting technical studies for the Solana Beach Train Station Mixed Use Project in the City of Solana Beach for area residents; presented findings to area property owners and to City Council; prepared rebuttal to responses to comments in the Final EIR for the project (6/2006 to 1/2008)
- ❖ Provided technical assistance for the Santa Monica Growth Limitation Ballot Initiative to Shute, Mihaly, & Weinberger (1/2008)
- ❖ Prepared critique of the traffic impacts identified in the Initial Study for the United Spiral Pipe Manufacturing Plant Project in the City of Pittsburg for Adams Broadwell Joseph & Cardozo (10/2007 to 11/2007)
- ❖ Prepared critique of traffic and parking impacts identified in the Traffic Impact Study for the Initial Study for the Wilshire Parkview Hotel and Residences Project in the City of Los Angeles for Shute, Mihaly, & Weinberger (8/2007 to 9/2007)
- ❖ Prepared critique of the traffic impacts identified in the Initial Study with Proposed Mitigated Negative Declaration prepared by Caltrans for the widening of State Route 74, Lower Ortega Highway, in the City of San Juan Capistrano for Shute, Mihaly, & Weinberger (8/2007)
- ❖ Prepared critique of traffic and parking impacts identified in the Traffic Impact Analysis for the Providence Medical Center Expansion Project in the City of Los Angeles for Weinberg, Roger & Rosenfeld (11/2006 to 8/2007)
- ❖ Prepared critique of the traffic impacts identified in the Draft and Final EIRs for the Rockville Trails Estates Project in Solano County for Shute, Mihaly, & Weinberger (7/2007)

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- ❖ Prepared critique of traffic and parking impacts identified in the Draft EIR for the La Bahia Hotel Expansion in the City of Santa Cruz for Mark R. Wolfe & Associates (6/2007 to 7/2007)
- ❖ Prepared preliminary critique of the traffic impacts identified in the Draft EIR for the Delano Marketplace Project in the City of Delano for Mark R. Wolfe & Associates; prepared rebuttal to responses in Final EIR (5/2006 to 7/2007)
- ❖ Prepared critique of the traffic impacts identified in the Draft EIR for the Live Oak Master Plan Project in the City of Hanford for Adams Broadwell Joseph & Cardozo (5/2007)
- ❖ Prepared critique of the traffic impacts identified in the Draft EIR and the supporting traffic study for the La Floresta Development Project in the City of Brea for the City of Yorba Linda (1/2007 to 4/2007)
- ❖ Prepared critique of the traffic impacts identified in the Addendum to the Program EIR and Transportation Analysis for the Davidon Homes Project in the City of Antioch for Adams Broadwell Joseph & Cardozo (1/2007)
- ❖ Prepared critique of the traffic and circulation impacts identified in the Monterey County 2006 General Plan Final EIR for Mark R. Wolfe & Associates (12/2006)
- ❖ Provided expert witness evaluation of traffic and circulation impacts identified in the EIS, Traffic Impact Report, and Updates for the Turtle Bay Resort Expansion Project on the North Shore of Oahu for Alston Hunt Floyd & Ing (9/2006 to 11/2006)
- ❖ Prepared trip generation study for a bank and separate drive through bank facility in Century City in the City of Los Angeles for Tract No. 7260 Association (11/2006)
- ❖ Prepared preliminary critique of the traffic impacts identified in the Draft EIR and Traffic Impact Study for the Rio Vista Riverwalk Project in the City of Rio Vista for Adams Broadwell Joseph & Cardozo (11/2006)
- ❖ Prepared critique of the traffic impacts identified in the Draft EIR and Traffic Impact Analysis for the Chula Vista Bayfront Master Plan (Gaylord Resort Project) in the City of Chula Vista for Adams Broadwell Joseph & Cardozo (10/2006 to 11/2006)
- ❖ Prepared critique of the traffic impacts identified in the Draft EIR and Traffic Impact Study for the Antioch Wal-Mart Expansion Project in the City of Antioch for Mark R. Wolfe & Associates (6/2006 to 8/2006); prepared rebuttal to responses to comments in the Final EIR (9/2006 to 10/2006)
- ❖ Prepared critique of the traffic and circulation impacts identified in the Revised Partial Draft EIR and the Traffic Study for the Gregory Canyon Landfill Project in San Diego County (7/2006 to 8/2006)

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- ❖ Prepared critique of the traffic and circulation impacts identified in the Conditional Use Permit Application for Altamont Motorsports Park in Alameda County for Mark R. Wolfe & Associates (6/2006)
- ❖ Prepared response to Initial Study/Notice of Preparation of a Draft EIR for 483 condominiums proposed in three high rise towers in Century City in the City of Los Angeles for Tract No. 7260 Association (6/2005); prepared critique of the Draft EIR for the 10131 Constellation Boulevard Project proposed by JMB (12/2005 to 1/2006); reviewed responses to comments in the Final EIR (5/2006)
- ❖ Conducted study which developed traffic engineering measures as well as potential enforcement and legislative actions to deter excessive speeding on Stunt Road adjacent to Calabasas in Los Angeles County for area residents (9/2005 to 4/2006)
- ❖ Prepared critique of the Draft EIR and Traffic Impact Analysis for the Rancho Santa Fe Elementary School Project in San Diego County for Coast Law Group (9/2005); prepared rebuttal to responses to comments in the Final EIR (2/2006 to 3/2006)
- ❖ Prepared critique of the traffic, circulation, and parking impacts identified in the Traffic Impact Analysis for Los Angeles Unified School District Valley Elementary School #8 in the City of San Fernando (1/2006)
- ❖ Prepared critique of the traffic impacts identified in the Focused EIR and Traffic Impact Analysis for the Temecula Regional Hospital Project in the City of Temecula for Adams Broadwell Joseph & Cardozo (10/2005); prepared rebuttal to responses to comments in the Final EIR (1/2006)
- ❖ Prepared critiques of the traffic impacts identified in the Draft EIR and in the Revised Draft EIR for the Central Larkspur Specific Plan in the City of Larkspur and prepared responses to comments in the Final EIR for Shute, Mihaly, & Weinberger (7/2002 to 8/2002, 12/2003 to 2/2004, 1/2005 to 3/2005, and 12/2005 to 1/2006)
- ❖ Conducted Traffic Impact Analyses for the Sacred Heart Church and School Master Plan in the City of Palm Desert including presentations to community residents and testimony at Public Hearings before the City Council (3/2005 to 12/2005)
- ❖ Prepared critique of traffic impacts identified in the Final EIR and Traffic Study for the Preserve at San Marcos Project in Santa Barbara County for the San Marcos Foothill Coalition (10/2005 to 11/2005)
- ❖ Prepared critique of the traffic impacts identified in the Draft EIR and the Traffic Impact Analysis for the Borden Ranch Surface Mining Project in Sacramento County for Weinberg, Roger & Rosenfeld (11/2005)
- ❖ Prepared critiques of the Mitigated Negative Declaration and Traffic Impact Analysis and of these documents as revised for the Providence Center Specific Plan in the City of Fullerton for Shute, Mihaly, & Weinberger (6/2005 to 7/2005; 11/2005)

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- ❖ Prepared critique of the traffic impacts identified in the Draft EIR for the Blue Rock Quarry Expansion near the Town of Forestville in Sonoma County for Weinberg, Roger & Rosenfeld (10/2005)
- ❖ Prepared critique of the traffic impacts identified in the Draft EIR and Traffic Study for the Oak to Ninth Project in the City of Oakland for Mark R. Wolfe & Associates (9/2005 to 10/2005)
- ❖ Prepared critique of the traffic impacts identified in the Draft EIR for the East Cypress Corridor Specific Plan Project adjacent to the City of Oakley in Contra Costa County for Adams Broadwell Joseph & Cardozo (9/2005 to 10/2005)
- ❖ Prepared critique of the Mitigated Negative Declaration for the Providence Medical Center Expansion Project in the City of Los Angeles for Shute, Mihaly, & Weinberger (9/2005)
- ❖ Prepared critique of the traffic impacts identified in the Draft EIR for the University District Specific Plan Project adjacent to the City of Rohnert Park in Sonoma County for Mark R. Wolfe & Associates (9/2005)
- ❖ Prepared preliminary critique of the traffic impacts identified in the Draft Subsequent EIR for the Mare Island Specific Plan Project in the City of Vallejo for Adams Broadwell Joseph & Cardozo (9/2005)
- ❖ Prepared critique of the traffic portions of the Revised EIR and the traffic study of the Deer Creek Park 2 Project in the County of Nevada for Shute, Mihaly, & Weinberger and the City of Nevada City (8/2005 to 9/2005)
- ❖ Prepared preliminary critique of the traffic impacts identified in the Draft EIR and traffic study for the Prewett Ranch Project in the City of Brentwood for Adams Broadwell Joseph & Cardozo (7/2005)
- ❖ Prepared critique of the traffic and circulation sections of the Draft Subsequent EIR of the County of Ventura Focused General Plan Update and prepared rebuttal to responses for Shute, Mihaly, & Weinberger and the Community of Somis (12/2004 to 1/2005; 6/2005)
- ❖ Prepared critique of the traffic and parking impacts identified in the Draft EIR and Traffic Impact Analysis for the Long Beach Memorial Medical Center Expansion in the City of Long Beach for Weinberg, Roger & Rosenfeld (2/2005 to 5/2005)
- ❖ Prepared critique of the Draft EIR and traffic study for the Villages at Fairfield Project in the City of Fairfield for Adams Broadwell Joseph & Cardozo (4/2005 to 5/2005)
- ❖ Prepared critique of the traffic, circulation, and parking impacts identified in the Traffic Impact Analysis for Los Angeles Unified School District Valley High School #5 in the City of San Fernando (4/2005)

Tom Brohard and Associates

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Tom Brohard, PE, Page 8

- ❖ Prepared critique of the transportation, circulation, and parking impacts identified in the Draft EIR and the Final EIR for the Wood Street Project in the City of Oakland for the East Bay Community Law Center (3/2005)
- ❖ Conducted City wide engineering and traffic surveys confirming enforceable speed limits on 31 street segments for the City of San Fernando (1/2005 to 3/2005)
- ❖ Checked plans for traffic signal installations and modifications as well as signing and striping revisions for various projects for Engineering Resources of Southern California and the Cities of Hemet and Palm Springs (12/2003 to 3/2005)
- ❖ Prepared critique of the Initial Study and traffic study prepared for the Hidden Canyon (Greenfield) Quarry Use Permit and Reclamation Plan in Monterey County for Weinberg, Roger & Rosenfeld (2/2005)
- ❖ Prepared critiques of the traffic impacts identified in the Los Angeles International Airport Master Plan Draft EIS/EIR for Alternatives A, B, and C and in the Supplement Draft EIS/EIR for Alternative D, prepared responses to comments in the Final EIS/EIR, and reviewed Addendum #3 for Shute, Mihaly, & Weinberger and the City of El Segundo (2/2001 to 7/2001, 7/2003 to 10/2003, 11/2004, and 12/2004)
- ❖ Prepared critique of the Traffic Study for the 450-460 North Palm Drive Senior Housing Residential Project in the City of Beverly Hills for Luna & Glushon (11/2004)
- ❖ Prepared critique of the Draft EIR and traffic study and provided testimony at a public hearing regarding the West Los Angeles College Facilities Master Plan in Los Angeles County for Culver Crest Neighborhood Association (10/2004 to 12/2004)
- ❖ Prepared critique of the Draft EIR and the associated traffic impact analysis as well as subsequent rebuttal to responses to these comments in the Final EIR for The Ranch Plan in the County of Orange for the Endangered Habitats League (6/2004 to 7/2004 and 10/2004)
- ❖ Prepared preliminary critique of the Draft EIR and traffic study for the Chandler Ranch Specific Plan Project in the City of Paso Robles for Adams Broadwell Joseph & Cardozo (9/2004)
- ❖ Prepared critique of the Draft EIR and traffic report associated with the Magnolia Park Project in the City of Oakley for Adams Broadwell Joseph & Cardozo (9/2004)
- ❖ Prepared critique of the traffic impacts identified in the Recirculated Draft EIR and traffic study for the McKean Road Sports Complex in Santa Clara County for Shute, Mihaly, & Weinberger (9/2004)
- ❖ Prepared critique of the Environmental Assessment for Robie Ranch Reclamation Project in Calaveras County for Weinberg, Roger & Rosenfeld (9/2004)

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- ❖ Provided expert assistance to residents in the City of La Mirada during settlement negotiations regarding litigation involving the Big T Residential Development Project in the City of Buena Park (6/2004 to 9/2004)
- ❖ Prepared critique of the traffic impacts identified in the Recirculated Draft EIR and the associated traffic study for the Lake Jennings Ralph's Shopping Center in San Diego County for SOFAR and Shute, Mihaly, & Weinberger (8/2004)
- ❖ Reviewed Traffic Impact Study prepared for the San Fernando Corridors Specific Plan for the City of San Fernando (7/2004 to 8/2004)
- ❖ Prepared critique of the Negative Declaration for the Brisbane Recycling Project in the City of Brisbane for Weinberg, Roger & Rosenfeld (6/2004)
- ❖ Reviewed various alternative alignments for the extension of Lexington Drive from Cerritos Avenue to Katella Avenue, a proposed secondary highway, for the City of Los Alamitos; provided expert assistance to the City of Los Alamitos during settlement negotiations regarding litigation of the proposed Cottonwood Christian Center Project in the City of Cypress (4/2004 to 6/2004)
- ❖ Prepared critique of the Draft EIR and the associated traffic impact study for the Jaxon Enterprises Mine and Reclamation Expansion Project in the County of Merced for Weinberg, Roger & Rosenfeld (5/2004)
- ❖ Prepared critique of the Environmental Secondary Study for the Santa Fe Parcel 6 Mixed Use Project in the City of San Diego for Adams Broadwell Joseph & Cardozo (4/2004 to 5/2004)
- ❖ Prepared critique of the Draft EIR and the associated traffic impact analysis for the for the San Mateo Rail Corridor Plan & Bay Meadows Specific Plan Amendment in the City of San Mateo for Adams Broadwell Joseph & Cardozo (3/2004 to 5/2004)
- ❖ Reviewed the Edinger Corridor Specific Plan Traffic Analysis for the proposed redevelopment and intensification of adjacent land uses for the City of Huntington Beach (12/2003, 4/2004, and 5/2004)
- ❖ Conducted the Traffic Impact Study of the San Fernando Regional Pool Facility Project and the associated street improvements for the City of San Fernando (3/2004 to 4/2004)
- ❖ Prepared critique of the Initial Study/Mitigated Negative Declaration and the associated traffic study for the Pixar Headquarters Expansion in the City of Emeryville for Shute, Mihaly, & Weinberger (3/2004 to 4/2004)
- ❖ Prepared critique of the Draft EIR and the associated traffic impact analysis for the Lower Lagoon Valley Specific Plan in the City of Vacaville for Adams Broadwell Joseph & Cardozo (3/2004 to 4/2004)

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- ❖ Conducted the Traffic Study of Two Parking Alternatives for the City of San Dimas to provide on street parking to complement potential retail/residential development on the east side of San Dimas Avenue north of Arrow Highway (12/2003 to 4/2004)
- ❖ Prepared trip generation calculations for various retail and "Big Box" stores in conjunction with a March 2004 ballot measure in Contra Costa County for Mark R. Wolfe & Associates (1/2004 to 2/2004)
- ❖ Prepared critique of the Initial Study/Mitigated Negative Declaration and the associated transportation impact analysis for the S&S Farms and Hancock Property Residential Development Plan in the City of Brentwood for Adams Broadwell Joseph & Cardozo (2/2004)
- ❖ Prepared critiques of the traffic impacts identified in the Mitigated Negative Declarations as well as subsequent rebuttal to responses to these comments for the Bayfront Live Work Project in the City of Hercules for Adams Broadwell Joseph & Cardozo (4/2003, 10/2003, and 2/2004)
- ❖ Conducted the City Wide Traffic Calming Study of Residential Streets in the City of San Fernando including development of traffic calming guidelines and specific recommendations addressing over 70 "Hot Spots" throughout the City including monthly presentations at Transportation & Safety Commission meetings and a presentation of the Final Report to the City Council (5/2003 to 1/2004)
- ❖ Prepared critique of the Initial Study/Mitigated Negative Declaration and the associated transportation analysis for the Cottonwood Christian Center in the City of Cypress for the City of Los Alamitos (1/2004)
- ❖ Prepared critique of the Recirculated Draft EIR and the associated transportation analysis for the Sand Creek Specific Plan in the City of Antioch for Adams Broadwell Joseph & Cardozo (1/2004)
- ❖ Prepared critique of the Initial Study and the associated traffic impact studies for the West Dublin Transit Village in the City of Dublin for Adams Broadwell Joseph & Cardozo (11/2003 to 1/2004)
- ❖ Prepared critiques of the Initial Study and the Recirculated Initial Study/General Plan Amendment and Rezoning for the Jack Parker Trucking Site in the City of San Pablo for Adams Broadwell Joseph & Cardozo (9/2003 and 11/2003)
- ❖ Prepared critique of the traffic impacts identified in the Draft EIR and rebuttal to responses to comments in the Final EIR for the proposed Wal-Mart in the City of Fremont for Mark R. Wolfe & Associates (7/2002 to 10/2003)
- ❖ Prepared critique of the traffic impacts identified in the Draft EIR, rebuttal to responses in the Final EIR, and testimony at a public hearing regarding the Alpine Village Shopping Center in San Diego County for Shute, Mihaly, & Weinberger (6/2002 to 10/2003)

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- ❖ Prepared critique of the traffic impacts identified in the Draft EIR, rebuttal to responses in the Final EIR, testimony at public hearings, and assistance during settlement negotiations regarding the 2000 Avenue of the Stars Project in Century City in the City of Los Angeles for Tract No. 7260 Association (9/2002 to 10/2003)
- ❖ Prepared critique of the traffic impacts identified in the Draft EIR for the Glen Loma Ranch Project in the City of Gilroy for Adams Broadwell Joseph & Cardozo (9/2003)
- ❖ Prepared critique of the traffic impacts identified in the Initial Study and the Traffic Impact Analysis for the Ryder Homes Project in the City of Oakley for Adams Broadwell Joseph & Cardozo (9/2003)
- ❖ Prepared critique of the traffic impacts identified in the Initial Study and the Traffic Impact Analysis for the Ravenswood Residential Project in Contra Costa County for Adams Broadwell Joseph & Cardozo (8/2003 to 9/2003)
- ❖ Prepared critique of the traffic impacts identified in the Draft Subsequent EIR for the proposed Boronda Crossing Commercial Project in the City of Salinas for Mark R. Wolfe & Associates (8/2002 to 9/2003)
- ❖ Prepared four grant applications to Caltrans for \$1,115,000 of Hazard Elimination Safety funding to modify traffic signals and to upgrade regulatory, warning, and street name signs in the City of Santa Ana (3/2003 to 8/2003)
- ❖ Prepared critique of the traffic impacts identified in the Draft EIR and the Traffic Impact Analysis for the Bluerock Business Center Project in the City of Antioch for Adams Broadwell Joseph & Cardozo (8/2003)
- ❖ Prepared critique of the traffic impacts identified in the Draft EIR for the Clark Road Residential Project in the City of Richmond for Adams Broadwell Joseph & Cardozo (8/2003)
- ❖ Prepared critique of the traffic impacts identified in the Initial Study and the Traffic Impact Analysis for the Sky Ranch Residential Project in the City of Antioch for Adams Broadwell Joseph & Cardozo (7/2003 to 8/2003)
- ❖ Prepared critique of the traffic impacts identified in the Draft EIR for the Cal Poly Student Housing North Project in the City of San Luis Obispo for Adams Broadwell Joseph & Cardozo (7/2003)
- ❖ Prepared critique of the traffic impacts identified in the Final EIR for the Lake Jennings Ralph's Shopping Center in San Diego County for SOFAR and Shute, Mihaly, & Weinberger (3/2003 to 7/2003)
- ❖ Prepared critique of the traffic impacts identified in the Draft EIR for the Cypress Grove Residential Project in the City of Oakley for Adams Broadwell Joseph & Cardozo (6/2003)

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- ❖ Prepared critique of the traffic impacts identified in the Draft EIR for the McKean Road Sports Complex in Santa Clara County for Shute, Mihaly, & Weinberger (5/2003)
- ❖ Prepared grant application to Caltrans for \$448,000 of Safe Route to School funding to upgrade all school signs at 68 public and private schools in the City of Santa Ana (3/2003 to 5/2003)
- ❖ Prepared critique of the traffic impacts identified in the Traffic Impact Analysis for the Blossom Valley Middle School for the Dunbar Lane Task Force in San Diego County (4/2003 to 5/2003)
- ❖ Prepared critique of the traffic impacts identified in the Draft EIR and the Traffic Impact Analysis for the Bettencourt Ranch Aggregate Mining Project in Merced County for Weinberg, Roger & Rosenfeld (4/2003)
- ❖ Conducted a complete review of the General Plan Circulation Element for the City of Huntington Beach including comparisons to the Orange County Transportation Authority's Master Plan of Arterial Streets and drafted a Request for Proposal to update the City's Circulation Element (8/2002 to 4/2003)
- ❖ Prepared critique of the traffic impacts identified in the Traffic Impact Analysis for the proposed Wal-Mart in the City of Gilroy for Mark R. Wolfe & Associates (2/2003 to 3/2003)
- ❖ Prepared critique of the traffic impacts identified in the Draft EIR for the Waterfront/Downtown Mixed Use Project in the City of Vallejo for Adams Broadwell Joseph & Cardozo (2/2003)
- ❖ Provided expert witness evaluation of the traffic impacts caused by simultaneous construction of various Alameda Corridor Transportation Authority projects for Sullivan, Workman, & Dee (12/2002 to 2/2003)
- ❖ Conducted 12 training sessions in Urban Street Design Fundamentals for the Engineering Department staff in the City of Torrance (4/2001 to 4/2002 and 10/2002 to 12/2002)
- ❖ Prepared critique of the traffic impacts identified in the Transportation Impact Study for the Western Research Campus in the City of Richmond in Contra Costa County for Adams Broadwell Joseph & Cardozo (11/2002)
- ❖ Evaluated Conditions of Approval for the proposed intersection of Mulholland Highway and Hazel Nut Court in Los Angeles County and provided testimony to the Board of Supervisors for Seminole Springs Mobile Home Park (11/2002)
- ❖ Reviewed the Traffic Impact Analysis prepared for the Pacific City Project for the City of Huntington Beach (9/2002)

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- ❖ Prepared critique of the traffic impacts identified in the Draft EIR for North Yorba Linda Estates in the City of Yorba Linda for Shute, Mihaly, and Weinberger (9/2002)
- ❖ Conducted the Hacienda Road Traffic Calming Study and presented the final report at locally televised meetings of the Traffic Committee and the City Council in the City of La Habra Heights (10/2001 to 9/2002)
- ❖ Prepared critique of the traffic impacts identified in Initial Studies with Traffic Impact Analyses for three residential subdivisions in the City of Pittsburg for Adams Broadwell Joseph & Cardozo (8/2002)
- ❖ Conducted the City Wide Traffic Safety Study and presented the final report at meetings of the Traffic Committee and the City Council in the City of Rolling Hills Estates (4/2001 to 5/2002)
- ❖ Prepared critique of the traffic impacts identified in the Draft EIR, rebuttal to responses, and testimony at a public hearing regarding extensions of Corona and Valley View Avenues in the City of Norco for C. Robert Ferguson (1/2002 to 4/2002)
- ❖ Prepared critique of the traffic impacts identified in the Draft Initial Study and Environmental Assessment, rebuttal to responses, and testimony at public hearings before the Ventura County Board of Supervisors regarding intersection improvements proposed by Caltrans at State Route 118/State Route 34 in Ventura County for the Community of Somis (12/2000 to 10/2001)

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■ Letter 47: California State Parks Foundation (1/12/10)

Response to Comment 47-1

This comment contains introductory or general background information and is not a direct comment on environmental issues or the content or adequacy of the Draft EIR. No response is required.

Response to Comment 47-2

The comment is acknowledged. No response is required.

Response to Comment 47-3

Following implementation of the Project, CPSRA will be protected by the same statutory scheme that protects the rest of the State Park System.

As the Draft EIR acknowledges, the proposed reconfiguration would remove 29.2 acres from CPSRA. Of this area, 21.4 acres are currently used as parking for events at Candlestick Park stadium. This land currently does not provide CPSRA with recreational benefit; as such removing it does not damage the Park. Similarly, the land that would be crossed by the proposed Yosemite Slough bridge is not presently available for recreation. As discussed in Master Response 3 (Impacts of the Project on Yosemite Slough [Biological Resources]), with identified mitigation, the Project will have less-than-significant impacts on biological resources in the slough currently or following the Yosemite Slough Restoration Project. The only direct loss to the Park is the 7.8 acres of recreation land (which includes several acres used for CPSRA parking) that would be removed and developed with residential uses essential to the Project's overall success.

In contrast to this relatively small loss, the reconfiguration would provide a substantial net increase in usable recreation land within CPSRA. The proposed reconfiguration would increase the recreational value of CPSRA, in part by providing substantial improvements to parkland in exchange for the land to be removed. The Project, moreover, would not damage any part of the post-reconfiguration park, as discussed more fully in Response to Comment 47-28. Overall the area of CPSRA usable for recreation will increase from the current area of 77.7 acres (about 64 percent of the park's total 120.2 acres, including the slough, which is of minimal recreational value in its unrestored state) to 96.7 acres (the entire future park), a clear improvement.

Response to Comment 47-4

Refer to Master Response 3 (Impacts of the Project on Yosemite Slough [Biological Resources]) for a discussion of the Yosemite Slough Wetlands Restoration Project and the biological impacts resulting from construction and operation of the Yosemite Slough bridge; and Master Response 4 (Purpose and Benefits of the Yosemite Slough Bridge) for a discussion of the traffic implications if the Yosemite Slough bridge were constructed.

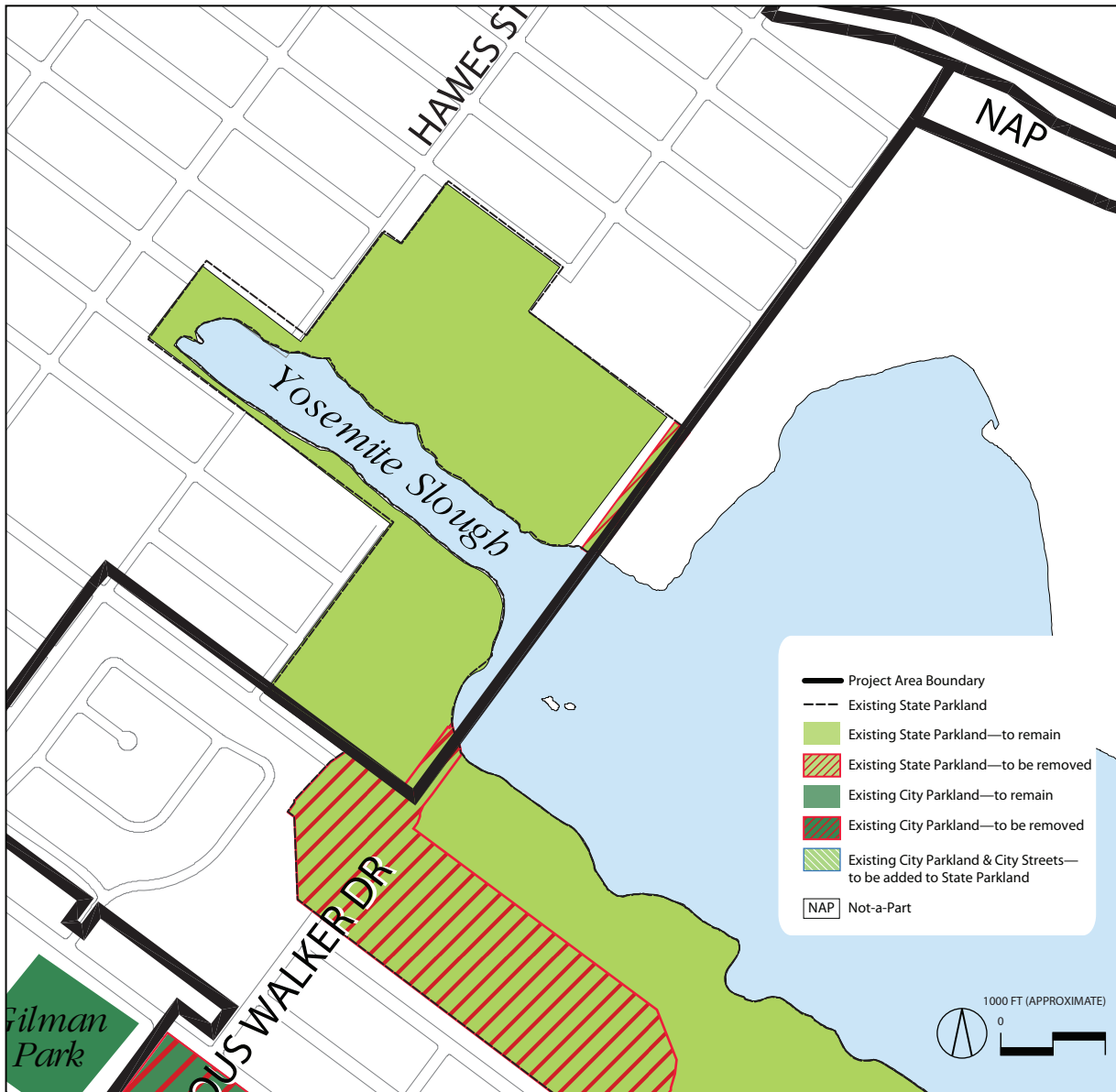
Project Boundaries and the Yosemite Slough Bridge

As noted in Master Response 3 (Impacts of the Project on Yosemite Slough [Biological Resources]), confusion regarding whether or not Yosemite Slough was considered part of the Project and whether impacts to portions of Yosemite Slough outside the Project site were analyzed in the Draft EIR stemmed

in part from reviewers' interpretations of various figures in the Draft EIR, particularly Figure III.N-1 (Biological Resources Study Area). This figure correctly depicted only the mouth of Yosemite Slough as being within the "Project Boundary," while showing that a slightly greater portion of the slough was within the "Study Area" and the entire slough was within the "Yosemite Slough Watershed Wildlife Study Area."

The purpose of Figure III.N-1 was to indicate the relationships of three different geographic areas: the boundary of the Project site (Project Boundary); the boundary of the area that was covered by the wetland delineation performed for the Project (Study Area); and the boundary of the area in which data on wildlife use had been collected during a study performed by LSA Associates, Inc. and volunteers in 2004 (Yosemite Slough Watershed Wildlife Study Area). The Study Area boundary extended beyond the Project boundary because impacts to wetlands and aquatic habitats, both existing and those that would be present after implementation of the Yosemite Slough Restoration Project, were anticipated to occur slightly upstream from the Project boundary during construction of the Yosemite Slough bridge. That the Study Area boundary did not include the entire slough does not indicate that the remainder of the slough was not considered in the impact analysis. Rather, as discussed in the following section, the impact analysis considered direct and indirect effects on all biological resources both within and adjacent to the Project boundary, including all of Yosemite Slough and relevant adjacent areas.

The figures in the EIR depict the location of the proposed Yosemite Slough bridge relative to the Project site boundaries and the CPSRA. In response to this comment, Figure C&R-8 (CPSRA and Project Boundaries) is provided as a larger-scale depiction to illustrate the Project boundaries relative to the slough. This illustration also clearly shows the proposed position of the bridge relative to the CPSRA boundary. The bridge footings on either side of Yosemite Slough would require removal of portions of parkland from the CPSRA (red hatched areas). On the north side of the slough, this would result in 0.8 acre, and on the south side of the slough it would be part of 2.6 acres that would be reconfigured. As evident in the figure, on the north end of the slough, the bridge footings on the north are located at the eastern edge of the park boundary and thus would not "split" the CPSRA. On the south end of the slough, the area removed for bridge footings would impinge on approximately 300 feet or less (270 feet) through the CPSRA. On the south side, the bridge would extend Arelious Walker Drive through a portion of the CPSRA. Persons using the Bay Trail would be able to cross Arelious Walker Drive and easily access the opposite portion of the CPSRA. Thus, while the road and bridge approach on the south side of the slough would cross the CPSRA, it would not act as a physical barrier preventing use of the entire CPSRA. While the proposed road and bridge would cut through the open space in one location, the majority of the restored slough area would remain unaffected and available for its intended use. Further, given the limited automobile use of the bridge (during stadium events only) crossing Arelious Walker Drive would not involve navigating a heavily traveled thoroughfare. Cross-traffic, except on stadium day events, would be limited to the BRT, bicycles, and pedestrians. The current condition of the south side of the slough (the larger shore area) is documented in the Draft EIR, page III.P-26, and states in part: "This area, which runs north along the shoreline from the Boat Launch to Arelious Walker Drive, is currently used for stadium parking and is not available as recreation or open space land. The Project would create grasslands and other habitats and make the area a functioning part of CPSRA's open space."



SOURCE: Lennar Urban, RHAA, 2010.

PBS&J 04.16.10 02056 | JCS | 10

Candlestick Point — Hunters Point Shipyard Phase II EIR
CPSRA AND PROJECT BOUNDARIES



FIGURE C&R-8

The Yosemite Slough Restoration Project

Commenters suggested that the Draft EIR did not adequately recognize the Restoration Project as an integral component of the CPSRA or adequately analyze effects of the bridge on the Restoration Project, and suggested that the bridge would conflict with the goals of the restoration. The Restoration Project was discussed in the cumulative context and was considered one of the “planned and in-process wetland Restoration Projects within the Bay area” in the cumulative impact analysis on page III.N-118 of the Draft EIR. In addition, the effects of the Project on the habitats and species that would be expected to use the restoration site were analyzed in the context of direct and indirect impacts to sensitive habitats and special-status/sensitive species both on- and off-site (Impact BI-3a through Impact BI-12c). Direct, explicit reference to the effects of the Project, including the Yosemite Slough bridge, on the Restoration Project itself was limited in the Draft EIR. Because the Draft EIR followed the CEQA requirement to assess impacts with respect to the change that the Project would cause to existing, baseline conditions (under which the Restoration Project has not been implemented), the descriptions of those impacts focused on existing conditions rather than explicitly discussing the Restoration Project. Nevertheless, as explained in more detail, below, the existing slough serves as an appropriate proxy for the restored slough in terms of type of habitat and species that could be impacted by the Project. Although the Restoration Project would increase the extent of tidal aquatic, mudflat, and (especially) tidal marsh habitat in Yosemite Slough, the type of the potentially affected habitats and species present after implementation of the Restoration Project would be similar to existing conditions, and the quantity of impacts to the new/restored habitats would not be substantially greater than the Project’s effects on existing Yosemite Slough conditions. Thus, the DEIR assessed impacts to the resources which are the focus of the Restoration Project. To enable the public to see how the analysis covered the impact areas, Master Response 3 (Impacts of the Project on Yosemite Slough [Biological Resources]) more directly correlates the biological analysis with the details of the Restoration Project.

The Yosemite Slough Restoration Project was considered in the analysis of cumulative impacts in all technical sections. For clarity, text changes have been made to specifically call out the Restoration Project in the cumulative analysis of each technical section (refer to Section F [Draft EIR Revisions]).

As stated in the Initial Study/Mitigated Negative Declaration issued by the California State Parks Foundation¹¹⁰ for the Restoration Project, the goals and objectives of the restoration plan include the following:

- Increase the area subject to tidal influence.
- Restore habitat diversity by re-establishing tidal flats and marsh in areas of present upland fill.
- Improve local foraging and roosting habitat for migratory and resident birds.
- Improve quality of life for the surrounding community.
- Remediate, sequester, or remove contaminated soils to reduce potential for human and wildlife contact.
- Create a clean, beautiful, and local park that the public can visit and view wildlife habitat.
- Create an environmental area that local schools can use for educational field trips.

¹¹⁰ California State Parks Foundation. 2006. Draft Initial Study/Mitigated Negative Declaration. Candlestick Point State Recreation Area Yosemite Slough Restoration Project. SCH # 2005122023, June.

- Benefit local businesses by increasing the number of visitors coming to the area.
- Connect the Bay Trail through CPSRA with the Bay Trail that is proposed for Hunters Point.

As described in Section III.N (Biological Resources) and Master Response 3 (Impacts of the Project on Yosemite Slough [Biological Resources]), all impacts to the slough, restored or unrestored, were analyzed. The Project would not interfere with any of the identified objectives of the Restoration Project. In numerous ways, the Project would further the objectives of the Restoration Project, particularly with respect to improving quality of life for the surrounding community, remediating, sequestering, or removing contaminated soils to reduce potential for human and wildlife contact, benefiting local businesses by increasing the number of visitors coming to the area, and connecting the Bay Trail through CPSRA with the Bay Trail that is proposed for Hunters Point. The Project would rehabilitate and replace dilapidated structures and vacant lots full of rubble and debris with high-quality development that would include numerous acres of open space and local parks. The Project would connect the Bay Trail along the shoreline on Hunters Point. The Project would increase the number of visitors and residents coming to the area, exposing residents and visitors to the CPSRA and the restored slough who might have otherwise not been provided the opportunity. The bridge itself would provide unique viewing opportunities of the slough wetlands and tidal habitat that would not otherwise be available. The area is urban now, although degraded. The Project would create a new, improved development that includes open space and parks that would complement the CPSRA, and would include shoreline improvements that would directly benefit visitors to the CPSRA. The Project and the Restoration Project are not mutually exclusive. The two projects can further the objectives of each other.

Analysis of the Yosemite Slough Bridge and Roadway

As noted in Master Response 3 (Impacts of the Project on Yosemite Slough [Biological Resources]) and Section III.N (Biological Resources), Section III.E (Aesthetics), and Section III.P (Recreation) of the Draft EIR, the placement of a bridge across the neck of the slough would not, as demonstrated in the EIR, result in significant and unavoidable impacts to wildlife habitat or recreational users of the slough, or in significant and unavoidable impacts to scenic resources. It is acknowledged that the bridge and roadway would present a structural element that would not otherwise be visible across the neck of the slough. The Project's proposed roadway and bridge through an otherwise entirely recreational open space area would have some adverse impact on the recreational experience, when compared to a natural open space area with no roadway or bridge running through it. Clearly, the introduction of a roadway and bridge, together with activity on and use of those features, would adversely affect the natural feel of this portion of the park. Nevertheless, the EIR does not consider the proposed roadway and bridge to result in a significant adverse impact on the proposed improved recreation area for a variety of reasons. The Slough is presently, and would continue to be, located with an urban environment, bordered in part by developed lots and roads. Hence, even without the proposed roadway and bridge, park users would be aware of and in close proximity to the roads and developed areas bordering the park. In addition, the proposed road and bridge would provide some benefits to the restored park. The bridge would be carefully designed to maximize its integration with surrounding natural areas, including open work, low profile, and architectural finishes that would allow the bridge to blend to the maximum extent feasible with the surrounding environment. The Yosemite Slough is between two urbanized areas, and the "natural" view and feel of the slough as it currently exists would only be sensed if one were wearing blinders, providing the narrowest possible focus directly out from the slough. Otherwise, urban development as it exists would intrude on the "natural feel" of the area, even without the Project. Also refer to Response to Comment 47-20.

Yosemite Slough Bridge Benefits

Refer to Master Response 4 (Purpose and Benefits of the Yosemite Slough Bridge) for a discussion of the need for the bridge and the benefits that it provides. Even without a stadium, the bridge would provide substantial benefits to bicyclists and pedestrians, and facilitates reduced transit times. With a stadium, the bridge would also provide acceptable access to the stadium on game days. The bridge, as noted, above, would provide viewing opportunities for visitors and residents that would not otherwise be available. The pedestrian and bicyclist paths on the bridge would provide unique opportunities for viewing wildlife and the improved wetlands upon completion of the Restoration Project that would otherwise be unavailable. The nesting island and restored wetlands would be highly visible from the bridge and would actually provide a better view in some respects than the view from on the ground. Wildlife traversing the slough could easily be watched from the bridge.

No-Bridge Options

The commenter indicates that there is no analysis in the EIR of a non-stadium option without the Yosemite Slough bridge. A range of development scenarios excluding the Yosemite Slough bridge has been analyzed in the Draft EIR. These include Alternative 2, Alternative 4, and Alternative 5, the analysis of which provides a range of impacts for development without a bridge, from a reduced development scenario without a stadium to a more intense development without a stadium as analyzed under Alternative 5. Alternative 2 analyzes the full Project land use program without construction of the Yosemite Slough bridge. Generally, travel demand associated with all Variants and Alternatives studied would be similar with or without the Yosemite Slough bridge. Because the Yosemite Slough bridge would not accommodate auto travel on non-game days, the traffic circulation patterns are expected to be the same under Alternative 2 as the Project. Similarly, since auto traffic would only use the bridge on game days for any Alternative or Variant considered, the typical non-game day travel patterns for any of the Alternatives or Variants that include the bridge would be the same under conditions without the bridge. If Variant 1 (R&D Variant), Variant 2 (Housing Variant), or Variant 2A (Housing/R&D Variant) were approved, and no bridge were constructed, the impacts would not increase from those identified for Variant 1, Variant 2, or Variant 2A with the bridge. In fact, all operational and construction impacts associated with the bridge, although identified as less than significant, would be eliminated.

Without the bridge across Yosemite Slough, additional travel distance and travel time would have a notable effect on passengers who use the BRT to travel to or from the Hunters Point Shipyard (the analysis indicates a reduction of 15 percent for these trips). However, because this represents a relatively small portion of overall Project-generated transit riders, the overall change in transit ridership and auto trip generation is negligible. This conclusion applies to any Variant or Alternative that was analyzed assuming a bridge over Yosemite Slough.

Operation of the BRT within the rail right-of-way would not affect study intersection operations. Therefore, the traffic impacts associated with Alternative 2 would be the same as the Project. Similarly, traffic impacts associated with any Variant or Alternative that was analyzed assuming a bridge over Yosemite Slough would be the same as the equivalent Variant or Alternative without the bridge.

Table C&R-10 (Development Plan Assumptions for Alternatives 2, 4, and 5) describes the Project components that were analyzed for Alternatives 2, 4, and 5.

Table C&R-10 Development Plan Assumptions for Alternatives 2, 4, and 5			
<i>Alternative</i>	<i>Yosemite Slough Bridge</i>	<i>Stadium</i>	<i>Intensity of Development Plan</i>
2	No	Yes	Same as Project
4	No	No	Reduced CP-HPS Phase II Development (approximately 30%) with Historic Preservation
5	No	No	Same as Project but less development at CP, more at HPS Phase II

While Alternative 2 analyzed the impacts of a no-bridge scenario with the stadium at a similar development intensity as the Project, Alternatives 4 and 5 examined alternative development scenarios, one with a reduced development envelope compared to the Project and the other with the same development program, but different distribution of uses, as the Project, both without a stadium or inclusion of the Yosemite Slough bridge.

Alternative 4 is a reduced-development alternative. A total of 7,350 residential units would be constructed under this alternative, about 30 percent less than proposed with the Project. Consequently, the population growth anticipated under this alternative would be approximately 17,126 compared to approximately 24,465 under the Project. Land uses proposed under Alternative 4 would be similar to those proposed under the Project; however, residential densities and commercial intensities for most uses would be approximately 30 percent less at full build-out in comparison to build-out of the Project.

Alternative 5 would have the same overall land use program as the Project. The total number of housing units would be the same as for the Project. However, approximately 1,350 units would be shifted from Candlestick Point to HPS Phase II, because no State Parks agreement would occur, resulting in a smaller development footprint at Candlestick Point. No Yosemite Slough bridge would be constructed and there would be no stadium at HPS Phase II. As noted on page VI-126 of the Draft EIR, Alternative 5 would retain the existing configuration of the State Park boundary, and would not include improvements or ongoing funding for operations and maintenance as provided by the Project. As a result, the land area available for development at Candlestick Point would be smaller and 1,350 housing units would be shifted to HPS Phase II. A total of 6,500 residential units would be constructed at Candlestick Point with higher densities, resulting in more mid-rise structures and towers than under the Project. The amount of retail, office, community service, hotel, arena uses would remain as proposed under the Project. Research and development uses, neighborhood retail, community-serving uses, the artists' studios, and marina proposed by the Project are also proposed under Alternative 5. Residential development would increase by 1,350 units, for a total of 4,000 units. The San Francisco 49ers football stadium would not be constructed at HPS Phase II.

Therefore, the EIR has analyzed alternatives without a bridge or stadium that range from a 70-percent of Project development to a full Project development with units shifted from Candlestick Point to HPS Phase II. The shifting of these residential units in Alternative 5 would result in more intense development at HPS Phase II than as analyzed for the Project. While the traffic patterns would be somewhat different under Alternatives 2, 4, and 5, the EIR has analyzed an equivalent, a reduced, and a more intense Project at HPS Phase II without inclusion of the bridge.

If the 49ers relocate to a city other than San Francisco, Variants 1, 2, or 2A could be developed. If any of these Variants is ultimately implemented, and there is no Yosemite Slough bridge, impacts with regard to

Land Use and Plans, Population, Housing, & Employment, Aesthetics, Wind, Shadow, Cultural and Paleontological Resources, Geology and Soils, Hazards and Hazardous Materials, Hydrology and Water Quality, Public Services, Recreation, Utilities, Energy, and Greenhouse Gas Emissions would not differ from the analyses in the EIR with respect to these Variants, as impacts on these resource areas are based on intensity of development, population/employment generation, extent of land disturbance, and types of land uses, and would not become more severe or result in additional environmental impacts if a bridge were not constructed. Therefore, the analyses contained in the EIR for any of these Variants would apply if neither the stadium nor the bridge is built.

The only resources that could be affected by routing traffic around the slough would be traffic, transit, air quality, and noise. Alternatives 2, 4, and 5 analyzed routing traffic around the Yosemite Slough rather than across a Yosemite Slough bridge. If Variants 1, 2, or 2A were approved without a bridge, the traffic impacts of routing traffic around the slough has been included in the EIR analysis of Alternatives 2, 4, and 5, and would be greater than the Project. The biological resource impacts would be reduced with no bridge compared to the Project. However, the benefits of the bridge would not be realized, such as decreased transit times and additional wildlife viewing opportunities.

The only area where transportation and circulation would be different without a stadium if the bridge were not built relates to transit travel times. The distance across the Yosemite Slough bridge (from Carroll Avenue to Shafter Avenue) is approximately 0.4 mile. The distance on the route around the slough is approximately 1 mile, a difference of 0.6 mile. The travel time for the BRT route across this distance (assuming an average 10 to 20 mph travel speed) would be approximately 1.25 to 2.5 minutes. The travel time for the BRT route around the slough (assuming an average 7 mph travel speed) would be 8.7 minutes, an increase of over 6 to 7.5 minutes. Therefore, the assumption of a 5-minute difference in travel time as disclosed in the Draft EIR is a reasonable estimate given the uncertainties in estimating actual transit travel time. Further, whether the actual difference in travel time is 5 minutes or 6 minutes, or perhaps even 7 minutes, it would not alter the significance conclusion relative to transit travel since the transit ridership generated would be similar to the Project with a no-bridge development scenario, and transit demand would be accommodated by available capacity, similar to the Project. Further, as described for Alternative 2 in the Draft EIR, traffic volumes would be similar under conditions with or without the bridge, since traffic would not typically be allowed to use the bridge. Therefore, impacts to transit associated with traffic congestion would be similar with or without the bridge.

Response to Comment 47-5

The Draft EIR considers the Project's impacts to recreation opportunities at CPSRA as a whole, while acknowledging that some area would be removed from the park. It concludes that because recreational opportunities would increase overall, the Project would not have a significant physical impact. Refer to Draft EIR at p. III.P-32. As discussed in Responses to Comments 47-20 and 47-26, below, the Project would not significantly degrade existing recreational opportunities at, or any other aspect of, Yosemite Slough as it exists today. Response to Comment 47-20 discusses potential impacts to future uses of the slough. Refer also to Master Response 3 (Impacts of the Project on Yosemite Slough [Biological Resources]) and to Draft EIR pages III.E-50 through III.E-51, concerning the Project's aesthetic impacts to the slough.

Response to Comment 47-6

This comment contains introductory, closing, or general background information and also reflects the commenter's opinions. No response is required. However, each of the commenter's general issues is specifically responded to in Responses to Comments 47-7 through 47-65.

Response to Comment 47-7

Refer to Master Response 3 (Impacts of the Project on Yosemite Slough [Biological Resources]) and Master Response 4 (Purpose and Benefits of the Yosemite Slough Bridge), which discuss the bridge's effects on biological resources and transportation, respectively. As noted in Master Response 4, although the bridge does provide an important function related to the stadium on game days, the bridge would also serve a vital role in providing effective BRT service to the Hunters Point Shipyard neighborhood and a key pedestrian and bicycle connection between the Hunters Point Shipyard and Candlestick Point neighborhoods. Therefore, the bridge is proposed under Project Variants 1 and 2, which do not include the stadium.

However, the Draft EIR Chapter VI includes an analysis of the Project without the Yosemite Slough Bridge. Alternative 2 (CP-HPS Phase II Development Plan; No Yosemite Slough Bridge) would have the same land use program proposed with the Project, including the State Parks agreement, but would not include the Yosemite Slough bridge. Discussion of impacts of Alternative 2, as compared to the Project, is presented on Draft EIR pages VI-30 to VI-59. Alternative 2 could also be combined for approval with Project land use Variants 1 and 2, also resulting in a Project without the Yosemite Slough bridge. Alternative 4 (Reduced CP-HPS Phase II Development; Historic Preservation; No HPS Phase II Stadium, Marina or Yosemite Slough Bridge) and Alternative 5 (Reduced CP-HPS Phase II Development; No HPS Phase II Stadium, State Park Agreement, or Yosemite Slough Bridge), presented on Draft EIR pages VI-93 to VI-159 also do not include the Yosemite Slough bridge.

The benefit of the bridge with respect to BRT service described above are similar for the land use plans as part of the Project, Project Variants, and Project Alternatives where BRT service is proposed.

Refer to Response to Comment 17-1 for a discussion of the process that would be required for the bridge to be open for public use.

Response to Comment 47-8

Refer to Responses to Comments 47-3 and 47-28 for discussions of the proposed park reconfiguration.

Response to Comment 47-9

This comment is an overview of the commenter's concerns, which are specifically described and responded to above and below in responses to this letter.

Response to Comment 47-10

The Draft EIR identifies both the City and County of San Francisco and the Agency as co-lead agencies for the purposes of carrying out or approving the Project and preparing the CEQA review document. Section 15051(a) of the CEQA Guidelines provides criteria for determining the Lead Agency, stating that

it generally should be the agency that will carry out the Project. Section 15051(d) of the CEQA Guidelines also acknowledges that there may be times in which two or more public agencies have a substantial claim to be the Lead Agency, in which case, the agencies may designate one agency as the lead or may provide for cooperative efforts by two or more agencies, as is the case for the CP-HPS Phase II EIR.

The City and County of San Francisco has adopted guidelines for implementing CEQA, as required by the statute; and those guidelines are codified in its Administrative Code Article 31. Article 31.04 states that the City and all of its officials, boards, commissions, departments, bureaus, and offices shall constitute a single “local agency,” “public agency,” or “lead agency,” as those terms are used in CEQA, except that the Agency shall be a separate “local agency” or “public agency” as specified in CEQA. With regard to the establishment of any redevelopment area, the City shall be the “Lead Agency.” In other words, the City has authorized the Agency to be its own Lead Agency except in the instance of the establishment of a redevelopment area.

In this case, the Project does not establish a redevelopment area, so Article 31.04 does not mandate that the “City” serve as the Lead Agency; however, the Project proposes to amend two plans of existing redevelopment areas and that action requires Board of Supervisor approval. The Board also will take a number of other approval actions. The Agency, however, will carry out the Project. The facts here present a situation as recognized in Section 15051(d) where two or more agencies have a substantial claim to be the Lead Agency. Given the language in Article 31.04, it has been the City's experience that the Agency has a substantial claim to be the Lead Agency in circumstances where the Agency proposes to establish redevelopment areas or amend redevelopment plans. Consequently, in addition to having CEQA allow for cooperative efforts by two or more agencies, the City and Agency have long had the practice of jointly preparing CEQA documents for redevelopment plans and plan amendments.

Consistent with CEQA’s basic purpose of informing decision-makers and the public about potential significant environmental effects, the identification of cooperative lead agencies increases the opportunity for public disclosure. Rather than creating a problem for the public, if anything, this process results in a better process for the public. It ensures that the Project is well defined, both by the City and the Agency. It requires two commissions to hold public hearings on the draft document, the Redevelopment Commission and the Planning Commission, following both the City's adopted guidelines for carrying out CEQA and the Agency's adopted guidelines. It requires both commissions to certify to the adequacy, accuracy, and completeness of the Final EIR.

As a procedural matter, there is no additional burden on the part of the public by having additional hearings; instead, the public is afforded more opportunities to participate in the process, and any oral comments at any one or more of the hearings are provided equal weight. The public has embraced the practice, as is evident by the number of people who appeared to testify before the commissions. Further, the process does not produce administrative waste because the fact remains that both the City and the Agency have discretionary approval authority over the Project and both agencies must be fully informed as to the potential environmental impacts before acting on the Project.

Consistent with Section 15051(c) of the CEQA Guidelines, to the extent that the City would act first on the Project, it could be considered the primary Lead Agency, if a choice were to be made. However, if the City were designated as the primary Lead Agency and the Agency as a responsible agency (as opposed to

designating co-lead agencies), the conclusions of the EIR would not change, nor would the process by which the EIR has been or will be heard and considered by the City and the Agency. The designation of the City as the primary Lead Agency would not trigger any of the conditions identified in Section 15088.5 of the CEQA Guidelines that require recirculation of an EIR, which include (1) a new significant environmental impact; (2) a substantial increase in the severity of an environmental impact; (3) a feasible project alternative or mitigation measure considerably different from others previously analyzed that would clearly lessen the significant impacts of the project (but the project's proponents decline to adopt it); or (4) precluding meaningful public review and comment.

Response to Comment 47-11

Use of a Project-Level vs. Programmatic EIR and Certainty with Respect to Project Features and/or Variant Features

As stated on page I-6 of the Draft EIR:

This EIR evaluates the development Project's environmental effects at a project level of detail and examines all phases of the Project, including planning, construction, and operation, as well as the direct, indirect, and cumulative impacts that might result. The Candlestick Point-Hunters Point Shipyard Phase II EIR is a Redevelopment Plan EIR pursuant to CEQA Guidelines Section 15180 and a project EIR pursuant to CEQA Guidelines Section 15161. The CEQA "Project" includes the proposed Candlestick Point-Hunters Point Shipyard Phase II Development project, the proposed amendments of the Bayview Hunters Point and Hunters Point Shipyard Redevelopment Plans, and the proposed amendments of the San Francisco *General Plan* and the San Francisco *Planning Code*.

CEQA does not mandate the use of programmatic EIRs in most circumstances. Section 15168(a) of the CEQA Guidelines provides permissive language regarding the use of Program EIRs, stating, "A program EIR is an EIR which may [emphasis added] be prepared on a series of actions that can be characterized as one large project and are related. ..." Section 15165 of the CEQA Guidelines, in its section describing multiple and phased projects, provides guidance as to when a program EIR must be used, stating, "Where individual projects are, or a phased project is, to be undertaken and where the total undertaking comprises a project with significant environmental effect, the lead agency shall prepare a single program EIR for the ultimate project as described in Section 15168." The identification of a separate section of the CEQA Guidelines to address multiple and phased projects is intended to make clear that an EIR must address the impacts associated with the whole of an action. If the approval of one particular activity could be expected to lead to many other activities being approved in the same general area, such as is the case with multiple or phased projects, the EIR must examine the expected effects of the ultimate environmental changes. Essentially, while CEQA and the CEQA Guidelines allow for different types of environmental documents, such as a program EIR or a project EIR, the type of environmental document ultimately selected must disclose all environmental impacts associated with a project or an action that leads to other reasonably foreseeable actions; impacts cannot be overlooked due to piecemeal development. As further explained in Practice Under the California Environmental Quality Act (Kostka and Zischke 2009), a Program EIR may be used to (1) avoid multiple EIRs, which could otherwise cause piecemeal environmental review or (2) consider broad programmatic issues for related actions at an early stage of the planning process.

The CP-HPS Phase II Project, while it would occur over a 20-year period of time due to the size of the site and magnitude of the undertaking, represents a single and discrete project, the whole of which has been fully

analyzed in the CP-HPS Phase II Project EIR. With respect to the stadium, the EIR evaluates a project that includes a stadium, which is consistent with the development application submitted by Lennar Urban and jointly accepted by the City and County of San Francisco and the Agency. However, because it is possible that the 49ers may not choose to remain in San Francisco, which is a decision made by the 49ers and outside of the control of the lead agencies and the Applicant, it is possible that a stadium would not be necessary at the Project Site; therefore, the EIR evaluated a variant to the Project that did not include a stadium.

With respect to the Tower Variants, the document analyzes different locations and heights of the residential towers at Candlestick Point, while maintaining the same total number of residential units identified for the Project, in order to provide a range of options for the Planning Commission and Board of Supervisors to evaluate. Impacts related to all of the environmental topics, including shade, wind, and aesthetics impacts, are fully evaluated for all of the variants, including the Tower Variants. In fact, as stated on page IV-1 of the Draft EIR (and as revised in this document in Section F [Draft EIR Revisions]):

Most of the features of the variants would be similar to the features of the Project. None of the variants would alter the Project Objectives, which are provided in detail in Chapter II (Project Description). The Project could be approved in combination with Variants 3 (Tower Variants A, B, C, and D), 4, and/or 5, any of which can be overlaid on the Project. Variants 1, 2, and 2A represent variants of the Project without a stadium; either of these variants, if approved, could also include components of Variants 3 (Tower Variants A, B, C, and D), 4, and/or 5. For all of these variants, this eChapter IV (Project Variants) provides an environmental analysis such that this EIR would be adequate under CEQA for purposes of review and approval for any of the variants of the Project either individually or in combination with elements of the Project. The variants are analyzed at a project-level of detail, which is equal to the Project analysis included in Chapter III (Environmental Setting, Impacts, and Mitigation Measures) Section III.A through Section III.S of this document. The environmental impacts that would result from implementation of the variants are presented following the description of each variant. A comparison of the variant development programs to the Project is presented in Table IV-1 (Comparison of Variants to the Project). Table IV-2 (Impact Comparison of Project Variants) summarizes the effects of the Project compared to the variants. ~~As necessary, figures are included to illustrate key details of the Variants and are presented below with the variant descriptions.~~

The analysis of variants in the EIR does not reflect uncertainty or ambiguities, but, instead, provides flexibility and a range of options for the Lead Agency to consider. In all cases, the variants have been fully evaluated.

All potential components of the proposed development that could occur over the 20-year development schedule have been fully considered in the Draft EIR, either in the analysis of the Project or in the analysis of the variants.

It is acknowledged that some aspects of the Project will need to undergo further design and those further design details will be reviewed and approved by the Agency following the initial approval actions for the Project, consistent with the design review process set forth in the Project approval documents. It is anticipated that these later approvals would require additional environmental analysis only if the specific conditions provided for in CEQA for such later approval action were to occur. As stated on page I-7 of the Draft EIR:

It is anticipated that each discretionary approval related to the implementation of the Project would rely on this EIR and would not require preparation of subsequent environmental documentation, unless otherwise required by CEQA pursuant to Public Resources Code Section 21166 and CEQA Guidelines Sections 15162 through 15164. Anticipated approvals for the Project are included in Chapter II.

Recreational Impacts Associated with Variant 5

As stated on page IV-238 of the Draft EIR with respect to Variant 5 (49ers/Raiders Shared Stadium):

Development with the 49ers/Raiders Shared Stadium Variant would be similar to the Project. The Shared Stadium Variant would include the construction and improvement of new parks, recreational facilities, and open space. At build-out of this Variant, approximately 337.5 acres of parks, open space, and recreational uses would be provided, as described in Table IV-1, which is about 0.5 acre more than proposed with the Project.

As stated on page IV-238 of the Draft EIR:

The Shared Stadium Variant would have the same number of housing units as proposed with the Project, thereby resulting in the same residential population of 24,465, although 0.5 acres more of parkland would be provided. Operational impacts are determined based on a ratio of acres of parkland per resident. Currently, the City provides approximately 7.1 acres of parkland per thousand residents, and the standard used in Section III.P assumes a ratio of 5.5 acres of parkland per 1,000 population is sufficient to meet the demand for recreational facilities without causing or accelerating substantial physical deterioration of facilities or requiring the construction of further facilities. The parkland-to-population ratio associated with the Shared Stadium Variant would be 13.7, which is the same as the Project. The Shared Stadium Variant ratio would be considerably higher than the ratio of 5.5 acres of parkland per thousand residents, which is considered sufficient to meet demand for recreational facilities without causing or accelerating substantial physical deterioration of facilities or requiring the construction of further facilities. Impacts would be less than significant.

As stated on page III.P-29 of the Draft EIR (which provides the same information for Variant 5):

The Project would also provide approximately 10,730 jobs, which could result in a daytime population of 35,195 (adding the resident population of 24,465, and assuming that no residents were also employees, which is unlikely). Counting the entire daytime population as a part of the population served by the parks on the Project site, the parks-to-population ratio would be 9.5 acres per 1,000 employees/residents, which still exceeds the benchmark ratio of 5.5 acres per 1,000 residents.

In summary, Variant 5 would provide 0.5 acre of additional park facilities, but would result in the same residential and daytime population and associated parks-to-population ratios as the Project, which are considered acceptable.

The Draft EIR assumed there would be 12 game days and 20 other stadium events for the Project, resulting in a total of 32 events. Variant 5 assumes 22 games and 20 other stadium events, for a total of 42 events, an increase of 10 events as compared to the Project.

Environmental Impacts of Shared Stadium and No Stadium Variants

As with the Project, Variant 5 would locate the stadium at Hunters Point, which is not proximate to the CPSRA for purpose of both attending a game and recreating at the CPSRA. As with the Project, it is assumed that individuals that attend a game may arrive early for the purpose of tailgating (refer to page III.D-26 of the Draft EIR), but would not also arrive early (or stay late) for recreation purposes at the CPSRA. Therefore, even with an increase of 10 events, it is unlikely that any of the individuals would impact the recreational values of the CPSRA.

In terms of how the Project will differ in terms of environmental impacts under the 49ers/Raiders Shared Stadium as compared to the Project, refer to the analysis for Variant 5, provided on pages IV-214 through IV-248 of the Draft EIR, as well as Table IV-2 (Impact Comparison of Project Variants). Table IV-2 has

been revised to include Subalternative 4A and is presented in Section F (Draft EIR Revisions). In terms of how the Project will differ in terms of environmental impacts, if the stadium is not built, unlike the Project, refer to the analysis for Variants 1 and 2, provided on pages IV-4 through IV-139 of the Draft EIR, as well as Table IV-2 (Impact Comparison of Project Variants).

Response to Comment 47-12

All of the issues raised in this comment are addressed by the commenter in greater detail in subsequent comments. Therefore, refer to Response to Comment 47-4 for a discussion of why the Yosemite Slough was not included as part of the Project site. Refer to Response to Comment 47-11 for a discussion of reasonably foreseeable future activities associated with the Project. Refer to Response to Comment 47-14 for a discussion of the Project's objectives. Refer to Response to Comment 47-16 for a discussion of necessary federal approvals.

Response to Comment 47-13

Refer to Response to Comment 47-4 regarding the identification and analysis of Yosemite Slough.

Response to Comment 47-14

Chapter II (Project Description) of the Draft EIR clearly indicates that the Project includes construction of a new 49ers stadium, as first described on page II-14 and again described on page II-20. The conceptual design and cross-sections in Figure II-7 (49ers Stadium Conceptual Elevations) and Figure II-8 (Existing and Approved Parks and Open Space), pages II-22 and II-23, further reflect this aspect of the Project. Figure II-8 has been revised and presented in Response to Comment 50-23 to correct the legend and clarify the park boundaries around the stadium site. The Project, including a new 49ers stadium, is evaluated in Chapter III (Environmental Setting, Impacts, and Mitigation Measures) within each environmental topic area.

In this comment, the commenter is identifying one of the six objectives of the Project. Objective 5 on page II-7 of the Draft EIR states:

5. The integrated development should encourage the 49ers—an important source of civic pride—to remain in San Francisco by providing a world-class site for a new waterfront stadium and necessary infrastructure, and in so doing should:
 - Provide the parking necessary to operate the stadium.
 - Provide the necessary transportation infrastructure, including automobile, public transit and pedestrian connections between Candlestick Point, Hunters Point Shipyard, and the larger BVHP neighborhood, to facilitate the efficient handling of game day traffic.

The Project Objectives are designed to describe the underlying purpose of the Project, as a whole, and to guide in the selection of alternatives. While the City and Agency would like a stadium to be part of the Project, development of an NFL stadium is not the City's or Agency's decision, and is a business decision of the NFL. For the purpose of the analysis of Project impacts, the 49ers stadium is assumed as part of the Project. For example, Section III.D (Transportation and Circulation) evaluates the transportation impacts of a 49ers stadium and identifies mitigation measures to address them.

While the Project includes development of a stadium, several variants to the Project were developed to address a non-stadium scenario. To maintain the same major elements of the Project, while accounting for the potential for the 49ers to relocate to Santa Clara or another jurisdiction, the City identified Variant 1 (R&D Variant) and Variant 2 (Housing Variant), which would develop R&D or housing, respectively, in lieu of a stadium, at levels that would be consistent with population and employment levels associated with a stadium scenario. This analysis is presented in Chapter IV (Variants), and is presented separately from the analysis of a new 49ers stadium within Chapter III. Refer to Master Response 4 (Purpose and Benefits of the Yosemite Slough Bridge) for a discussion of the need for, and benefit of, the Yosemite Slough bridge.

Project variants are addressed on page IV-1, second paragraph, of the Draft EIR. The Draft EIR states that the Project and one or more variants could be adopted ultimately by decision-makers. Nothing in CEQA precludes adoption of a Project that authorizes multiple land uses. The use of the variants in the Draft EIR was done to make it clear which portions of the Project might be developed in alternative ways. Text changes in Section F (Draft EIR Revisions) of this document show new text that has been added to the Executive Summary to discuss Project variants.

As addressed on page IV-214, last paragraph, of the Draft EIR, a stadium shared by two NFL teams would have limited new environmental effects compared to a one-team stadium:

Overall, the 49ers/Raiders Shared Stadium Variant would not change the amount or type of development compared to the Project. However, the 49ers/Raiders Shared Stadium Variant includes an increase in NFL events per season from 12 to 20 games. Development with this Variant is also likely to result in events occurring weekly for the entire NFL season. Thus, no construction-related environmental effects would occur in excess of those identified for the Project. The potential operational effects of the 49ers/Raiders Shared Stadium Variant would be related to the increase of stadium use and would affect air quality, noise, transportation, utilities, energy, and aesthetics.

As stated in Appendix D of the Draft EIR, pages 35 and 36, the 49ers/Raiders Shared Stadium Variant would have the same impacts as the Project, except that transportation impacts would occur on ten additional days compared to the Project.

Refer to Response to Comment 17-1 for a discussion of allowing the bridge to be open year-round for automobile use.

Response to Comment 47-15

Refer to Response to Comment 17-1 for a discussion of the process that would be required for the bridge to be open to automobile traffic outside of game-day conditions.

Further, the purpose of making the BRT route “rail-ready” is not as a precursor to anticipated implementation of light-rail on this route; rather, it is a common citywide approach to providing new infrastructure, including new BRT routes, that seeks to avoid precluding future modifications or conversions as technology or demands change. Generally, the concept of “rail-ready” implies that roadway designs, including available right-of-way, curve radii, grades, potential station platform areas, and overhead clearances proposed by the Project would not preclude implementation of light rail along the route.

However, there is currently no proposal to implement light rail along the BRT route. If such a proposal were made at a later date, any such proposal would need to go through appropriate environmental review

prior to being considered by SFMTA. Such a project is not foreseeable and cannot, therefore, be analyzed because no such project has been defined or proposed.

Response to Comment 47-16

Table ES-1 (Major Project Approvals), Draft EIR page ES-6, and Table II-16 (Major Project Approvals), Draft EIR page II-82, include the major Project approvals, including regional, state, and federal approvals. The table is not an exhaustive list, as identified in the table note, but describes the major approvals that would be required of the Project. In response to this comment, Table ES-1 and Table II-16 are revised:

Table ES-1 Major Project Approvals [Revised]

...

Redevelopment Agency Commission

...

- ~~Approves~~ Reports to the Board of Supervisors on the amendments to Redevelopment Plans

...

- Approves land transfer agreements with Port Commission, State Lands Commission, and California Department of Parks and Recreation (CDPR)

...

...

Bay Conservation and Development Commission

- Approves amendments of the Bay Plan and Seaport Plan
- Approves permits for activities within BCDC's jurisdiction, including the proposed Yosemite Slough bridge
- Reviews Project land use plan for federal consistency under the Coastal Zone Management Act for activities not previously authorized in Consistency Determination No. CN 1-99

...

US Army Corps of Engineers

- Approves permit for fill related to the Yosemite Slough bridge, shoreline improvements, and other activities-
- Consults with USFWS or NMFS regarding federally listed species prior to carrying out its discretionary authority under Section 404 of the CWA, pursuant to Section 7 of federal ESA
- Consults with NMFS regarding pile-driving and harbor seal and California sea lion prior to carrying out its discretionary authority under Section 404 of the CWA, pursuant to *Marine Mammal Protection Act*
- Consults with NMFS regarding modifying designated EFH prior to carrying out its discretionary authority under Section 404 of the CWA, pursuant to the *Magnuson-Stevens Act*

...

Each federal agency required to take approval actions would determine its NEPA requirements for those actions. The Navy, for example, is preparing a Supplemental Environmental Impact Statement (SEIS) with a Draft SEIS expected to be published in June 2010 and the Final SEIS expected in December 2010.

Response to Comment 47-17

Refer to Master Response 3 (Impacts of the Project on Yosemite Slough [Biological Resources]) for a discussion of the potential impacts from construction of the Yosemite Slough bridge on wetlands that are restored as part of the Yosemite Slough Restoration Project as mitigation for impacts from other projects.

Response to Comment 47-18

Refer to Master Response 3 (Impacts of the Project on Yosemite Slough [Biological Resources]) for a discussion of the Project's consistency with, and potential effects of the Yosemite Slough Restoration Project. The Yosemite Slough Restoration Project is not an adopted land use plan of a local or regional agency within the meaning of Section 15125(d) or (e) of CEQA.

Response to Comment 47-19

Refer to Master Response 3 (Impacts of the Project on Yosemite Slough [Biological Resources]) for a discussion of potential effects of the project on the Yosemite Slough Restoration Project and its biological goals.

Mitigation measures pertaining to impacts to jurisdictional habitats (i.e., MM BI-4a.1, MM BI-4a.2, and MM BI-4c) would apply to any impacts to the resources present when the project is constructed, whether they currently exist or whether they will exist as a result of the Yosemite Slough Restoration Project. Therefore, no revisions to these mitigation measures are necessary.

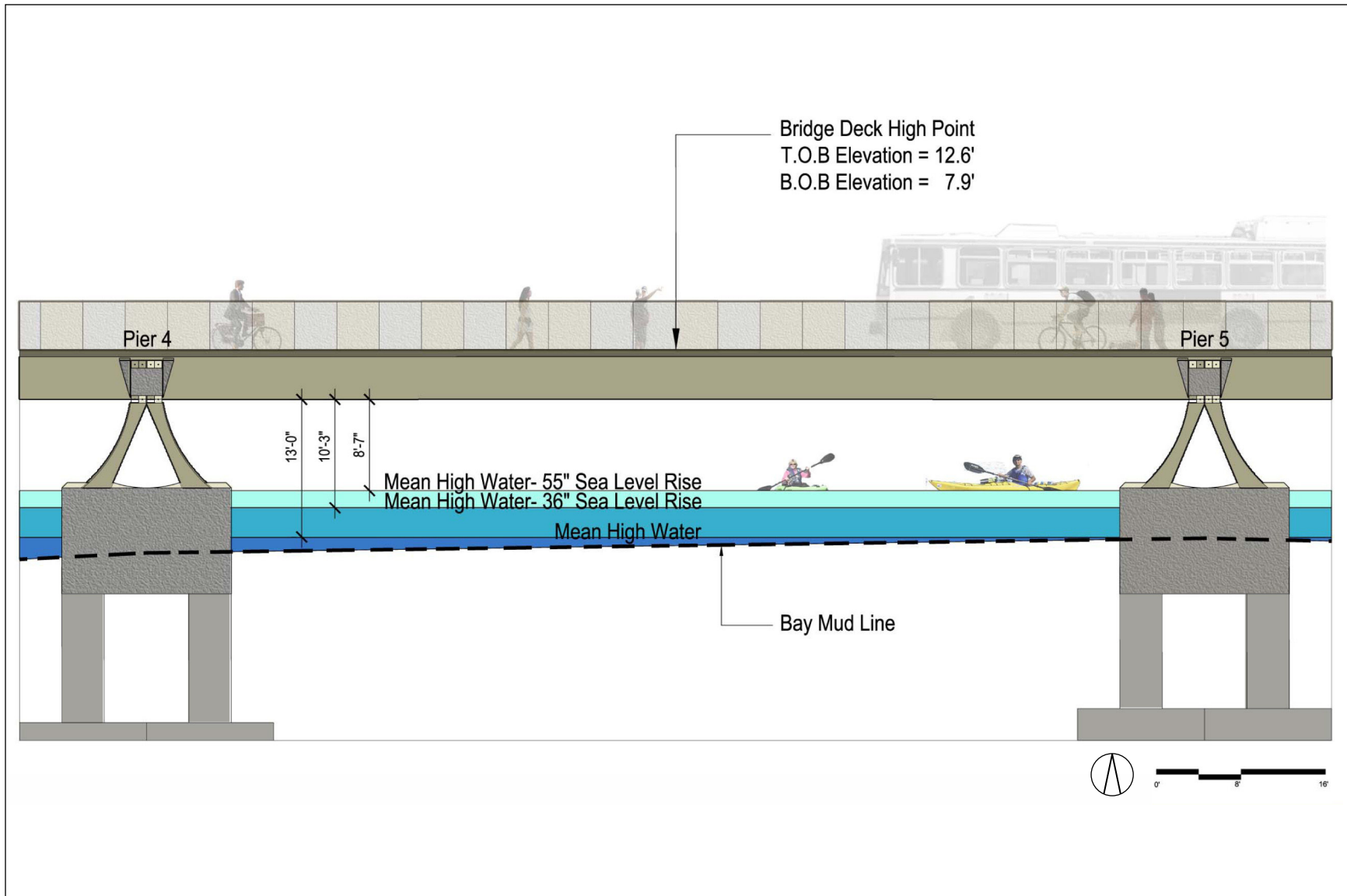
Response to Comment 47-20

The Draft EIR considers, as CEQA requires, the Project's impact on the existing physical environment, which includes Yosemite Slough in its existing, unrestored state. For example, Draft EIR pages III.E-50 through -51 analyze the Project's aesthetic impacts related to the slough. Yosemite Slough currently does not support substantial recreational use, including recreational boating or trails. Thus, the Project would not have a negative impact on existing recreational use.

Analysis of the Project's impact on the future recreational uses associated with the slough and the Restoration Project is difficult. Because these uses do not currently exist, such analysis requires one to project how future visitors may use and experience the slough, and then to project how the Project, particularly the proposed bridge across the slough, would alter those experiences. CEQA normally discourages such speculation. Nevertheless, the commenter has provided information about the proposed future project to create a wetland restoration area around Yosemite Slough and expressed concern that the Project is inconsistent with various elements of the project. Although no such uses exist at this time, assuming the Restoration Project as described by the commenter is eventually constructed, the Project would not have a significant adverse impact on future recreation in the slough, as explained below.

Recreational Boating in the Slough

The proposed bridge across Yosemite Slough would not impede the passage of recreational paddle crafts from the slough into the open bay. Although the precise details of the bridge's design have not been finalized at this time, preliminary plans estimate that under current conditions, the bridge would provide approximately 13 feet of clearance at mean high water—that is, during an average high tide, as illustrated by Figure C&R-9 (Yosemite Slough Bridge—Paddle Craft Clearances). This is sufficient clearance to allow unimpeded navigation by human-powered craft. If sea level rises by 55 inches—a projection at the high end of many estimates of the effects of climate change—clearance would be 8 feet, 7 inches at mean high water, which is still sufficient for paddle craft navigation. And in a more moderate sea level rise scenario of 36 inches, clearance would be 10 feet, 3 inches at mean high water. Thus, there will be no physical impediment to navigation.



SOURCE: RHAA; Lennar Urban, 2010.

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FIGURE C&R-9



Candlestick Point — Hunters Point Shipyard Phase II EIR
YOSEMITE SLOUGH BRIDGE – PADDLE CRAFT CLEARANCES

Some paddlers may feel that their experience is less “natural” because of the bridge and is therefore diminished. Bridges are a frequent feature of water recreation areas in California. For example, most paddlers visiting Elkhorn Slough in Monterey County, a very popular human-powered boating area, pass under Highway 1 at the beginning of their outing. Moreover, the recreational experiences offered by CPSRA and other parks within the Project area involve a mosaic of natural and developed parklands, all connected to urban development. The restored slough will be a more-natural part of the patchwork, but will not be isolated from the developed and urban areas nearby. People visiting the slough, including paddlers, will be aware that they are in an urban park and could expect to see features like the bridge. Thus, while the bridge may detract from the sense of nature that some visitors hope for, on the whole it will not have significant adverse impacts on boaters’, or other visitors’ recreational experiences, as described below.

The Bay Trail Along the Slough Shoreline

As discussed in Response to Comment 47-28, the Bay Trail alignment proposed in the Draft EIR has been amended in response to public comments. The amended alignment traces the slough shoreline and connects with the proposed Bay Trail alignments on Candlestick Point and Hunters Point. The Bay Trail must cross Arelious Walker Street on both sides of the slough. On the north side, the crossing would be possible without substantial deviation from the shoreline alignment. On the south side, visitors walking the Bay Trail would need to walk along Arelious Walker for a block inland (southward) in order to cross the street, then return to the shoreline. The trail alignment along Arelious Walker would be clearly marked. While this crossing is not exactly the same as identified in the Restoration Project’s plans, it is not a significant inconsistency. The Bay Trail will remain a continuous shoreline trail.

Vista Points in the Slough

Proposed vista points associated with the planned Yosemite Slough restoration may also provide recreational experiences in the future. The footprint of proposed bridge may include the areas planned for vista points. While the precise location and nature of these vista points are not known (and CEQA does not require such speculation), it is likely that the proposed bridge will have a less than significant impact on the experience they would offer. On most days of the year, the bridge will be open only to pedestrians, cyclists, and transit vehicles. In this pedestrian-dominated mode, the bridge will be effectively an aspect of the Project’s parkland, linking CPSRA with the open space on Hunters Point. The entire length of the bridge will offer scenic vistas both towards the Bay and inward toward the restored slough. The availability of these views essentially provides the experience that the vista points would have offered. Moreover, the bridge’s final design may be able to accommodate widened portions of the sidewalks that project over the water and serve as observation decks at either end of the span. These would similarly be effective replacements for the vista points, and would be available at all times, even on those occasions when the bridge is open to private vehicles.

To the extent that the surroundings of a vista point—rather than simply the views on offer—are considered an essential part of the experience, the proposed sites could be relocated within the slough restoration area. For example, overlooks could be constructed along the Bay Trail at points on either side of the slough west of the bridge. These points would provide views of the slough comparable to those from the originally proposed vista sites. Views toward the Bay would include the bridge, which may detract from some viewers’ experience. The points would nevertheless offer substantial views of the Bay, the mouth of the slough,

Double Rock, and shoreline features. In light of these views and of viewers' expectations of the urban nature of these parklands, the bridge's impact on views from the slough, and of the recreational experience of Slough viewpoints, would be less than significant.

Overall, while the proposed bridge would result in a different, more urban recreational experience than Slough visitors would obtain without it, the Project would not have a significant adverse impact on potential future recreational opportunists in Yosemite Slough.

Other Elements of Slough Restoration Project

The commenter points to several elements of the Restoration Project and concludes that the Project is inconsistent with these elements. The Project will remove from CPSRA approximately 1.5 acres of the 34 acres in the proposed restoration area, which includes the slough itself. Consequently, the large majority of the Restoration Project is not directly affected by the Project. The Project will not have any effect on recreational access to the slough, one of the Restoration Project's stated purposes; in fact, the connection of Arelious Walker Street across the slough will enhance access to the restoration area and result in more, not fewer visitors to the area. The Project will not prevent the construction of the Restoration Project's proposed interpretative center, fencing, lighting, benches, or drinking fountains. With the exception of the small acreage affected by the bridge construction, the Project will not affect the addition of 2.5 acres of passive public use areas, new interpretative trails, and vista points along those trails. As explained above, small portions of trails and vista points affected by the bridge could be relocated within the slough restoration area without a substantial effect on the recreational opportunity that the Yosemite Slough Restoration Project presents to visitors to the area.

The Project would construct a bridge and roadway in an area that otherwise would, after the restoration project, be used solely for recreation and open-space uses. The construction of these facilities, together with their use and operation, would adversely affect visitor's experience of the restored natural state of the area. However, the slough is now, and would continue to be, located in an urban environment, bordered by roads and developed lands. The bridge would have limited automobile use, primarily serving as a BRT, bicycle, and pedestrian route. Even without the bridge and roadway, users would always be near and aware of the urban environment in addition to the more natural immediate surroundings in the restoration area. Moreover, the majority of the restored slough area would be unaffected. Therefore, any adverse impact would be less than significant.

Response to Comment 47-21

Refer to Master Response 3 (Impacts of the Project on Yosemite Slough [Biological Resources]) for a discussion of potential effects of the Project on wetlands created as part of the Yosemite Slough Restoration Project.

Refer to Response to Comment 47-20 for a discussion of the Project's impacts on future recreation in the slough, and Response to Comment 47-73 for a discussion of the aesthetic impacts of the Project on the restored slough.

Response to Comment 47-22

Refer to Master Response 3 (Impacts of the Project on Yosemite Slough [Biological Resources]) for a discussion of the project's potential effects on the Yosemite Slough Restoration Project. As discussed in Master Response 3, impacts on the biological resources that are expected to occur within the Restoration Project area were addressed in the Draft EIR. Also, refer to Responses to Comments 47-67 through 47-101 for responses to individual comments in WRA's letter, and refer to Master Response 3 for a discussion of text added to quantify potential impacts of the Yosemite Slough bridge on wetlands proposed to be created as part of the Restoration Project.

Response to Comment 47-23

Refer to Master Response 3 (Impacts of the Project on Yosemite Slough [Biological Resources]) for a discussion of the reasons why different study areas were depicted on Figure III.N-1 (Biological Resources Study Area) and Figure III.N-2 (Study Area Habitats) and for clarification regarding the scope of the project's analysis of impacts to biological resources in on-site and off-site areas (i.e., the impacts to resources in all of Yosemite Slough were included in the impact analysis).

With respect to whether the biological resources impact analysis included Yosemite Slough, page III.N-1 of the Draft EIR states:

The Study Area for this biological resources analysis includes both developed and undeveloped portions of HPS Phase II and Candlestick Point, including the entire Candlestick Point State Recreation Area (CPSRA), as well as off-site open waters adjacent to the Project site that would be impacted by Project components (i.e., breakwater, pier, etc.); refer to Figure III.N-1 (Biological Resources Study Area). The off-site aquatic resources discussed include Yosemite Slough (except the area of construction), the open water area between Candlestick Point and HPS Phase II (known as South Basin), and adjacent open waters that would be impacted by Project components (i.e., breakwaters, gangways, floats, etc.). For purposes of the evaluation of sensitive species, the Study Area is defined as the Project site and a radius of up to 5 miles beyond the Project site.

Thus, the Draft EIR included Yosemite Slough in the off-site areas in which impacts were analyzed. The phrase "(except the area of construction)" was not intended to indicate that the area of construction was excluded from the impact analysis; rather, this parenthetical phrase was intended to indicate that the area of construction was included in the on-site impact analysis. In response to this comment, Section III.N (Biological Resources), third paragraph, second sentence, page III.N-1, has been revised as follows for clarification purposes:

... The off-site aquatic resources discussed include Yosemite Slough (except the area of construction, which is included in the on-site impact analysis), the open water area between Candlestick Point and HPS Phase II (known as South Basin), and adjacent open waters that would be impacted by Project components (i.e., breakwaters, gangways, floats, etc.). ...

Response to Comment 47-24

Refer to Master Response 3 (Impacts of the Project on Yosemite Slough [Biological Resources]) for a discussion of the project's potential effects on the existing biological resources of Yosemite Slough, and the potential effects on the wetlands planned for restoration under the Yosemite Slough Restoration Project.

Response to Comment 47-25

Refer to Responses to Comments 47-26 through 47-30 for discussions of the Draft EIR’s analysis of the Project’s impacts on existing recreational resources and facilities.

Response to Comment 47-26

The majority of the CPSRA shoreline would not be affected by the proposed bridge. Please refer to Response to Comment 47-20 regarding the bridge’s impacts on recreational opportunities in Yosemite Slough.

Response to Comment 47-27

Current recreation in CPSRA consists primarily of windsurfing and land-based uses such as picnicking and walking. The Draft EIR analyzes the Project’s impacts on such users. It analyzes the Project’s impacts on windsurfing on page III.P-33. The Draft EIR analyzes the Project’s impacts on existing land-based uses by considering the area that will be available for such uses. It considers construction-related impacts in Impact RE-1, beginning on page III.P-12. Regarding impacts on future recreational uses in Yosemite Slough, please refer to Response to Comment 47-20. As discussed in Response to Comment 47-3, the Project will enhance the rest of CPSRA (outside the slough), and therefore will not have an adverse impact on future recreational uses.

Response to Comment 47-28

The Draft EIR analyzes recreational impacts in part by considering whether the Project would “adversely impact existing recreational opportunities.” This standard goes well beyond what is required by the CEQA Guidelines, which include recreation standards that only address impacts to the physical environment; they do not require any consideration of impacts to recreational users’ experiences. Refer to CEQA Guidelines, Appendix G Section XIV. This qualitative standard was selected to acknowledge and analyze the changes that current users of CPSRA will encounter during and after implementation of the Project. In applying this standard to the Project, the Draft EIR recognizes that the proposed reconfiguration of CPSRA would remove some land from the Park. As the Draft EIR shows, and as further identified in Table C&R-11 (CPSRA Recreation Land), this land does not for the most part support recreational uses presently. Specifically, of the 29.2 acres to be removed, only 7.8 acres is presently used for recreation. The remainder is not recreation land, but is used for parking for Candlestick Park stadium events.

Table C&R-11 CPSRA Recreation Land

	<i>Current CPSRA Land (acres)</i>	<i>Current CPSRA Land to be Removed by Reconfiguration</i>	<i>CPSR Land to Be Improved</i>	<i>Land to be Added to CPSRA and Improved</i>	<i>Total Following Reconfiguration (Current Improved Land + CPSRA Land to be Improved + Land Added to CPSRA)</i>
Improved Recreation Land	51.5	[3.9]		5.7	96.7
Unimproved Recreation Land	26.2	[3.9]	22.3		
Land Unavailable for Recreation	42.5	[21.4]	21.3		
Total	120.2	[29.2]	43.6	5.7	

At the same time, the Project would provide substantial improvements to CPSRA. These proposed improvements are not mitigation measures. Rather, they are an essential part of the Project. The Draft EIR acknowledges that land would be removed from CPSRA, but concludes that following implementation of the Project, including the improvements, the Park as a whole will not suffer an adverse effect on recreational opportunities. The table below demonstrates that the Project would remove only small amounts of actual recreation land, while improving large areas of land currently inaccessible or underused.

Specifically, of the 77.7 acres of CPSRA currently in use for recreation, approximately 51.5 acres is developed with facilities and actively used. The remaining 26.2 acres is undeveloped and used less frequently. Following the reconfiguration, 69.9 acres of this land would be improved and available for recreation. Further, 5.7 acres of improved land would be added. The removal of actual recreation land would be minimal: only 7.8 acres, half of which is unimproved. Against that small loss, CPSRA would gain large areas of improved land.

Overall, the reconfiguration and associated park improvements would increase, rather than diminish, recreational opportunities at CPSRA. In short, CPSRA will provide a better recreational experience after the Project than it does now.

Response to Comment 47-29

The Draft EIR considers the Project's impacts on the existing physical environment, and therefore analyzes the impact of increased use on existing recreational facilities. It does not analyze the impacts of increased use of areas that are currently unused for recreation purposes, such as areas of CPSRA that are currently used for stadium parking but will, following the Project, be used for recreation. Because these areas are presently parking lots, future use cannot degrade them to worse-than-current conditions. In other words, future use cannot make these parts of CPSRA worse than the parking lots they currently are.

Thus, the Draft EIR's analysis of CPSRA is concerned solely with the Project's impacts on the 77.7 acres of CPSRA currently available for recreation. Of this area, 7.8 acres would be removed from the park, which, the Draft EIR acknowledges. The remaining 69.9 acres will likely experience increased visitation due to the Project, although CEQA does not require the Draft EIR to speculate about or quantify the precise level of increased visitation. The Draft EIR's analysis thus must take account of the combined impact of the removal of 7.8 acres and increased usage of the remaining 69.9 acres. The Draft EIR reasonably concludes that the park will be able support the increase in visitation without substantial degradation, on the basis of many aspects of the Project: the improvements to the 69.9 acres that will increase the amount of use the area can support, the addition of 26.8 acres to CPSRA's stock of improved recreation land, the Project's funding for CPSRA operations and maintenance, and the availability of large areas of new parkland throughout the Project area. Refer to Draft EIR on page III.P-32. As such, this substantial improvement in the quality of parkland at CPSRA would outweigh the impact of the loss of 7.8 acres of recreation land, thus rendering any impact less than significant.

Moreover, in this context increased visitation is a benefit of the Project: bringing additional visitors to this unique and important state park advances the goals of the City, the Agency, and the State Park System.

Regarding the standard of significance for this impact, CEQA requires analysis of a project's impacts on the physical environment. Thus standards of significance measure whether a project would make the

environment—in this case, recreational facilities—significantly worse than it is without the project. Here, the ratio of parkland to acres to 1,000 residents is used as a way of measuring whether the Project will increase park usage to such a degree that substantial physical degradation would occur or accelerate. The current ratio at the Project site is very high because there is a small population as compared to the size of CPSRA. The Project will inevitably reduce this ratio, but such reduction would not lead to degradation of existing facilities and thus would not cause a significant environmental impact. The Draft EIR selected its standard of 5.5 acres of parkland per 1,000 residents because this was the ratio existing in the City at the time of the 1986 General Plan. Although an improvement in this ratio would be a benefit, maintenance of the ratio would allow the ongoing maintenance of parkland without accelerated degradation. In fact, as demonstrated on pages III.P-30 and -31 of the Draft EIR, parkland ratios at the Project site will be well above 5.5 acres per 1,000 residents at all phases of the Project.

Response to Comment 47-30

In response to the comment, the text in Section III.P (Recreation), page III.P-1, paragraph 1, sentence 3 has been revised as follows:

... The analysis in this section concludes that ~~no the Project could have potentially significant or significant environmental impacts development would result from the Project related to the timing of proposed park;~~ therefore, ~~no a~~ mitigation measures ~~are is~~ included.

Also in response to the comment, the text in Section III.P (Recreation), page III.P-25, last paragraph, has been revised as follows:

... In addition, The Last Rubble would contain a new beach area ~~and marshland (refer to Figure H-24).~~ Other features here may include parking, picnic areas, overlook terraces, restrooms, and a restaurant/café.

Noise impacts to CPSRA are encompassed by the analysis in Section III.I (Noise and Vibration). Park users are not considered sensitive receptors.

Response to Comment 47-31

This comment contains introductory information and summarizes an attached letter from Tom Brohard and Associates (Comments 47-102 through 47-115). Responses to specific comments from that letter are provided in Responses to Comments 47-67 through 47-101. Also refer to Master Response 4 (Purpose and Benefits of the Yosemite Slough Bridge) for discussion of transportation issues relating to the Yosemite Slough bridge.

Response to Comment 47-32

The Draft EIR considered impacts of the Project to scenic vistas and scenic resources, including the CPSRA, impacts from increased light and glare, and analyzed whether the Project would substantially degrade the visual character or quality of the site. Regardless of whether the CPSRA is called out specifically in the Draft EIR as a scenic resource or not, impacts to the CPSRA were considered in all applicable technical sections, including Aesthetics, Hazards and Hazardous Materials, Hydrology and Water Quality, Geology and Soils, Noise, Biological Resources, Traffic, Air Quality, and Recreation. The Draft EIR does not underplay the significance of the CPSRA as a resource, contrary to the commenter's assertion. If that

were the case, there would be no analysis in the Draft EIR of impacts to the CPSRA at all or the CPSRA would be briefly mentioned here and there. The fact that the CPSRA, when built out, will dwarf all other park resources in the area, as commenter states, actually provides some substantiation for the fact that the Project, although large, would not adversely affect the CPSRA from a visual standpoint. There are no impacts to the CPSRA that are not disclosed in the Draft EIR, and the commenter does not cite any such specific impacts that were not analyzed. Instead, the commenter relies on the fact that the Draft EIR does not specifically identify the CPSRA as a “scenic resource” in exactly those words. The Draft EIR references the CPSRA repeatedly throughout every section of the document; thus, the impacts of the Project were considered in the full environmental context, pursuant to *Kings County Farm Bureau v. City of Hanford* (1990), 221 C.A.3d 692.

Response to Comment 47-33

Refer to Responses to Comments 31-14, 47-34, 47-36, 47-58, 47-73, and 47-76 for discussion of the proposed bridge and its aesthetic impacts on views. Response to Comment 47-46 also contains additional simulations of the proposed Yosemite Slough bridge from four additional reference points. Impacts on CPSRA would be less than significant.

Response to Comment 47-34

Section III.E (Aesthetics) of the EIR contains 30 figures. Viewpoints were selected for inclusion in the EIR that are representative of the wide range available on such a large site. It is not necessary to include every possible view of a project feature to make a determination of the significance of an impact. Refer to Responses to Comments 31-14, 47-34, 47-36, 47-58, 47-73, and 47-76 for discussion of the proposed bridge and its aesthetic impacts on views. Response to Comment 47-46 also contains additional simulations of the proposed Yosemite Slough bridge from four more reference points. The analysis in the EIR and the amplification of that analysis in the Responses to Comments demonstrates that the Project would have a less-than-significant aesthetic impact on the CPSRA.

Response to Comment 47-35

Construction equipment for the bridge would not block views except from very close up, and the presence of construction equipment would be temporary and intermittent. Views of, across, and from the slough would remain from many vantage points during and after construction of the bridge. Pages III.E-51 and III.E-52 of the Draft EIR state that impacts from construction are potentially significant, and less than significant with mitigation measure MM AE-2 (requiring strict control and storage of construction equipment and staging). With regard to lighting, most recreational users of the CPSRA are on site during daylight hours (the park is open from 8:00 A.M. to 5:00 P.M. daily and slightly longer during summer). Therefore, security lighting at night would not disturb recreational users of the CPSRA. All potentially significant impacts from construction of the Yosemite Slough bridge have been identified and determined to be less than significant in the EIR. Also refer to Master Response 3 (Impacts of the Project on Yosemite Slough [Biological Resources]) for a discussion of impacts of lighting in the bridge area on biological resources.

Response to Comment 47-36

Impact AE-4 analyzes long-range views across the site. From a distance, the Yosemite Slough bridge will not appear as a prominent feature of the Project. Facts to support the conclusions of the EIR as to long-range views were presented on pages III.E-53 through -56, which discussed eight different viewpoints in addition to views across the Bay towards Oakland. With regard to Impact AE-5, the commenter fails to quote the remainder of the paragraph (page III.E-58, second paragraph of the Draft EIR), which sets forth the reasons the potentially significant impact of the bridge would not substantially damage a resource that contributes to a scenic public setting. The bridge would contain “green” auto lanes, with plantings in the middle providing a green boardwalk. Page III.N-95 of the Draft EIR indicates that the bridge would be low enough in profile to easily allow birds to fly over the bridge, and the bottom of the bridge deck would be high enough that swimming birds could swim under during tidal currents that currently allow that. The bridge would be low in profile (9 feet above water at the arch of the span and extending to 16 feet above water at its tallest point) and integrated into the open space on either side of the slough, and would contain piers and pedestrian and bicycle paths for a pedestrian viewing experience. Yosemite Slough would continue as a waterway bordered by open space opening from a narrow channel to the west to the wider South Basin to the east and would remain a scenic resource on the site. Placement of a low-profile bridge at one end of the slough would not substantially damage the scenic resource, as the vast majority of the slough would be untouched, and the impact would be less than significant. Visual simulations included in the Draft EIR show that the bridge would not, in the context of the entire expanse of the slough, substantially damage the resource.

For a discussion of the bridge and aesthetic impacts, refer to Responses to Comments 31-14, 47-34, 47-36, 47-46 (including four new graphics depicting the bridge), 47-58, 47-73, and 47-76. Whether a visual impact is substantial is largely a subjective determination based on an evaluation of facts. The Lead Agencies have made the determination that the bridge would not substantially impede views of the Bay or substantially damage a scenic resource because the bridge would have a small footprint relative to the expanse of the slough, and because its design would be visually integrated into the environment to a substantial degree. The Lead Agencies have determined that the Project, and the bridge in particular, would not result in a substantial adverse change in the visual character or quality of the site. The visual simulations and the extensive analysis contained in this section provide substantial evidence of the nature and magnitude of the change in visual character. The Lead Agencies have concluded based on substantial evidence that the change is not substantially adverse and the impact would be less than significant.

Response to Comment 47-37

Refer to Response to Comment 47-35 regarding light and glare impacts. The CPSRA is not open at night. Therefore, Project lighting would have no adverse effect on recreational users of the CPSRA, which would be on site only during daylight hours. With regard to bridge lighting and vehicle headlight impacts on biological resources, refer to Master Response 3 (Impacts of the Project on Yosemite Slough [Biological Resources]).

Response to Comment 47-38

The comment states that the evaluation of potential noise impacts is flawed for three reasons: (1) the CPSRA was not included as a noise sensitive receptor, (2) the proposed Yosemite Slough bridge is not analyzed as a source of noise, and (3) no potentially significant or significant noise impacts from noise to recreational users are identified. Refer to Responses to Comments 47-39, 47-40, and 47-41 for full responses to these issues. Also refer to Master Response 3 (Impacts of the Project on Yosemite Slough [Biological Resources]).

Response to Comment 47-39

The comment states that the Draft EIR does not disclose potentially significant impacts to recreational users of the CPSRA, and that the Draft EIR provides no significance threshold for analyzing potential noise-related impacts to recreational users of the CPSRA. While it is true that the Draft EIR characterizes parks and open space as noise-sensitive uses, this characterization is based upon the City of San Francisco General Plan's "Land Use Compatibility Chart for Community Noise" presented in the Environmental Protection Element of the *San Francisco General Plan*. The General Plan Land Use Compatibility Chart indicates that new construction of parks should generally not be undertaken in areas where ambient noise levels exceed 75 dBA. As shown in the Draft EIR and further explained in Response to Comment 47-41, implementation of the project would result in an increase in 24-hour noise levels to the areas adjacent to the CPSRA; however, the future ambient noise levels are estimated to be well below the 70 dBA noise exposure that is considered satisfactory by the General Plan. It should also be pointed out that noise-sensitive uses, as per the General Plan, are not the same as noise-sensitive receptors under CEQA. Noise-sensitive receptors are generally considered to be those individuals for whom a long-term exposure to excessive noise could be detrimental to their health or welfare. Uses with noise-sensitive receptors in San Francisco are generally considered to be uses such as residences, schools, hospitals, and rest homes.

The commenter states that no noise measurements were taken within the CPSRA. Noise measurements were taken in close proximity to uses that would experience permanent long-term increases in ambient noise levels as a result of project implementation. As described in Section III.I (Noise and Vibration), existing long-term (24-hours over the course of three days in January 2009 and July 2009) and short-term (15-minute) noise measurements were taken at locations that were identified as having sensitive receptors that would potentially be permanently impacted by implementation of the Project. These noise-sensitive receptors represented residential and educational uses as identified in Table III.I-3 through Table III.I-6. Consistent with the City's Noise Ordinance and General Plan, the A-weighted decibel scale (dBA) was used to measure potential noise impacts. Residential and educational uses were selected, as these uses would have the highest degree of sensitivity to increases in noise levels, and increases in exterior noise levels above 75 dBA L_{max} (L_{max} is the highest peak noise) would result in interference with indoor speech and sleep disruption, and would impact the educational environment of the schools in the vicinity of the Project. While users of the CPSRA would experience a change in ambient noise levels, these recreationists are not considered noise sensitive receptors. Implementation of the Project would not result in ambient noise levels in excess of 70 dBA within the CPSRA, as noise levels along adjacent roadways were modeled to be below 65 dBA L_{dn} . As roadway noise is the predominant source of ambient noise in the Project vicinity, and as the CPSRA is generally located either equal to or further from roadways than the noise

measurement locations used for the EIR, ambient noise levels within the CPSRA would be equal to or less than the noise levels identified at those noise measurement locations. Recreational users of the CPSRA would not be exposed to 24-hour increases in noise levels as would residential uses located along the Project roadways, nor would they be exposed to temporary increases above 75 dBA L_{max} that would occur during stadium events at the new stadium site. In addition, as noted, the CPSRA is not open after dark, which is when most non-football-related stadium events would likely occur. Therefore, the locations selected for both long- and short-term noise measurements meet the requirements of the City of San Francisco and provide an accurate baseline for evaluation of potential project impacts to sensitive receptors as required by CEQA.

As noise levels adjacent to the CPSRA would be substantially below the 70 dBA noise, implementation of the proposed Project would be considered compatible with CPSRA uses. The potential for the project to create permanent increases in ambient noise levels that would exceed the 70 dBA noise exposure limit were evaluated under Impact NO-4, which analyzed operational impacts such as the use of mechanical cooling systems, deliveries of retail and commercial products and activities such as trash collection and Impact NO-6, which analyzed operational impacts due to increase in roadway noise levels. As detailed under these impacts, ambient noise levels associated with the Project would not exceed 70 dBA and noise measurements were not required to be taken in the CPSRA as impacts to users within the CPSRA would be less than significant.

The commenter claims that the Draft EIR provides no significance threshold for determining significant impacts on the CPSRA, in addition to claiming that no quantitative or qualitative analysis was made for determining potential Project-related noise impacts to the CPSRA. As neither the CDPR nor the CPSRA General Plan has established significance criteria for increases in ambient noise levels, the lead agencies utilized the thresholds of significance identified in Section III.I.4 (and further detailed below), in order to determine potential impacts to both existing and future noise-sensitive receptors both on and off site with regard to construction and operational increases in noise. The Lead Agencies utilized the City of San Francisco Noise Ordinance standards for residential uses to evaluate potential permanent increases in noise levels that would occur with implementation of the project for off-site uses, including users of the CPSRA. The residential noise standards are the most restrictive identified in the Noise Ordinance, and, therefore, afford the most protection to off-site users in the vicinity of the Project.

The Draft EIR's significance thresholds are clearly identified on under Section III.I.4 (Impacts) on pages III.I-21 and III.I-22. Specifically, with regard to impacts relating to increase in ambient noise increases that would potentially impact noise-sensitive receptors the following thresholds were identified based upon the City of San Francisco General Plan or Noise Ordinance:

- During Construction
 - > Generate construction noise between the hours of 8:00 P.M. and 7:00 A.M. that exceeds the ambient noise level by 5 dBA at the nearest property line (unless a special permit has been granted by the Director of Public Works or the Director of Building Inspection); or produce noise by any construction equipment (except impact tools) that would exceed 80 dBA at 100 feet. (Criteria I.a and I.d)
- During Operation
 - > Cause an increase in noise (i.e., as produced by “any machine or device, music or entertainment or any combination of same”) greater than 5 dBA or 8 dBA above the local

ambient (i.e., defined as the “lowest sound level repeating itself during a minimum 10-minute period as measured with a sound level meter, using slow response and A-weighting”) at any point outside the property plane of a residential, commercial/industrial or public land use, respectively, containing the noise source. (Criteria I.a, I.c, or I.d)

- > In the case of noise or music generated from a “licensed Place of Entertainment,” cause an increase in low frequency ambient noise (i.e., defined as the “lowest sound level repeating itself during a 10-minute period as measured with a sound level meter, using slow response and C-weighting”) by more than 8 dBC. (Criteria I.a, I.c, or I.d)

Additionally, the Draft EIR considered noise impacts where quantitative significance thresholds may not be included in the City of San Francisco *General Plan* or Noise Ordinance. The Draft EIR states that the Project would cause or be subject to a significant noise or vibration impact if it would:

- Cause outdoor traffic noise levels at existing or proposed residential and other noise-sensitive uses to increase by more than the FTA criteria specified in Table III.I-9, which vary depending on the baseline ambient noise levels. (Criterion I.c)
- Cause excessive annoyance, activity disruption, or sleep disturbance due to noise from SFO-related aircraft operations at the proposed residential uses to be located on the Project site according to FAA criteria (i.e., aircraft noise level of 65 dBA L_{dn} or greater). (Criteria I.e, I.f, and I.g)

The lead agencies utilized the FTA criteria to evaluate noise impacts from surface transportation modes (i.e., passenger cars, trucks, buses, and rail). The incremental noise allowances established by the FTA extended the EPA’s incremental impact criteria to higher baseline ambient levels. As baseline ambient levels increase, smaller and smaller increments are allowed to limit increases in community annoyance (e.g., in residential areas with a baseline ambient noise level of 50 dBA L_{dn} , a 5 dBA increase in noise levels would be acceptable, while at 70 dBA L_{dn} , only a 1 dBA increase would be allowed). Again, these standards, which are designed to protect the most noise-sensitive uses, such as residential and educational uses, were applied to all off-site uses, including users of the CPSRA.

As such, the Draft EIR evaluated potential impacts to all on- and off-site users that would occur due to construction and operation of the Project. As there would be no development within the CPSRA and noise levels from roadways adjacent to the CPSRA (e.g., Harney Way and Gilman Avenue) would be well below the 70 dBA compatibility range, no noise measurements were required to be taken within the CPSRA. No new or additional analysis would be required as suggested in the comment. Further, in response to this comment Figure III.I-5 (Existing and Future Noise Sensitive Land Uses in Project Site and Vicinity) has been modified to more accurately depict land uses identified as noise sensitive by the City of San Francisco’s General Plan or Municipal Code.

Response to Comment 47-40

As stated in Master Response 3 (Impacts of the Project on Yosemite Slough [Biological Resources]), ambient noise levels at Yosemite Slough are currently high, due to the industrial and storage uses of the properties on the south side of Yosemite Slough (that are outside both the Yosemite Slough Restoration Project area and the CP/HPS project site, and will thus not be subject to change as a result of either project) that are the source of considerable ambient noise. The Yosemite Slough bridge will be used only by BRT buses except during the 10 to 12 days (or if Variant 5 is approved) annually in which vehicles entering or



SOURCE: Lennar, 2009; CCSF, 2007; PBS&J, 2010.

PBS&J 04.21.10

FIGURE III.I-5 **Candlestick Point - Hunters Point Shipyard Phase II EIR**
EXISTING AND FUTURE NOISE SENSITIVE LAND USES
IN PROJECT SITE AND VICINITY

exiting the new stadium will be using the bridge. The hybrid buses that would be used on this BRT route would have a maximum noise level (from pull-away to 35 mph) of 70 to 75 dBA, roughly equivalent to the sound of freeway traffic at a distance of 50 feet. The roadway noise modeling performed for the project in the Draft EIR accounts for the total increase in daily vehicle trips to predict the 24-hour increases in roadway noise levels along existing uses that would potentially be impacted by implementation of the project. Development of the Yosemite Slough bridge would result in BRT buses traveling along the bridge over undeveloped portions of the CPSRA, and would not result in an increase in 24-hour noise levels that would exceed standards for sensitive receptors established by the City's Noise Ordinance or the *City of San Francisco General Plan*.

As described below in Response to Comment 47-41, implementation of the project would result in an increase in 24-hour noise levels in the CPSRA that are within the noise exposure that is considered satisfactory with no special noise insulation requirements according to the "Land Use Compatibility Chart for Community Noise" presented in the Environmental Protection Element of the *San Francisco General Plan*. Additionally, while noise levels would increase in the vicinity of the Yosemite Slough bridge, there are no permanent noise sensitive receptors within the vicinity of the bridge (residential, educational, or convalescent uses). While recreationists would be exposed to a new source of noise in the vicinity of the bridge, their exposure would be temporary and below the thresholds of significance identified in the Draft EIR. Refer to Response to Comment 47-41 for greater details regarding potential construction impacts to recreationists within the CPSRA.

Response to Comment 47-41

Permanent increases in ambient noise levels were evaluated and identified in the Draft EIR utilizing the significance standards identified in the City of San Francisco Noise Ordinance, as described in Response to Comment 47-39 above. While the Noise Ordinance does incorporate the World Health Organization Guidelines (WHO), the City utilizes the Environmental Protection Element of the *San Francisco General Plan* in determining compatibility of proposed land uses with existing adjacent uses. Specifically, Objective 11 of the Environmental Protection Element states:

Promote land uses that are compatible with various transportation noise levels.

Policy 11.1	Discourage new uses in areas in which the noise level exceeds the noise compatibility guidelines for that use. The "Land Use Compatibility Chart for Community Noise" included in Policy 11.1 specifies the compatibility of different land use types within a range of ambient noise levels.
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The "Land Use Compatibility Chart for Community Noise" specifies that for new development to be compatible with Parks and Playgrounds:

- Noise exposure is considered "satisfactory, with no special noise insulation requirements" where the L_{dn} is 70 dBA or less.
- "New construction or development should be undertaken only after a detailed analysis of noise reduction requirements is made and needed noise insulation features included in the design" where the L_{dn} is between 68 dBA and 78 dBA.
- "New construction or development should generally not be undertaken" where L_{dn} is over 75 dBA.

As shown in Table III.I-14 (Modeled Noise Levels along Major Project Site Access Roads), the only two roadways in the vicinity of the CPSRA that would experience increases in roadway noise levels are Harney Way west of Jamestown Avenue, which is modeled to have a noise level of 59.6 L_{dn} in the year 2030 and Gilman Avenue east of Third Street, which is modeled to have a noise level of 64.6 L_{dn} in the year 2030. These noise levels are within the noise exposure that is considered satisfactory with no special noise insulation requirements according to the “Land Use Compatibility Chart for Community Noise” presented in the Environmental Protection Element. Therefore, impacts from increased roadway noise levels are identified and would be less than significant to users of the CPSRA.

Existing CPSRA users are frequently exposed to noise levels that are likely above the 75 dBA maximum identified in the “Land Use Compatibility Chart for Community Noise.” These would include football games and special events at the existing stadium site, the Blue Angels flying show that occurs during Fleet Week, and fireworks shows on the Fourth of July. Project-related business and residential uses would be required to comply with the noise limits established by the City of San Francisco Noise Ordinance, and therefore, operational impacts to users of the CPSRA would be less than significant, as identified in the Draft EIR.

Upon approval of the Project, no construction activity associated with development of Candlestick Point would occur within the CPSRA. Further, page 48 of the CPSRA General Plan acknowledges that construction activity associated with proposed CPSRA improvements would be short-term and less than significant. As construction of the Candlestick Point area would comply with the regulations of Section 29 of the Noise Ordinance and identified in mitigation measures MM NO-1a.1 and MM NO-1a.2, construction-related impacts would be less than significant with regard to exposure of persons to or generation of noise levels in excess of standards established in the Environmental Protection Element of the *San Francisco General Plan* or San Francisco Noise Ordinance (Article 29, *San Francisco Police Code*) as identified in the Draft EIR.

The Draft EIR did identify that construction activities occurring within the Project site and in the Project vicinity for roadway and infrastructure improvements would last throughout the 18-year construction phasing, and, therefore, this temporary increase in ambient noise levels would be noticeable and would likely be cause for human annoyance. Implementation of the above-mentioned mitigation measures would reduce the noise levels associated with the loudest construction activities identified above, but not to a less-than-significant level. Therefore, construction-related temporary increases in ambient noise levels for users of the CPSRA would be considered significant and unavoidable as identified in the Draft EIR.

No substantial sources of groundborne vibration would be built as part of the Project; therefore, operation of the Project would not expose sensitive receptors on site or off site to excessive groundborne vibration or groundborne noise levels, and this impact would be less than significant to users of the CPSRA, as identified in the Draft EIR. Construction related vibration would likely not occur within 50 feet of users of the CPSRA, as the general vicinity of the construction area would be secured and CPSRA users would not be located directly adjacent to these construction activities. As such, construction related vibration impacts would be less than significant to users of the CPSRA.

Refer also to Response to Comment 47-40 for a discussion of traffic noise impacts associated with the Yosemite Slough bridge.

Response to Comment 47-42

Contrary to the comment, the Draft EIR does calculate the significance of the risks due to fugitive dust, including contaminated fugitive dust. With regard to the identification of significance thresholds, the thresholds used to evaluate toxic air contaminants (TACs) associated with contaminated dust are discussed on page III.H-17:

Though not explicitly required by the BAAQMD CEQA Guidelines,¹⁸¹ a HRA was conducted to evaluate the human health effects from emissions of DPM and TAC-containing soil-PM₁₀ associated with Project construction activities. This analysis was deemed appropriate due to the scale (multi-year time horizon utilizing extensive construction equipment over a large area) and location (e.g., brownfield redevelopment on land which may contain residual chemicals in soil) of the Project. Therefore, the BAAQMD CEQA significance thresholds as described below were used to evaluate the possibility that emissions of DPM or soil-PM₁₀ emissions from Project construction activities would expose the public to potential airborne health risks:

- Probability of contracting cancer for the Maximally Exposed Individual (MEI) exceeds 1×10^{-5} (10 in a million)
- Ground level concentrations of noncarcinogenic air contaminants/pollutants resulting in a HI greater than 1 for the MEI

While the thresholds presented are not specifically designated by the BAAQMD for use in evaluating impacts from construction activities, they are the de facto risk and hazard levels used by the BAAQMD and virtually all other local and state agencies in California in determining whether a project, process or facility would have an adverse health impact. In respect to the supporting calculations, refer to Appendix H3, Attachment II of the Draft EIR, entitled *Human Health Risk Assessment of Chemicals Bound to Airborne PM₁₀* for a complete description of the methodology and supporting calculations used to estimate cancer risks and noncancer hazards associated with construction dust emissions.

The control measures applied in the Draft EIR relating to fugitive dust are appropriate and are consistent with the City of *San Francisco Health Code* and BAAQMD CEQA Guidelines. The mitigations are not optional and are required by the City of San Francisco, as discussed on page III.H-16:

San Francisco Health Code Article 22B, Construction Dust Control, requires, for construction projects within 1,000 feet of sensitive receptors (residence, school, childcare center, hospital or other health-care facility or group-living quarters), preparation of a site-specific dust control plan. That plan must include a number of equivalent measures to minimize visible dust. These measures contain all the dust control measures presented in the BAAQMD CEQA Guidelines; however the *San Francisco Health Code* requirements increase the watering frequency as well as adding monitoring, recordkeeping, third-party verification, and community outreach requirements not found in the BAAQMD guidelines.

As discussed in Impact AQ-3, on page III.H-28 of the Draft EIR:

Emissions of soil-PM₁₀ from construction activities were estimated assuming the mitigation measures discussed in MM HZ-15.

The specific mitigation measures to be implemented are defined in MM HZ-15 of the Draft EIR. In summary, a dust mitigation plan must be submitted and approved by the BAAQMD prior to issuance of a grading, excavation, site building, or other permit from the City. Mitigation is not deferred; rather specific standards that the dust plans must meet are set out in the mitigation measure. The mitigation measure MM HZ-15 to be implemented in the Project is defined on Draft EIR pages III.K-99 to -101, (underlined

text shows revisions outlined in Master Response 16 [Notification Regarding Environmental Restrictions and Other Cleanup Issues]), as follows:

MM HZ-15

Asbestos Dust Mitigation Plans and Dust Control Plans. *Prior to obtaining a grading, excavation, site, building or other permit from the City that includes soil disturbance activities, the Project Applicant shall obtain approval of an Asbestos Dust Mitigation Plan (ADMP) from BAAQMD for areas over 1 acre that potentially contain naturally occurring asbestos and approval of a Dust Control Plan (DCP) from SFDPH for all areas at HPS Phase II and for areas over 0.5 acre at Candlestick Point. Compliance with the ADMP and DCP shall be required as a condition of the permit.*

The ADMP shall be submitted to and approved by the BAAQMD prior to the beginning of construction, and the Project Applicant must ensure the implementation of all specified dust control measures throughout the construction Project. The ADMP shall require compliance with the following specific control measures to the extent deemed necessary by the BAAQMD to meet its standard:

For construction activities disturbing less than one acre of rock containing naturally occurring asbestos, the following specific dust control measures must be implemented in accordance with the asbestos ATCM before construction begins and each measure must be maintained throughout the duration of the construction Project:

- *Limit construction vehicle speed at the work site to 15 miles per hour*
- *Sufficiently wet all ground surfaces prior to disturbance to prevent visible dust emissions from crossing the property line*
- *Keep all graded and excavated areas, around soil improvement operations, visibly dry unpaved roads, parking and staging areas wetted at least three times per shift daily with reclaimed water during construction to prevent visible dust emissions from crossing the property line. Increased watering frequency may be necessary whenever wind speeds exceed 15 miles per hour.*
- *Adequately wet all storage piles, treat with chemical dust suppressants, or cover piles when material is not being added to or removed from the pile*
- *Wash down all equipment before moving from the property onto a paved public road*
- *Clean all visible track out from the paved public road by street sweeping or a HEPA filter equipped vacuum device within 24 hours*

For construction activities disturbing greater than one acre of rock containing naturally occurring asbestos, construction contractors are required to prepare an ADMP specifying measures that will be taken to ensure that no visible dust crosses the property boundary during construction. The plan must specify the following measures, to the extent deemed necessary by the BAAQMD to meet its standard:

- *Prevent and control visible track out from the property onto adjacent paved roads. Sweep with reclaimed water at the end of each day if visible soil material is carried out from property.*
- *Ensure adequate wetting or covering of active storage piles*
- *Hydroseed or apply non-toxic soil stabilizers to disturbed surface areas and storage piles greater than ten cubic yards or 500 square feet of excavated materials, backfill material, import material, gravel, sand, road base, and soil that will remain inactive for seven days or more*
- *Control traffic on on-site unpaved roads, parking lots, and staging areas: including a maximum vehicle speed of 15 miles per hour or less*

- *Provide as much water as necessary to control dust (without creating run-off) in any area of land clearing, earth movement, excavation, drillings, and other dust-generating activity.*
- *Control dust emissions from off-site transport of naturally occurring asbestos containing materials*
- *Stabilize disturbed areas following construction*

If required by the BAAQMD, air monitoring shall be implemented to monitor for off-site migration of asbestos dust during construction activities and appropriate protocols shall be established and implemented for notification of nearby schools, property owners and residents when monitoring results indicate asbestos levels that have exceeded the standards set forth in the plan.

The DCP shall be submitted to and approved by the SFDPH prior to the beginning of construction, and the Project Applicant must ensure the implementation of all specified dust control measures throughout the construction Project. The DCP shall require compliance with the following specific mitigation measures to the extent deemed necessary by the SFDPH to achieve no visible dust at the property boundary:

- *Submission of a map to the Director of Health showing all sensitive receptors within 1,000 feet of the site.*
- *Keep all graded and excavated areas, areas around soil improvement operations, visibly dry unpaved roads, parking and staging areas wetted at least three times per shift daily with reclaimed water during construction to prevent visible dust emissions from crossing the property line.*
- *Increased watering frequency may be necessary whenever wind speeds exceed 15 miles per hour.*
- *Analysis of wind direction and placement of upwind and downwind particulate dust monitors.*
- *Record keeping for particulate monitoring results.*
- *Requirements for shutdown conditions based on wind, dust migration, or if dust is contained within the property boundary but not controlled after a specified number of minutes.*
- *Establishing a hotline for surrounding community members who may be potentially affected by Project-related dust. Contact person shall respond and take corrective action within 48 hours. Post publicly visible signs around the site with the hotline number as well as the phone number of the BAAQMD and make sure the numbers are given to adjacent residents, schools, and businesses.*
- *Limiting the area subject to construction activities at any one time.*
- *Installing dust curtains and windbreaks on windward and downwind sides of the property lines, as necessary. Windbreaks on windward side should have no more than 50% air porosity.*
- *Limiting the amount of soil in trucks hauling soil around the job site to the size of the truck bed and securing with a tarpaulin or ensuring the soil contains adequate moisture to minimize or prevent dust generation during transportation.*
- *Enforcing a 15 mph speed limit for vehicles entering and exiting construction areas.*
- *Sweeping affected streets with water sweepers at the end of the day.*
- *Installing and using wheel washers to clean truck tires.*
- *Halting all construction activities during periods of sustained strong winds, hourly average wind speeds of 25 miles per hour.*
- *Applying soil stabilization methods to inactive areas.*
- *Sweeping off adjacent streets to reduce particulate emissions.*

- *Hiring an independent third party to conduct inspections for visible dust and keeping records of those inspections.*
- *Minimizing the amount of excavated material or waste materials stored at the site.*
- *Prevent visible track out from the property onto adjacent paved roads. Sweep with reclaimed water at the end of each day if visible soil material is carried out from property.*

For all areas, this measure shall be implemented through Article 22B (areas over one half acre) or for HPS Phase II through a requirement in the potential additions to Article 31 imposing requirements to parcels other than Parcel A or through an equivalent process established by the City or Agency.

The Draft EIR concludes that with mitigation measure MM HZ-15, the impacts would less than significant (page III.H-29):

As the carcinogenic and noncarcinogenic health risks posed by soil-PM₁₀ emissions during construction activities associated with development of HPS Phase II have been determined to be below established thresholds, this impact is less than significant with mitigation measure MM HZ-15 discussed above. ...

The Draft EIR goes on to indicate, that in the absence of mitigation measure MM HZ-15, the impacts would likely be significant (page III.H-29) (text has been revised as shown by underline and strikethrough):

As the carcinogenic and noncarcinogenic health risks posed by soil-PM₁₀ emissions during construction activities associated with development of Candlestick Point have been determined to be below established thresholds, this impact is less than significant with mitigation measure MM HZ-15 discussed above. An analysis was not conducted to determine the impact of Project construction activities without the dust control mitigation measures described in MM HZ-15; ~~however, because the dust controls described in MM HZ-15 are required by San Francisco Health Code Article 22B or BAAQMD regulations.~~ Due to the scale of the construction activities and proximity to adjacent receptors, without these dust control measures, the impacts from TACs bound to soil PM₁₀ would likely be above the BAAQMD's significance threshold and would, therefore, be potentially significant.

The BAAQMD significance thresholds used in the Draft EIR to evaluate air quality impacts are current and appropriate for use. The current guidelines, as specified in the 1999 BAAQMD CEQA Guideline document, are recommended for use until the implementation of updated guidelines. Since the publication of the Draft EIR, the BAAQMD has released additional information pertaining to the updated BAAQMD CEQA Guidelines. During the BAAQMD Public Meeting on January 6, 2010, the Board decided to postpone adoption of the updated CEQA Guidelines to a future meeting. Future consideration of the updated BAAQMD CEQA Guidelines is postponed until June 2010 at the earliest. Therefore, the adoption and implementation of the updated BAAQMD CEQA Guidelines is not expected until after June 2010.

Even so, the proposed BAAQMD CEQA Guidelines as available at the time the Draft EIR were considered in the Draft EIR, as specified in the first full paragraph on page III.H-39 and, further, Master Response 19 (Proposed BAAQMD Guidelines) provides an updated analysis based on the most recent guidance.

The conclusions stated in the Draft EIR with respect to soil-PM₁₀ due to construction activities are outlined on page III.H-38, third paragraph, as follows:

As stated under Impact AQ-1, fugitive dust associated with Project construction would not be expected to cause violations of AAQS with the inclusion of a City mandated and approved dust

control plan. As stated under Impact AQ-2 and Impact AQ-3, emissions of DPM and soil-PM₁₀ from construction activities associated with the Project would not exceed BAAQMD's thresholds for determining potential impacts to human health. With this plan in place, Project dust emissions would be controlled consistent with BAAQMD CEQA Guidelines and, therefore, construction fugitive dust emissions would be considered to have a less-than-significant project impact. With Project emissions well controlled, the Project would not make a considerable contribution to a cumulative impact.

Response to Comment 47-43

As discussed in Response to Comment 47-42, the BAAQMD significance thresholds used in the Draft EIR to evaluate air quality impacts are current and appropriate for use. The current guidelines, as specified in the 1999 BAAQMD CEQA Guideline document, are to be used until the implementation of updated guidelines. Refer to Master Response 19 (Proposed BAAQMD Guidelines) for an updated analysis based on the most recent guidance.

Response to Comment 47-44

The California Air Resources Board (ARB) considers a United States Environmental Protection Agency (USEPA) Tier 2 engine outfitted with California ARB Level 3 Verified Diesel Emission Control Strategies (VDECS) as a USEPA Tier 4 equivalent engine. The Draft EIR used these two terms interchangeably; however, in response to this comment and to clarify the description, the text in Section III.H (Air Quality) has been revised to always refer to the mitigation as "USEPA Tier 2 standards outfitted with California ARB Level 3 VDECS or equivalent." Changes have been made in the following locations:

- Page III.H-24, Impact AQ-2, first and second bullets:
 - Construction equipment used for the Project ~~will~~ would utilize a phased-in emission control technology in advance of a regulatory requirement such that 50 percent of the fleet will meet USEPA Tier ~~4 engine~~ 2 standards outfitted with California ARB Level 3 VDECS (Verified Diesel Emission Control Strategies) for particulate matter control (or equivalent) during ~~2010 and 2011~~ the first two years of construction activities, increasing to 75 percent of the fleet in ~~2012~~ the third year and 100 percent of the fleet starting in ~~2013~~ the fourth year and for the duration of the Project
 - Construction equipment used in the Alice Griffith parcels (CP01 through CP06) would utilize equipment which meets the USEPA Tier ~~4 engine~~ 2 standards outfitted with California ARB Level 3 VDECS (Verified Diesel Emission Control Strategies) for particulate matter control (or equivalent) throughout the entire duration of construction activities on those parcels-
- Page III.H-25, mitigation measure MM AQ-2.1 has been revised to reflect the correct standard:

MM AQ-2.1 Implement Emission Control Device Installation on Construction. To reduce DPM emissions during Project construction, the Project Applicant shall require construction equipment used for the Project to utilize emission control technology such that 50% of the fleet will meet USEPA Tier 2 standards outfitted with California ARB Level 3 VDECS (Verified Diesel Emission Control Strategies) for particulate matter control (or equivalent) during ~~2010 and 2011~~ the first two years of construction activities, increasing to 75% of the fleet in ~~2012~~ the third year and 100% of the fleet starting in ~~2013~~ the fourth year and for the duration of the Project.

Appendix H3, Attachment 1, of the Draft EIR, entitled *Human Health Risk Assessment of Construction-Related Diesel Particulate Matter* discusses the evaluation analysis used to evaluate Impact AQ-2. Though not explicitly discussed in the Draft EIR, the Appendix provides the necessary information to determine the

health impacts without mitigation. In response to this comment, the unmitigated impacts have been added to the Draft EIR in the following locations:

■ Page III.H-25, Impact AQ-2a discussion:

As noted earlier, BAAQMD CEQA Guidelines has an established threshold of 10 in one million for carcinogenic health risks. The HRA, which took into account the mitigation measures described above, concluded that the cancer risk at the MEI would be 3.3 in one million. This represents the maximum level of DPM experienced by all off-site sensitive receptors during Candlestick Point construction activities. Exposure to DPM from construction activities associated with Candlestick Point would not exceed the threshold. In addition, the HRA concluded the maximum chronic noncancer HI to be 0.007, which is below the BAAQMD's significance threshold of 1.0. ~~An analysis was not conducted to determine the impact of Candlestick Point construction activities without the mitigation described above; however, due to the scale of the construction activities and proximity to adjacent receptors, without mitigation the impacts would be potentially above the BAAQMD's significance threshold and would therefore be potentially significant.~~

The impact of Candlestick Point construction activities without the mitigation described above would result in an estimated cancer risk at the MEI of 11 in one million, above the significance threshold of 10 in one million and, therefore, significant without mitigation. The corresponding chronic noncancer HI for the unmitigated emissions was estimated to be 0.027, which is below the BAAQMD's noncancer HI significance threshold of 1.0.

Due to the scale of the construction activities and proximity to adjacent receptors, without mitigation the impacts would be potentially above the BAAQMD's significance threshold and would, therefore, be potentially significant.

As the carcinogenic and noncarcinogenic health risks posed by DPM emissions during construction activities associated with development of Candlestick Point have been determined to be below established thresholds with mitigation, this impact is less than significant with mitigation measure MM AQ-2.1:

■ Pages III.H-25 to -26, Impact AQ-2b discussion:

As noted above, BAAQMD CEQA Guidelines has an established threshold of 10 in one million for carcinogenic health risks; the HRA which took into account the mitigation measures described above concluded that the cancer risk at the MEI would be 3.8 in one million. This represents the maximum level of DPM experienced by all off-site sensitive receptors during HPS-Phase II construction activities. Construction activities associated with HPS-Phase II would not exceed the threshold. In addition, the HRA concluded the maximum chronic non-cancer HI to be 0.01, which is below the BAAQMD's significance threshold of 1.0. ~~An analysis was not conducted to determine the impact of Candlestick Point HPS Phase II construction activities without the mitigation described above; however, due to the scale of the construction activities and proximity to adjacent receptors, without mitigation the impacts would be potentially above the BAAQMD's~~ result in an estimated cancer risk at the MEI of 8.4 in one million, which is below the significance threshold of 10 in one million and would be potentially, therefore, less than significant without mitigation. The corresponding chronic noncancer HI for the unmitigated emissions was estimated to be 0.024, which is below the BAAQMD's noncancer HI significance threshold of 1.0.

Due to the scale of the construction activities and proximity to adjacent receptors, without mitigation the impacts would be potentially above the BAAQMD's significance threshold and would, therefore, be potentially significant.

As the carcinogenic and noncarcinogenic health risks posed by DPM emissions during construction activities associated with development of HPS-Phase II have been determined to be below established thresholds with and without mitigation, this impact is less than significant with implementation of mitigation measure MM AQ-2.1.

■ Page III.H-26, Impact AQ-2c discussion:

As noted earlier, BAAQMD CEQA Guidelines has an established threshold of 10 in one million for carcinogenic health risks; the HRA which took into account the mitigation measures described above concluded that the cancer risk at the MEI inside Alice Griffith would be 4.5 in one million. This represents the maximum level of DPM experienced by all on-site sensitive receptors during Project construction activities. Exposure to DPM from construction activities associated with the Project would not exceed the threshold. In addition, the HRA concluded the maximum chronic non-cancer HI to be 0.02, which is below the BAAQMD's significance threshold of 1.0. ~~An analysis was not conducted to determine the impact of Candlestick Point construction activities without the mitigation described above; however, due to the scale of the construction activities and proximity to adjacent receptors, without mitigation the impacts would be potentially above the BAAQMD's significance threshold and would therefore be potentially significant.~~

The impact of Candlestick Point and HPS Phase II construction activities without the mitigation described above would result in an estimated cancer risk at the on-site MEI (sensitive receptors inside Alice Griffith) of 20 in one million, above the significance threshold of 10 in one million and therefore significant without mitigation. The corresponding chronic noncancer HI for the unmitigated emissions was estimated to be 0.09, which is below the BAAQMD's noncancer HI significance threshold of 1.0.

Due to the scale of the construction activities and proximity to adjacent receptors, without mitigation the impacts would be potentially above the BAAQMD's significance threshold and would therefore be potentially significant.

As the carcinogenic and noncarcinogenic health risks posed by DPM emissions during construction activities associated with development of the Project have been determined to be below established thresholds with mitigation, this impact is less than significant with implementation of mitigation measure MM AQ-2.1 and mitigation measure MM AQ-2.2:

MM AQ-2.2 Implement Accelerated Emission Control Device Installation on Construction Equipment Used for Alice Griffith Parcels. In addition to mitigation measure MM AQ-2.1, in order to minimize the potential impacts to residents living in Alice Griffith from the construction activities in that area, the Project Applicant will require that all construction equipment used in the Alice Griffith parcels (CP01 through CP06) would utilize equipment which meets the USEPA Tier 4 engine standards outfitted with California ARB Level 3 VDECS (Verified Diesel Emission Control Strategies) for particulate matter control (or equivalent) throughout the entire duration of construction activities on those parcels.

Response to Comment 47-45

Refer to Response to Comment 47-42 for a discussion of the application of mitigation measures used to evaluate impacts associated with construction dust. The analysis in the Draft EIR demonstrates that the impacts would be less than significant with mitigation; therefore, the analysis complies with CEQA.

Response to Comment 47-46

Double Rock is a formation of two rock outcroppings visible in the waters of South Basin, approximately 500 feet from the shoreline of CPSRA. Double Rock is visible from some shoreline areas of CPSRA and Hunters Point Shipyard. Double Rock as a local name was adopted for the Double Rock War Dwellings, developed in 1943/44 as part of Hunters Point Shipyard housing. The Alice Griffith public housing now at Candlestick Point replaced the Double Rock dwellings in 1964; Double Rock Street is a short cul-de-sac within the Alice Griffith site. Double Rock Community Garden near Griffith Street and Fitzgerald Avenue is maintained at the Alice Griffith public housing site. It is noted that the Alice Griffith housing is often

referred to as “Double Rock” by local residents. Double Rock Baptist Church is at 1595 Shafter Avenue, one block east of Third Street, and almost a mile west of South Basin. Double Rock Grocery is at 2830 Ingalls Street, about one-half mile from South Basin. Other than the local use of the name, Double Rock does not have documented cultural associations.

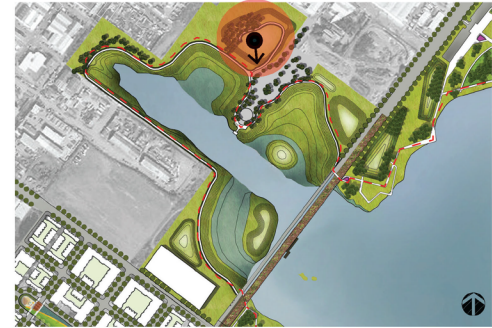
The Project would not alter the existing Double Rock formation in any way. Double Rock would continue to be visible from the CPSRA shoreline, including the improved CPSRA lands near Yosemite Slough and from shoreline open space proposed as part of Hunters Point Shipyard Phase II. The east side of the Yosemite Slough bridge would include pedestrian-bicycle lanes that would provide views of Double Rock. Visitors to the proposed restored Yosemite Slough area west of the bridge would in some cases have views of Double Rock blocked by the bridge. Figure C&R-10 through Figure C&R-13 of this document presents visual simulations of views of the Yosemite Slough bridge from the Yosemite Slough area. From some of those locations, as shown in Figure C&R-10 and Figure C&R-12, Double Rock would be seen below the bridge structure. Overall, however, the Project would maintain or enhance views of Double Rock. Refer also to Response 47-20 above, discussing viewpoints of the Bay and shoreline that would be available from the proposed Bay Trail and from the Yosemite Slough bridge. The Project would have a less-than-significant adverse effect on Double Rock as visual or cultural resource.

Response to Comment 47-47

Please see Master Response 3 (Impacts of the Project on Yosemite Slough [Biological Resources]) with respect to the Draft EIR’s analysis of the bridge’s potential impacts. Moreover, Yosemite Slough is a tidally dominated system with a large flow area within which tidal waters move in and out during ebb and flood tides. The proposed Yosemite Slough Restoration Project will make the tidal prism substantially larger than present conditions. The size and orientation of the proposed bridge piers will not constrict tidal flow in or out of Yosemite Slough, which will not result in an alteration of tidal currents. Even if the Restoration Project does not move forward, the effects of tidal constriction posed by bridge construction can be eliminated by sizing the bridge piers appropriately, which is the Project’s intent. Evidence of this intent is shown in “Impact of Yosemite Slough Bridge,” pages III.M-104 to -105 of the Draft EIR, which states (as revised in Section F [Draft EIR Revisions]):

The bridge across Yosemite Slough would not place structures within a SFHA that could generate high-velocity flood forces that could cause damage to the structure itself or adjacent structures. The Yosemite Slough bridge would be designed such that the superstructure would be well above the current 100-year flood hazard elevation in Zone V, to account for future sea level rise. Because the bridge was would be designed to avoid potential impedance of flood flows; therefore, the impacts would be less than significant. No mitigation is required.

It is recognized that there is a tidal restoration project for the Yosemite Slough area. It is not uncommon to design bridge piers and openings such that the net effect on tidal hydraulics is minimal or non-existent. The bridge project will incorporate this criterion into its design.



SOURCE: RHAA; Endres Ware, 2010.

PBS&J 04.16.10 02056 | JCS | 10

FIGURE C&R-10



Candlestick Point — Hunters Point Shipyard Phase II EIR
YOSEMITE SLOUGH BRIDGE
PANORAMIC VIEW FROM NORTHSIDE PICNIC KNOLL



SOURCE: RHAA; Endres Ware, 2010.

PBS&J 04.16.10 02056 | JCS | 10

FIGURE C&R-11



Candlestick Point — Hunters Point Shipyard Phase II EIR
YOSEMITE SLOUGH BRIDGE
PANORAMIC VIEW FROM NORTHSIDE PLAZA



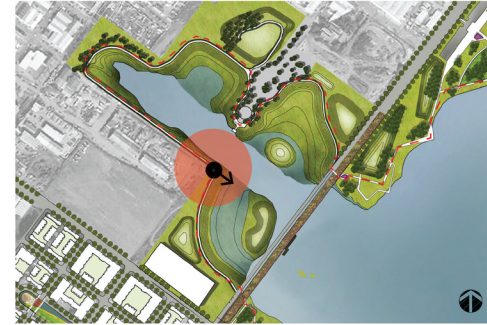
SOURCE: RHAA; Endres Ware, 2010.

PBS&J 04.16.10 02056 | JCS | 10

FIGURE C&R-12



Candlestick Point — Hunters Point Shipyard Phase II EIR
YOSEMITE SLOUGH BRIDGE
PANORAMIC VIEW FROM NORTHSIDE BAY TRAIL



SOURCE: RHAA; Endres Ware, 2010.

PBS&J 04.16.10 02056 | JCS | 10

FIGURE C&R-13



Candlestick Point — Hunters Point Shipyard Phase II EIR
YOSEMITE SLOUGH BRIDGE
PANORAMIC VIEW FROM SOUTHSIDE BAY TRAIL

Response to Comment 47-48

Draft EIR Section III.F (Shadows), analyzes Project shadow effects on existing and proposed open space in the Project site and vicinity, including CPSRA. The analysis conclusions are based on significance criteria presented on Draft EIR page III.F-5 (the underlined text corrects only a typographical error):

The CCSF and Agency have not formally adopted significance standards for impacts related to shadows, but generally consider that implementation of the Project would have significant impacts if it were to:

F.a Create new shadow in a manner that substantially affects outdoor recreation facilities or other public areas

In addition, shadow effects would be significant if they would affect, in an adverse manner, the use of any park ~~of or~~ open space under the jurisdiction of the SFRPD, or significantly detract from the usability of other existing publicly accessible open space.

The comment requested that the Draft EIR apply *Planning Code* Section 295 criteria and methodology to evaluate Project effects on CPSRA. The Draft EIR discusses *Planning Code* Section 295, “The Sunlight Ordinance,” on pages III.F-4 to -5; Draft EIR page III.F-5 states:

As noted above, parks and open space within the Project site or in the Project vicinity that are under the jurisdiction of the SFRPD include Candlestick Park, Bayview Park, Gilman Park, India Basin Shoreline Park, and India Basin Open Space. Development near these parks is subject to shadow review under *Planning Code* Section 295, except for Candlestick Park, which would be removed from the jurisdiction of the Recreation and Park Department as a result of the Project.

CPSRA is not under SFRPD jurisdiction, and Draft EIR page III.F-8 describes the approach to shadow effects on CPSRA (the deleted text in the first sentence of the second paragraph corrects only typographical errors in the Draft EIR):

For parks and open space that are not subject to the review requirements of *Planning Code* Section 295, only ~~provides~~ a qualitative assessment of shadow effects is provided, to determine whether enjoyment of the park or public space by users would be substantially and adversely affected by shadow effects. ...

Consistent with the significance criteria, the Draft EIR evaluates the shadow effects on CPSRA based on the extent of the area shaded, the time of day, and shade patterns at different seasons. Draft EIR pages III.F-9 through III.F-26 and Figure III.F-3 through Figure III.F-14 present the range of shadow conditions that would occur at the CPSRA throughout the year from 10:00 A.M. to 3:00 P.M., that are, as stated, the periods of most intensive open space use. As noted in the text and figures, other than winter months, when the sun angles are lowest and buildings shadows would therefore be at their longest extent, new shading in midday and afternoon periods would affect only 1 percent or less of the CPSRA. In December, midday shading would affect about 2 percent of the CPRSA, increasing to about 12 percent at 3:00 P.M. Refer to Figure III.F-4 (Candlestick Point: Shadow Patterns: December 21 [Noon PST]), and Figure III.F-5 (Candlestick Point: Shadow Patterns: December 21 [3 PM PST]), illustrating those December shadow conditions. As shown in Figure III.F-5, during mid-afternoon in winter (the period with the longest shadows), most of the shoreline of CPSRA would be in sun, including the proposed Bay Trail alignment and other waterfront activity areas that may be developed at CPSRA, such as windsurfing launch areas.

In general, the maximum winter conditions would occur from November to January. The Project would not add substantial shade to CPSRA during most of the year.

Therefore, the Draft EIR concluded on page III.F-26 that Project shade would not have a significant adverse effect on use of CPSRA:

The CPSRA would be affected by new shade in the afternoons, but most areas would experience limited to no new shadow from the Project. Other areas of the CPSRA would largely continue to remain in sun throughout the year. Project shadow would not interfere with the public's use or enjoyment of the CPSRA. Activities in these areas, such as windsurfing launching, walking, jogging, and fishing, would not be affected by the new shade.

With respect to comments on Section 295 criteria and methodology, Figure III.F-2 (Candlestick Point: Proposed Project Year-Round Shadow Trace) identifies the maximum extent of all Project-generated shadows from one hour after sunrise to one hour before sunset over an entire year at Candlestick Point, the periods specified in Section 295. While the shadow trace provides information on parks and open space that could be affected by new shading from Project structures over an entire year, it does not provide information on the shadow effects experienced by a park or open space at any particular time of the day or year. The trace is a "time-lapse" image of all shading during the year. The trace does indicate that in afternoon, up to hour before sunset, Project shade could affect CPSRA, extending across the CPSRA to the shoreline. Those effects would occur after 3:00 P.M., after the typical time of intensive use. (During late spring, summer and early fall months, after 3:00 P.M., some Project shading would occur, but most of CPSRA would not be affected.) Actual conditions would be as shown, for example, in Figure III.F-5 (Candlestick Point: Shadow Patterns: December 21 [3 PM PST]), when about 12 percent of CPRSA would be in shade, and the shade would not extend to the shoreline.

Adopted Section 295 criteria include a 1 percent limit for increased shading of larger parks (greater than two acres and having less than a 20 percent existing shadow load), and the commenter stated that this criterion should be applied to analysis of shading of CPSRA. As discussed on Draft EIR page III.F-5, the adopted Section 295 criteria use "Annual Available Sunlight" expressed in "square-foot-hours." That 1 percent limit is a calculation of change in square-foot-hours in sunlight on an SFRPD open space on an annual basis, and that approach is specific to Section 295. For the reasons noted above, that methodology was not applied to CPSRA. Further, page III.F-5 states that Section 295 criteria also consider shadow effects in light of "existing shadow profiles, important times of day, important seasons in the year, location of the new shadow, size, and duration of new shadows and the public good served by buildings casting new shadow." The Draft EIR evaluated shadow effects on CPSRA considering important times of day, important seasons in the year, location of the new shadow, size, and duration of new shadows.

A comment noted that CPSRA has typically cool and windy conditions and that shadow effects could preclude public use and enjoyment of any areas that are shaded for extended hours during park operating hours. As discussed above, the Draft EIR found that Project shade would occur on limited areas of the park, at limited times of day, and for limited periods of the year. Most of CPSRA would not be shaded, even during winter months when shadows are longest, and Project effects would not be expected to preclude public use and enjoyment of CPSRA.

Therefore, as discussed in this response, the Draft EIR does not require revision with regard to conclusions on shadow effects on CPSRA. Project effects on CPSRA would be less than significant.

Refer to Section F (Draft EIR Revisions) of this document, which presents a revised Tower Variant 3C. The revised Tower Variant would include changes in tower locations and heights at Candlestick Point that

would reduce shade effects at CPSRA, compared to Project shadow effects presented in Draft EIR Section III.F, and discussed in the response above.

Response to Comment 47-49

Refer to Master Response 3 (Impacts of the Project on Yosemite Slough [Biological Resources]) for a discussion of the potential effects of shading impacts on biological resources of Yosemite Slough, as discussed in Impact BI-4c of the Draft EIR.

Response to Comment 47-50

The commenter suggests that the Draft EIR defers to laws protecting resources such as wetlands rather than independently analyzing impacts. However, Impact BI-4a of the Draft EIR analyzes impacts to jurisdictional habitats, quantifying them in Table III.N-4 (Impacts to Wetlands and Other Jurisdictional Waters of the United States [Section 404]), Draft EIR page III.N-57. Table III.N-4 has since been modified and is presented in Section F (Draft EIR Revisions). Although mitigation measure MM BI-4a.1 on pages III.N-59 to -62 requires the applicant to obtain regulatory permits and indicates that mitigation for impacts to jurisdictional habitats will be identified by regulatory agencies during the permitting process, this measure also independently prescribes the minimum mitigation that will be required for CEQA compliance purposes, as follows:

Compensation for impacts to wetlands and jurisdictional waters shall be required to mitigate any permanent impacts to these habitats to less-than significant-levels. Such mitigation shall also be developed (separately from the CEQA process) as a part of the permitting process with the USACE, or for non-USACE-jurisdictional wetlands, during permitting through the SFRWQCB, BCDC, and/or CDFG. The exact mitigation ratio shall be established during the permitting process, and depends on a number of factors, including the type and value of the wetlands permanently affected by the Project; however, mitigation shall be provided at a ratio of no less than 1:1 (at least 1 acre of mitigation for every 1 acre of waters of the US/State permanently filled).

Likewise, mitigation for shading impacts to jurisdictional/regulated waters is described in mitigation measure MM BI-4c on page III.N-68 of the Draft EIR as follows:

Mitigation for Shading Impacts to Jurisdictional/Regulated Waters. Mud flats and aquatic habitats impacted by permanent shading from the Yosemite Slough bridge shall be mitigated by the creation or restoration, either on site, off site, and/or via purchase of mitigation bank credits, at a 0.5:1 (mitigation:impacted) ratio. Aside from the mitigation ratio, such mitigation shall be provided as described for mitigation measure MM BI 4a.1.

Shading impacts of the Yosemite Slough bridge are further discussed in Master Response 3 (Impacts of the Project on Yosemite Slough [Biological Resources]).

Refer to Response to Comment 17-1 for a discussion of how the City would prohibit use of the bridge by private automobiles.

Response to Comment 47-51

Under CEQA, an analysis of cumulative impacts must consider whether “the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.” CEQA Guidelines

Section 15065(a)(3). The Yosemite Slough Restoration Project will not have any adverse impacts related to recreation. Thus, it will have no effects that might combine with the incremental effects of the Project to create significant cumulative impacts. Regarding the Project's potential impacts *on* the slough, refer to Response to Comment 47-20 (regarding impacts on future recreational uses) and Master Response 3 (Impacts of the Project on Yosemite Slough [Biological Resources]). As Master Response 3 demonstrates, the Project will not have a significant impact on the Restoration Project area itself or on the slough's ecology or habitat, and therefore will not impede its mitigation of prior projects' impacts.

Response to Comment 47-52

This is a summary of comments in this letter, specifically that the full scope of impacts to the slough and CPSRA have not been examined, and the project objectives need to be clarified regarding the 49ers stadium. With regard to defining the Project Objectives regarding the 49ers stadium, refer to Response to Comment 47-14. With regard to examining the full scope of impacts to the slough and CPSRA, refer to Responses to Comments 47-18 through 47-51, which are specific comments on the EIR analysis relative to the slough and CPSRA. No new substantive changes to the Draft EIR analysis have been identified and therefore no changes are necessary for the analysis of alternatives. Refer to Response to Comment 48-3 regarding the selection and evaluation of alternatives.

With regard to clarifying the Project objective relative to the 49ers stadium, page VI-3 of the Draft EIR includes within the list of Project Objectives "the integrated development should encourage the 49ers: an important source of civic pride: to remain in San Francisco by providing a world-class site for a new waterfront stadium and necessary infrastructure." While the City and Agency would like a stadium to be part of the Project, development of a NFL stadium is not within the City's or Agency's control, and is a business decision of the NFL. Therefore, while the Project includes development of a stadium, several variants and alternatives to the Project were developed to address a non-stadium scenario. To maintain the same major elements of the Project, while accounting for the very real potential for the 49ers to relocate to Santa Clara or another location, the City identified Variant 1 and Variant 2, which would develop R&D or housing, respectively, in lieu of a stadium, and at levels that would be consistent with population and employment levels associated with a stadium scenario. Similarly, the alternatives analysis includes both stadium and non-stadium scenarios. Alternative 2 addresses a new stadium, without a bridge and Alternative 3 re-uses the existing stadium. Alternatives 4 and 5 include no-stadium scenarios.

As discussed previously in responses to this letter, the impacts to the CPSRA were adequately identified and disclosed in the Draft EIR. A re-examination of the alternatives analysis is not required and no changes to the Draft EIR are proposed.

Response to Comment 47-53

This comment contains introductory information and summarizes an attached letter from Tom Brohard and Associates (Comments 47-101 through 47-114). Responses to specific comments from that letter are provided in Responses to Comments 47-101 through 47-114. Also refer to Master Response 4 (Purpose and Benefits of the Yosemite Slough Bridge) for discussion of transportation issues relating to the Yosemite Slough bridge.

Response to Comment 47-54

Refer to Master Response 3 (Impacts of the Project on Yosemite Slough [Biological Resources]) with regard to impacts on CPSRA and the slough from the bridge. With regard to the three no-bridge options outlined by the commenter, most of these are addressed by existing analysis in the Draft EIR (the tunnel option is not). CEQA does not require a comprehensive evaluation of every conceivable alternative. Alternatives can be rejected because they are infeasible and/or if they fail to meet most of the Project objectives. Chapter VI (Alternatives) of the EIR describes several alternatives that were considered but rejected from further consideration. The range of development options of stadium or no stadium, and bridge or no bridge, [stadium/bridge is the Project; no stadium/bridge are Variant 1 and 2; stadium/no bridge is Alternative 2; and no stadium/no bridge are Alternatives 4 and 5] are covered by the existing analysis in the Draft EIR. Refer to Response to Comment 48-3 regarding the selection and analysis of alternatives. Because the Draft EIR includes no-bridge alternatives, these issues are addressed within the EIR.

Response to Comment 47-55

Section III.B (Land Use and Plans) discusses the Project's consistency with all applicable land use plans on pages III.B-7 through III.B-32. This comment is an introduction to the more detailed comments regarding plan consistency that follow. Refer to Responses to Comments 47-56 through 47-59 for responses to these concerns.

Response to Comment 47-56

The Lead Agencies have determined that the Project would not degrade scenic values. In fact, as noted on page III.B-12 of the Draft EIR, the Project would result in an overall benefit to the CPSRA. Two-thirds of the park that is currently unused, underutilized, or that is used for Candlestick Park stadium parking would be substantially improved to enhance overall park aesthetics and landscape ecology; reconnect visitors to the Bay shoreline; and provide direct access to the Bay for swimming, fishing, kayaking, and windsurfing. Proposed improvements include shoreline restoration and stabilization, a bio-filtration pond to cleanse stormwater, the provision of habitat and opportunities for environmental education, 'Eco-Gardens,' and salt-marsh restoration (refer to III.P [Recreation]).

The commenter states that the Project is inconsistent with the CPSRA General Plan and misinterprets the statement in the Draft EIR, page III.B-12, that, "To the extent that the final improvements to the reconfigured CPSRA would be inconsistent with the CPSRA General Plan, these improvements would be addressed through the State Parks General Plan amendment process." Prior to this sentence, these "inconsistencies" are identified as a boundary change and proposed new uses that would be located on lands removed from the park following the reconfiguration. The amendment to the CPSRA General Plan would correct the inconsistency that would arise over the boundary changes and the lands removed from the CPSRA by the Project. Pursuant to SB 792, no CPSRA General Plan amendment is required for the reconfiguration of the recreation area.

As explained in the Draft EIR, page III.B-12, the Project would be inconsistent with the CPSRA General Plan to the extent that it would result in a park boundary different from that shown in the General Plan and to the extent that it proposes new uses to be located on lands removed from the park following the reconfiguration. An amendment to the CPSRA General Plan would eliminate these inconsistencies.

Pursuant to SB 792, no CPSRA General Plan amendment is required for the reconfiguration of the recreation area.

As discussed above and in Response to Comments 47-3 and Master Response 3 (Impacts of the Project on Yosemite Slough [Biological Resources]), the Project would not have significant impact on the Park's scenic values, natural resources, or recreational value. The Project therefore is not inconsistent with the referenced General Plan policy.

Response to Comment 47-57

As noted on page III.B-12 of the Draft EIR, consistent with the goals and objectives of the CPSRA General Plan, the Project would develop recreational resources, including parks, picnic areas, shade shelters, tidal marsh restoration; park ranger station/visitor's center, a meadow, a bio-filtration pond, and a restaurant/café at The Last Rubble; pedestrian pathways, upgraded restrooms, overlooks, an interpretive amphitheater, parking, and a windsurf/kayak launch at Heart of the Park, The Point, and The Neck; and swimming, kayaking, and windsurfing at The Last Port. The Project also would connect the Bay Trail through the Project site, resulting in 9.6 miles of continuous public access through a diversity of natural and historic environments. The Project's passive and active recreation areas that would be accessed along the Bay Trail would encourage a longer stay than walking or bicycling would occasion. The Project would, therefore, benefit the CPSRA and further its objectives, and would be consistent with SB 792.

Response to Comment 47-58

Chapter VI (Alternatives) of the Draft EIR includes an analysis of Alternatives 2, 4, and 5, all of which do not include a bridge over Yosemite Slough and route traffic upland of the slough. Also refer to Master Response 4 (Purpose and Benefits of the Yosemite Slough Bridge), which includes the rationale for providing the bridge.

With regard to the aesthetic impacts of the Yosemite Slough bridge, refer to Responses to Comments 31-14, 47-34, 47-36, 47-46, 47-73, and 47-76. The bridge would contain pedestrian paths from which pedestrians can view the slough and the Bay. In fact, the bridge would provide an intimate viewing experience from its position over the water from which to watch ducks, water birds, and other wildlife that utilize the slough. While the Draft EIR included a preliminary design of the Yosemite Slough bridge, the final design would be fully developed through consultation with BCDC and CDPR. The bridge design would be integrated with its surroundings visually and spatially, and would only partially obstruct views of the Bay from close-up vantage points. From a mid- and long-range distance, the Bay would remain visible. With regard to the second policy quoted by the commenter, that towers, bridges or other structures near or over the Bay should be designed as landmarks that suggest the location of the waterfront when it is not visible, especially in flat areas, the bridge would act as a landmark. Visitors to the slough inland from the bridge could utilize the bridge as a landmark of the Bay entrance, and, similarly, boaters and kayakers could use the bridge as a visual landmark of the entrance to the Yosemite Slough when using the Bay. As noted in Section III.E (Aesthetics), the bridge would not have a substantial adverse impact on views of the large expanse of the Bay; views would be obstructed only partially and from close-in viewpoints.

The CDPR would ultimately establish the configuration of improvements to various areas of the CPSRA through the public general plan process. Page III.B-15 of the Draft EIR states:

The Project is consistent with the intent of the Bay Plan as it relates to the Candlestick Point area. The Project would provide park improvements, and on-going funding for park operation and maintenance. The ultimate configuration of improvements to various areas of the CPSRA would be determined by the ~~CPDR~~CDPR but the Project would not preclude a water trail camping site or fishing, windsurfing, hiking and viewing opportunities. The inclusion of the Yosemite Slough bridge would not conflict with the Bay Plan's policy regarding additional bridges over the Bay, which aims to preserve the visual impact of the large expanse of the Bay. Expansive views of the Bay would remain from numerous vantage points, even with inclusion of the bridge over the neck of the slough.

The Project is also consistent with the Bay Plan policies to minimize Bay fill and to preserve the shoreline for uses that are regionally important, water-oriented uses needing or historically located on shoreline sites, such as ports, water-related industry, water-related recreation, airports, and wildlife refuges. The Project involves minimal filling associated with the Yosemite Slough bridge, a marina and improvement of the existing shoreline, waterfront bulkhead, piers and seawall structures. The Project includes improved access to the shoreline through shoreline improvements, open spaces and a waterfront promenade. ...

With respect to the Project's inconsistency with the Bay Plan's biological resources policies, a summary of the Bay Plan policies related to wildlife, wetlands, and other biological resources are provided in the Regulatory Framework in Section III.N (Biological Resources) on pages III.N-44 and -45 of the Draft EIR:

Policies Concerning Fish, Other Aquatic Organisms and Wildlife in the Bay, Tidal Marshes and Tidal Flats Around the Bay, and Subtidal Areas in the Bay⁷⁷⁷

The SFBCDC shall protect native fish species, other aquatic organisms, other listed wildlife species and their specific habitats under the *California Endangered Species Act* or *federal Marine Mammal Protection Act* within the Bay's tidal marshes, tidal flats, and subtidal habitat. To the greatest extent feasible, specific habitats such as tidal marsh, tidal flats, and subtidal habitats shall be conserved, restored, and increased. Specific habitats that are needed to conserve, increase or prevent the extinction of any native species, species threatened or endangered, species that the CDFG has determined are candidates for listing as endangered or threatened under the *California Endangered Species Act*, or any species that provides substantial public benefits, should be protected, whether in the Bay or behind dikes. In reviewing or approving habitat restoration programs the SFBCDC should follow the recommendations in the Baylands Ecosystem Habitat Goals and provide a diversity of habitats for native aquatic and terrestrial plant and animal species. For projects that may adversely affect an endangered or threatened plant, fish, other aquatic organism or wildlife species the SFBCDC should consult and give appropriate consideration to the recommendations of the California Department of Fish and Game and the US Fish and Wildlife Service or the National Marine Fisheries Service and not authorize projects that would result in the "taking" of any plant, fish, other aquatic organism or wildlife species listed as endangered or threatened pursuant to the state or federal endangered species acts, or species that are candidates for listing under the CESA, unless the project applicant has obtained the appropriate "take" authorization from the US Fish and Wildlife Service, National Marine Fisheries Service or the California Department of Fish and Game. However, the SFBCDC may permit a minor amount of fill or dredging in wildlife refuges, shown on the Plan Maps, necessary to enhance fish, other aquatic organisms and wildlife habitat or to provide public facilities for wildlife observation, interpretation and education.

In consideration of these and other policies protecting biological resources, an analysis of the effects of Project construction activities on wetlands (including tidal marshes, tidal flats, and non-tidal marshes) and jurisdictional waters is provided in Impacts BI-4a, BI-4b, and BI-4c of the Draft EIR, pages III.N-56 through III.N-68. Mitigation measure MM BI-4a.1 on page III.N-59 of the Draft EIR explicitly states that

wetlands and jurisdictional waters shall be avoided to the maximum extent practicable, and that permits shall be obtained only where avoidance of existing wetlands and drainages is not feasible:

MM BI-4a.1 Wetlands and Jurisdictional/Regulated Waters Mitigation for Temporary and/or Permanent Impacts. Wetlands and jurisdictional waters shall be avoided to the maximum extent practicable for all Project components. For example, any measures taken to improve the existing shoreline of Candlestick Point or HPS Phase II for purposes of flood control, erosion control, or repair or stabilization of existing structures shall minimize the amount of fill to be placed in jurisdictional areas.

Where avoidance of existing wetlands and drainages is not feasible, and before any construction activities are initiated in jurisdictional areas, the Applicant shall obtain the following permits, as applicable to the activities in question: ...

Therefore, the Project is consistent with the Bay Plan policies provided by the commenter.

In response to the comment that the bridge does not provide adequate clearance for vessels navigating the waterway, the bridge has been designed to facilitate passage of non-motorized recreational vessels, such as canoes and kayaks. The clearance at the middle of the span would be over 18 feet at mean tide levels (accounting for sea level rise), which would be adequate for this type of use. During 100-year flood events, the clearance would decrease to approximately nine feet. Thus, the bridge would allow sufficient clearance for kayaks to continue to navigate the slough.

Response to Comment 47-59

The Project would not impede or obstruct implementation of the Yosemite Slough Restoration Project. Refer to Master Response 3 (Impacts of the Project on Yosemite Slough [Biological Resources]). Refer to Response to Comment 47-4 with regard to no-bridge alternatives that include routing traffic around the slough that are analyzed in the EIR.

Response to Comment 47-60

With respect to recirculation, Section 15088.5 of the CEQA Guidelines requires recirculation of an EIR if any one of the following circumstances arise after circulation of a Draft EIR: (1) a new significant environmental impact; (2) a substantial increase in the severity of an environmental impact; (3) a feasible project alternative or mitigation measure considerably different from others previously analyzed that would clearly lessen the significant impacts of the project (but the project's proponents decline to adopt it); or (4) precluding meaningful public review and comment. These circumstances must be supported by substantial evidence in the record. The comments raised on the Draft EIR, beyond those submitted by just this commenter, have not resulted in any of the circumstances described by items (1) through (3), above, as demonstrated by this Comments & Responses document. Further, in terms of providing meaningful public review and comment, refer to Responses to Comments 80-1 and 84-11 for a discussion of the adequacy of the public comment period, including the many opportunities for providing comments on the Draft EIR. In addition, refer to Response to Comment 96-1 for a discussion of the other opportunities for providing public comment prior to publication of the Draft EIR. Refer to Response to Comment 85-5 for a discussion of the extensive planning process for the Project.

Response to Comment 47-61

With respect to the preparation of a joint CEQA/NEPA document, there are several reasons why a joint document was not prepared, as follows:

- While Section 15170 of the CEQA Guidelines allows the use of joint document where a Project must comply with both NEPA and CEQA, CEQA does not require the use of a joint document. Similarly, while CEQA allows the use of an Environmental Impact Statement (EIS) in lieu of an EIR where a project requires both, it does not require use of an EIS. On both points, CEQA provides permissive, rather than prescriptive, language.
- The City/Agency and Navy previously made efforts to produce a joint EIS/EIR for the original HPS Redevelopment Plan. While a joint draft EIS/EIR was produced, the final documents were separated due to a schedule limitation of the City/Agency that was not shared by the Navy. At the time of the adoption of the HPS Redevelopment Plan, the City and Agency relied upon 1996 legislation (AB 2736) that granted a temporary exception of up to 18 months after the effective date of the ordinance adopting the Redevelopment Plan to satisfy the provisions of CEQA. In 1998, SB 1615 extended the temporary exception for another 12 months for a total of 30 months after the effective date of the ordinance adopting the Redevelopment Plan to complete the CEQA process. The original Redevelopment Plan was adopted on July 14, 1997, and it became effective 30 days later. Thirty months after the effective date meant that the City/Agency deadline for adopting a final CEQA document was February 14, 2000. The Final EIR was certified on February 8, 2000. The Navy did not issue a ROD for the FEIS until October 16, 2000. While every endeavor was made to produce the final documents according to the same schedule, the practical reality was that the City/Agency and the Navy had different schedule considerations.
- For the CP-HPS Phase II Project, and with the previous experience in mind, the City/Agency consulted with the Navy early on to determine whether a joint document should be prepared, and it was mutually agreed that it would be best to produce separate documents for several reasons. First, the project that the City/Agency proposed encompassed more than the HPS Redevelopment Plan area. Therefore, rather than producing a subsequent EIR, the City/Agency determined that a new EIR that would address the expanded Project site (to include Candlestick Point) would be more appropriate. Second, the CP-HPS Phase II Project would include amendments not only to the HPS Plan, but also to the BVHP Plan, which was not a project element over which the Navy had any involvement. The Navy saw its NEPA task as more limited. It determined that the only reason it needed to do a supplement to its FEIS was because the land uses at HPS were changing sufficiently (e.g. the stadium use) to require them to do a supplemental EIS before they transferred the property. The Navy intends to use its 2000 FEIS as a starting point to produce a supplement, focusing only on the HPS area. Third, the schedule considerations for both processes are different, with the City/Agency CP-HPS Phase II EIR proceeding ahead of the Navy's HPS Supplemental EIS. While the Navy needs its Supplemental EIS before it transfers more property to the Agency, the City/Agency undertaking involves many more approval actions than the Navy's single transfer action. Therefore, the City desired to go through its local approval process for amendments to two redevelopment plans and related documents before the Navy was expected to be in a position to transfer more property.
- Since the City/Agency was going to be studying a larger area than the Navy would need to study, it was agreed that the City would provide all background data that it collected to the Navy, so that the Navy would not need to duplicate the City/Agency work and that both documents would be consistent with one another.

Further, other federal agencies (beyond the Navy) with approval authority over an aspect of the Project, such as the USACE, would follow their respective federal regulatory procedures for compliance with NEPA, as needed.

Response to Comment 47-62

Section III.N.3 (Biological Resources, Regulatory Framework) of the Draft EIR discusses Section 404 Clean Water Act permitting beginning on page III.N-37, and indicates that the USACE grants three types of permits: individual, general and nationwide, and that Project-specific individual permits would be required for certain activities that may have a potential for more than a minimal impact. Section III.M.3 (Hydrology and Water Quality, Regulatory Framework) indicates on page III.M-32, that Section 404(b)(1) Guidelines (Guidelines for Specification of Disposal Sites for Dredged or Fill Material) are in 40 CFR 230.

40 Code of Federal Regulations (CFR) Part 230.5 states that if a General Permit is applicable, the applicant needs merely to comply with its terms, and no further action by the permitting authority is necessary. An examination of practicable alternatives to the proposed discharge is not required for activities covered by General Permits.

The types of permits that would be issued for the Project by the USACE would be determined during the Clean Water Act (CWA) Section 404 permitting process. The Nationwide permits are considered to be a type of General Permit, and do not require an alternatives analysis. For Project activities for which USACE determines that an individual permit is required, the Project Applicant would comply with CWA Section 404(b)(1) by supplying the USACE with an evaluation of practicable alternatives during the permit application process. The USACE would issue individual permits following a full public interest review of the permit application, and the USACE may only issue a permit for the least environmentally damaging practicable alternative.

Per 40 CFR Part 230.10 (a)(5), to the extent that practicable alternatives have been identified and evaluated under a Coastal Zone Management program or other planning process, such evaluation would be considered by the permitting authority as part of the consideration of alternatives under the Section 404(b)(1) guidelines. The USACE determines the completeness of the alternatives analysis and may require for it to be supplemented accordingly. Therefore, in summary a practicable alternatives analysis for CWA Section 404 permitting is not required to be included in the Draft EIR, but would be conducted during the CWA Section 404 permitting process (if an individual permit is required), under the direction of the USACE. If the General Permit were found to be applicable, no practicable alternatives analysis would be required.

Response to Comment 47-63

The federal *Land and Water Conservation Fund Act of 1965*, 16 USC 4601-4 (LWCFA) provides for federal grants to assist in the acquisition and development of state and local public outdoor recreation land. Lands that have received LWCFA assistance may be converted to uses other than public outdoor recreation only if replacement outdoor recreation land is provided and approved by the National Park Service. Parts of the CPSRA were developed with LWCFA funds and are therefore subject to the conversion requirement, including a portion of the lands to be removed from the CPSRA as part of the proposed CPSRA reconfiguration. It is anticipated that the Project's substantial acreage of new public outdoor recreation

land, illustrated in Figure III.P-2 (Proposed Parks and Open Space), will be sufficient to meet the LWCFA's requirement for replacement public outdoor recreation land. Consistent with the requirements of the LWCFA and SB 792, any agreement implementing the proposed park reconfiguration will require compliance with CPSRA and approval by the National Park Service prior to any removal of LWCFA land from the CPSRA for non-park purposes.

Response to Comment 47-64

These statutory requirements are preempted by Section 26(f) of SB 792, and therefore do not apply to the proposed CPSRA reconfiguration.

Response to Comment 47-65

These statutory requirements are preempted by Section 26(f) of SB 792, and therefore do not apply to the proposed CPSRA reconfiguration.

Response to Comment 47-66

This comment contains closing or general background information and is not a direct comment on environmental issues or the content or adequacy of the Draft EIR. No response is required.

Response to Comment 47-67

This comment contains introductory or general background information and is not a direct comment on environmental issues or the content or adequacy of the Draft EIR. No response is required.

Response to Comment 47-68

Refer to Master Response 3 (Impacts of the Project on Yosemite Slough [Biological Resources]) for a discussion of the Project's potential effects on the existing biological resources of Yosemite Slough, and potential impacts of the Yosemite Slough bridge on wetlands proposed to be created as part of the Yosemite Slough Restoration Project. Refer to Response to Comment 31-5 for a discussion of Project effects on views, and Response to Comment 47-20 for a discussion of Project effects on pedestrian trails.

Response to Comment 47-69

Refer to Response to Comment 47-4 about excluding the bridge from the Project site and analysis of Project impacts on Yosemite Slough.

Response to Comment 47-70

The Draft EIR considered the City's General Plan policies and CPSRA policies, as required by Section 15125(d) of the Public Resources Code, and the Yosemite Slough Restoration Project is not a local general plan or a regional land use plan within the scope Section 15125 (d).

Refer to Master Response 3 (Impacts of the Project on Yosemite Slough [Biological Resources]) for a discussion of the Project's consistency with, and potential effects on, the biological resources proposed as

part of the Yosemite Slough Restoration Project. Also, refer to Master Response 3 for a discussion of text added to quantify potential impacts of the Yosemite Slough bridge on wetlands proposed to be created as part of the Restoration Project. Refer also to Response to Comment 47-4 for discussion of the Project's consistency with the goals and objectives of the Yosemite Slough Restoration Project.

Response to Comment 47-71

Refer to Master Response 3 (Impacts of the Project on Yosemite Slough [Biological Resources]) for a discussion of potential effects of the project on the Yosemite Slough Restoration Project and its biological goals.

Response to Comment 47-72

Refer to Master Response 3 (Impacts of the Project on Yosemite Slough [Biological Resources]) for a discussion of potential effects of the Project, including a quantitative analysis, on the wetlands that will be constructed as part of the Yosemite Slough Restoration Project.

Response to Comment 47-73

Refer to Master Response 3 (Impacts of the Project on Yosemite Slough [Biological Resources]) and Master Response 4 (Purpose and Benefits of the Yosemite Slough Bridge), which contain a discussion of the Project's impacts on the slough, including the Yosemite Slough Restoration Project. The Yosemite Slough Restoration Project was considered in the cumulative analyses for the technical sections of the Draft EIR. Refer to Response to Comment 47-20 for a comprehensive discussion of the recreational experience in the slough.

With regard to the aesthetic impacts of the Project on the restored slough, the Yosemite Slough bridge would change the appearance of a portion of the slough, with the addition of a bridge structure and roadway approaches (refer to Figure III.E-8). The Project would alter the scenic nature of the Project site in that it would create a dense urbanized setting where one does not currently exist. The bridge would cross the extreme eastern edge of the area to be improved under the Yosemite Slough Restoration Project and would replace views of open water as seen from some nearby locations. The bridge would contain "green" auto lanes, with plantings in the middle providing a green boardwalk. The bridge would be low profile and integrated into the open space on either side of the slough to blend as much as possible into the environment through the use of openwork, materials, and color. Further, it would contain piers and lookout points for a pedestrian viewing experience that would not otherwise be provided. Yosemite Slough would continue as a waterway bordered by open space opening from a narrow channel to the west to the wider South Basin to the east and would remain a scenic resource on the site. The Project would complete the Bay Trail along the waterfront and provide substantial areas of parks and open space that would complement the slough restoration. The mid- and close-range views of the entire area would include the restored slough and the high-quality development of the Project, including substantial parks and open space. Inclusion of the bridge would not substantially damage a resource that contributes to a scenic public setting. The Slough restoration could proceed with or without the Project, and the inclusion of the bridge would not adversely affect the goals of the Restoration Project.

As shown by the various photographs and simulations presented in Section III.E (Aesthetics), the Project would provide extensive areas of open space integrated with new development and existing open space that would enhance the positive features of Bayview Hunters Point, with its immediate proximity to the shoreline, and would not substantially obstruct views of the Bay, the East Bay hills, and the San Bruno Mountains from adjacent neighborhoods. It should be pointed out that the visual simulations prepared for the Project do not include already approved development, including HPS Phase I (not part of the Project) and other cumulative projects, which would substantially increase the amount of development in the vicinity of the Project site. The simulations also do not show conditions that would exist with completion of the Yosemite Slough Restoration Project, as that project is still undergoing design and it would be speculative to provide graphics of an assumed condition. The discussion provided in the analysis of the Project's consistency with the Urban Design Element of the City's General Plan supplements the impact analysis by providing a narrative discussion of the visual character of each of the Project's districts with respect to design patterns, connectivity, neighborhood image, and visual compatibility with existing development. While the bridge would insert a structure into an improved open space area on completion of the Restoration Project, it would connect two already urbanized areas immediately adjacent. Taking into consideration the context of the entire site, not just the slough, the bridge would not be an element that is out of character or scale with surrounding development.

The proposed shoreline improvements would improve the aesthetic quality of the shoreline along the Project frontage, reducing erosion, including marsh plantings where appropriate, and removing debris. These improvements would correlate with the improvements to the tidal wetlands planned under the Yosemite Slough Restoration Project to provide expanded open space opportunities, including recreational trails linked to other regional trails and wildlife viewing. These improvements would represent a beneficial impact of the development, improving the overall visual character of the shoreline.

Development of the Project would not substantially block publicly accessible views of the Bay or other scenic areas. The Project would provide a continuation of the existing street grid, thereby maintaining existing view corridors to the Bay and East Bay hills. The Project would also provide new parks and open space facilities. Public access areas (City and State parks) would provide views from the Project site toward the East Bay and the Bay. The Yosemite Slough Restoration Project would include continuation of the Bay Trail and viewpoints/interpretative signage. The bridge component of the Project would place a low bridge structure across the neck of the slough that would partially obstruct a scenic view from the slough toward the Bay from some vantage points. Views of the Bay and the remainder of the slough would be retained from numerous other vantage points, including along the shoreline, from the view corridors within the Project site, the CPSRA, and the proposed bridge itself. The Project would improve access to the entire area, allowing a greater number of people to take advantage of the scenic resources at CPSRA and the slough.

Lighting impacts on biological resources of the slough are discussed in Master Response 3 (Impacts of the Project on the Yosemite Slough [Biological Resources]). With regard to lighting impacts on recreational users of the slough, the increase in ambient light as a result of the Project would be consistent with the urban character and associated ambient lighting of the City as a whole. Because the Project site is located immediately adjacent to a developed urban area, existing views of the night sky are diminished as is typical in all urban areas. Nighttime lighting from the Project structures, the stadium, and traffic would not affect users of the restored Yosemite Slough after completion of the Yosemite Slough Restoration Project, as the

CPSRA is closed after dark. Therefore, the light and glare as a result of the Project would not substantially interfere with these currently limited views.

Response to Comment 47-74

Refer to Master Response 3 (Impacts of the Project on Yosemite Slough [Biological Resources]) for a discussion of potential effects of the Project, including a quantitative analysis, on the wetlands that will be constructed as part of the Yosemite Slough Restoration Project.

Response to Comment 47-75

Refer to Master Response 3 (Impacts of the Project on Yosemite Slough [Biological Resources]) for a discussion of potential effects of the Yosemite Slough bridge, including noise effects, on wildlife use of Yosemite Slough under the Yosemite Slough Restoration Project. Refer also to Responses to Comments 47-39, 47-40, and 47-41 regarding noise-related impacts during construction and operation of the proposed project to recreational users and noise-sensitive receptors.

Response to Comment 47-76

It is acknowledged that the bridge would partially obstruct views of the Bay, including Double Rock, and the slough from some vantage points, particularly short-range views. The bridge would also block views from the slough to the open water. However, the bridge would be designed to be as open as possible to maximize views, and views of the Bay, Yosemite Slough, Double Rock, and the East Bay skyline would remain from numerous other vantage points. Four graphics (Figure C&R-10, Figure C&R-11, Figure C&R-12, and Figure C&R-13) of various viewpoints of the Yosemite Slough bridge are provided in Response to Comment 47-46 within this document. For this reason, it was determined that the impact of the bridge on views is less than significant.

Response to Comment 47-77

Refer to Master Response 3 (Impacts of the Project on Yosemite Slough [Biological Resources]) for a discussion of potential effects of the Yosemite Slough bridge, including shading effects, on wetlands.

Response to Comment 47-78

Refer to Responses to Comments 31-14, 47-34, 47-36, 47-46, 47-58, 47-73, and 47-76 for discussions relating to the obstruction of views resulting from construction of the Yosemite Slough Bridge. Figure C&R-10, Figure C&R-11, Figure C&R-12, and Figure C&R-13 provide various viewpoints of the Yosemite Slough bridge, as provided in Response to Comment 47-46.

Response to Comment 47-79

Refer to Responses to Comments 31-14, 47-34, 47-36, 47-46, 47-58, 47-73, and 47-76 for discussion regarding the obstruction of views resulting from construction of the Yosemite Slough Bridge. Views of Double Rock would remain from numerous vantage points in the area.

Response to Comment 47-80

The commenter states that the Project is inconsistent with *San Francisco Bay Plan* Policies 2, 4, 6, and 10. These policies state the following:

- | | |
|-----------|--|
| Policy 2 | All bayfront development should be designed to enhance the pleasure of the user or viewer of the Bay. Maximum efforts should be made to provide, enhance, or preserve views of the Bay and shoreline, especially from public areas, from the Bay itself, and from the opposite shore. To this end, planning of waterfront development should include participation by professionals who are knowledgeable of the (Planning) Commission's concerns, such as landscape architects, urban designers, or architects, working in conjunction with engineers and professionals in other fields. |
| Policy 4 | Structures and facilities that do not take advantage of or visually complement the Bay should be located and designed so as not to impact visually on the Bay and shoreline. In particular, parking areas should be located away from the shoreline. However, some small parking areas for fishing access and Bay viewing may be allowed in exposed locations. |
| Policy 6 | Additional bridges over the Bay should be avoided, to the extent possible, to preserve the visual impact of the large expanse of the Bay. The design of new crossings deemed necessary should relate to others nearby and should be located between promontories or other land forms that naturally suggest themselves as connections reaching across the Bay (but without destroying the obvious character of the promontory). New or remodeled bridges across the Bay should be designed to permit maximum viewing of the Bay and its surroundings by both motorist and pedestrians. Guardrails and bridge supports should be designed with views in mind. |
| Policy 10 | Towers, bridges, or other structures near or over the Bay should be designed as landmarks that suggest the location of the waterfront when it is not visible, especially in flat areas. But such landmarks should be low enough to assure the continued visual dominance of the hills around the Bay. |

With regard to the aesthetic impacts of the Yosemite Slough bridge, refer to Responses to Comments 31-14, 47-34, 47-36, 47-46, 47-73, and 47-76. The Project has been designed to preserve view corridors. The Project will connect the existing street grid in an orientation that will allow an uninterrupted view toward the Bay from numerous area streets. Project towers have been situated in zones that would allow the provision of view corridors. Numerous open space areas and waterfront pedestrian pathways would provide expansive viewing opportunities as well. Buildings and structures have been designed to be complementary to the surroundings. Parking structures are not proposed for the shoreline areas. Policy 6 likely refers to large bridges across the Bay such as the Golden Gate Bridge and not to small, local bridges as is proposed under the Project. However, the proposed bridge would be low in height and would connect two urban areas and relates to the adjacent developed and to be redeveloped land uses. The proposed bridge would provide unique viewing opportunities that are not currently available. The bridge would not substantially obstruct views of the Bay or affect the visual dominance of the hills around the Bay. The Project and, in particular, the Yosemite Slough bridge, would not be inconsistent with the policies of the Bay Plan, as commenter asserts.

Response to Comment 47-81

The commenter suggests that Figure III.N-2 (Study Area Habitats) does not indicate any mapped habitat types within the portion of the Study Area overlapping the Yosemite Slough Restoration Project area. In actuality, this figure does show habitats within this area. The habitats currently present within this area are mapped as tidal salt marsh and mud flat and open water, though at the scale of the figure, the tidal salt marsh habitat may be difficult to discern on this figure.

Refer to Master Response 3 (Impacts of the Project on Yosemite Slough [Biological Resources]) for a discussion of potential effects of the Project after implementation of the Yosemite Slough Restoration Project, the Draft EIR's analysis of impacts to areas both on-site and off-site, including Yosemite Slough, and clarification of the study areas shown on Figure III.N-1 (Biological Resources Study Area) and Figure III.N-2. Master Response 3 (Impacts of the Project on Yosemite Slough [Biological Resources]) also provides a discussion of text added to quantify potential impacts of the Yosemite Slough bridge on wetlands proposed to be created as part of the Restoration Project.

Response to Comment 47-82

Refer to Master Response 3 (Impacts of the Project on Yosemite Slough [Biological Resources]) for a discussion of potential effects of the project on the Yosemite Slough Restoration Project, the Draft EIR's analysis of impacts to areas both on-site and off-site, including Yosemite Slough, and clarification of the study areas shown on Figure III.N-1 and Figure III.N-2. Also, refer to Response to Comment 47-23 for a discussion of the Draft EIR's analysis of biological impacts to Yosemite Slough, including clarification of the statement that off-site aquatic resources analyzed included "Yosemite Slough (except the area of construction)."

Response to Comment 47-83

In response to the comment, the text in Section III.N (Biological Resources), page III.N-40, first paragraph after the four bullets, has been revised:

The tidal aquatic habitats adjacent to the Project site are considered EFH by NMFS for a species assemblage that includes anchovies, sardines, rockfish, sharks, sole, and flounder.^{768,769} Areas supporting the native Olympia oyster found in San Francisco Bay are also considered EFH by NMFS because oyster beds generally increase fish abundance. In addition, eelgrass beds are considered EFH. ...

Response to Comment 47-84

The commenter requests that impacts to wetlands that are considered self-mitigating be explicitly shown on the impacts map and identified in Table III.N-4. Table III.N-4 has since been modified and is presented in Section F (Draft EIR Revisions). As discussed in Impact BI-4a, page III.N-59 of the Draft EIR:

Shoreline improvements at Candlestick Point would result in the removal of approximately 2.86 acres of fill, and the placement of approximately 3.46 acres of fill. A net decrease of approximately 0.42 acre of open waters would occur at Candlestick Point. These impacts would occur entirely along the Candlestick Point shoreline as a result of construction of revetments to minimize flooding and shoreline erosion, and as a result of the placement of soils or sand to enhance beach or marsh habitat. For example, along most of the northern and southern edges of Candlestick Point, marsh soils would be placed in jurisdictional areas following completion of the revetment to provide a gentler slope

than is currently present, which would allow for colonization by marsh vegetation. As a result, much of the fill of jurisdictional areas (as reflected in Table III.N 4 and Figure III.N 5) would result in an enhancement of habitat and, thus, would be self-mitigating.

The precise locations of wetland impacts that will be self-mitigating will be determined as detailed project design occurs, and as potential wetland creation areas are determined in greater detail. Wetlands that are impacted by beneficial shoreline improvement activities that allow for wetland restoration *in situ* will be considered self-mitigating, while all other wetland impacts will require compensatory mitigation *ex situ*. Although the precise locations of self-mitigating wetlands cannot be known at this time, the Draft EIR identifies the process by which mitigation will be required for permanently impacted wetlands (i.e., those wetland impacts that are not self-mitigating) in MM BI-4a.1 on pages III.N-59 to III.N-62. Thus, no further clarification or specificity can be provided at this stage of the Project.

Response to Comment 47-85

In response to the comment, the text in Section III.N (Biological Resources), MM BI-4a.1, pages III.N-61 to -62, last bullet on page III.N-61 and first bullet on page III.N-62, has been revised as follows:

...

- *Year 3 after restored areas reach colonization elevation: 50 percent combined area and basal cover (rhizomatous turf) of all vegetation; prevalence of hydrophytic species in terms of both cover and dominant species composition of the vegetation; native vascular species shall comprise ~~40~~95 percent of the vegetation in the preserve wetland.*
- *Year 5 after restored areas reach colonization elevation: 70 percent combined area and basal cover (rhizomatous turf) of all vegetation; more than 50 percent dominance in terms of both cover and species composition of facultative (FAC), facultative wetland (FACW), and obligate (OBL) species; native vascular species shall comprise ~~65~~95 percent of the vegetation in the preserve wetlands.*

...

Response to Comment 47-86

In response to the comment, the Impact BI-4c discussion, Draft EIR page III.N-67, last paragraph, fourth sentence, has been revised as follows:

... The “shadow fill” produced by the Yosemite Slough bridge may change the biological functions and values of aquatic and mud flat habitats below to some extent; such an impact would cover approximately ~~0.96~~1.48 acres based on the acreage of mud flat below the immediate bridge surface.

...

Also, the Impact BI-4c discussion, Draft EIR page III.N-68, second paragraph, fourth sentence, has been revised as follows:

... However, shading of ~~0.94~~1.48 acres of mud flats and aquatic habitats would have only moderate effects on the functions and values of these habitats and would not result in the loss of these habitats. Mitigation measure MM BI-4a.2 shall be implemented to minimize indirect construction-related impacts on wetlands and other jurisdictional waters. Further, shading impacts to mud flats and aquatic habitats would be reduced by implementation of mitigation measure MM BI-4c.

Also, refer to Master Response 3 (Impacts of the Project on Yosemite Slough [Biological Resources]) for a discussion of potential effects of shading from the Yosemite Slough bridge on sensitive habitats.

Response to Comment 47-87

Refer to Master Response 3 (Impacts of the Project on Yosemite Slough [Biological Resources]) for a discussion of potential effects of shading from the Yosemite Slough bridge on sensitive habitats.

Response to Comment 47-88

In response to the comment, Impact BI-5b and its following discussion, Draft EIR pages III.N-69 and -70 (and Table ES-2, pages ES-97 to -98), have been revised as follows:

Impact of Hunters Point Shipyard Phase II and Yosemite Slough Bridge

Impact BI-5b **Construction at HPS Phase II and construction of the Yosemite Slough bridge would not have a substantial adverse effect on eelgrass beds, a sensitive natural community identified in local or regional plans, policies, and regulations or by the CDFG or USFWS. (Less than Significant with Mitigation) [Criterion N.b]**

Within HPS Phase II a total of 1.99 acres of eelgrass ~~occurs~~ has been mapped at two locations (refer to Figure III.N-2). A small eelgrass occurrence was reported along the north shore of the South Basin directly across from Candlestick Point. The only other reported occurrence of eelgrass within HPS Phase II is on the north shore, east of the northern end of Earl Street. This eelgrass bed extends from the end of Earl Street to the pier that forms Drydock 5. These eelgrass beds are mapped as being below mean sea level and, therefore, are spatially separated from areas where shoreline treatments would occur. There are no mapped eelgrass beds where the marina improvements would occur or where the Yosemite Slough bridge would be constructed. However, because the locations of eelgrass occurrence may vary over time, eelgrass not detected during previous surveys could potentially occur in the shallow waters in or near the Yosemite Slough bridge construction footprint, either now or in the future.

The shoreline improvements associated with HPS Phase II include transforming the revetment edge in wave-protected reaches to a more natural looking shoreline by placing suitable fill to cover the revetment that would be constructed by the Navy, which may include Articulated Concrete Block (ACB) mats and/or marsh soils. Shoreline wave berms may be included along the southwest facing shoreline at the bayward end of the ACB mats. If wave berms or other shoreline improvements, or the Yosemite Slough bridge, were constructed in ~~either of the two areas where eelgrass beds are known to exist~~, they could directly impact them through excavation/removal or placement of fill material. Construction of these features or other shoreline treatments near eelgrass beds could also result in the mobilization of some sediment, which, if it were to settle out on eelgrass, could reduce photosynthesis and, therefore, productivity and survival. Because of the ecological importance but regional scarcity of eelgrass beds and the potential contribution of eelgrass beds in the Study Area to populations of aquatic species (and their predators) throughout larger portions of the Bay, any impacts would be considered a substantial reduction in the local population and, therefore, a substantial adverse effect.

To reduce this impact, the following mitigation measures shall be implemented.

MM BI-5b.1 Avoidance of Impacts to Eelgrass. *As the design of shoreline treatments progresses, and a specific Shoreline Treatment Plan is determined, the Plan shall minimize any in-water construction required for installation of any treatment measures near either of the two eelgrass locations noted above. ~~If in-water work is completely avoided within 750 feet of these areas, there would be no impact and no further mitigation would be required. If complete avoidance of work within 750 feet of these areas is not feasible, measure MM BI-5b.2 shall be implemented.~~*

MM BI-5b.2 Eelgrass Survey. *If avoidance of work within 750 feet of two known eelgrass locations is not ~~feasible~~ Prior to the initiation of construction of the Yosemite Slough bridge or construction of*

shoreline treatments, an update to the existing eelgrass mapping shall be conducted to determine the precise locations of the eelgrass beds. ~~For the shoreline treatments,~~ ~~this survey shall occur when a final Shoreline Treatment Plan has been prepared.~~ The survey shall be conducted by a biologist(s) familiar with eelgrass identification and ecology and approved by NMFS to conduct such a survey. The area to be surveyed shall encompass the mapped eelgrass beds, plus a buffer of 750 feet around any in-water construction areas on Hunters Point or associated with the Yosemite Slough bridge. Survey methods shall employ either SCUBA or sufficient grab samples to ensure that the bottom was adequately inventoried. The survey shall occur between August and October and collect data on eelgrass distribution, density, and depth of occurrence for the survey areas. The edges of the eelgrass beds shall be mapped. At the conclusion of the survey a report shall be prepared documenting the survey methods, results, and eelgrass distribution within the survey area. This report shall be submitted to NMFS for approval. The survey data shall feed back into the shoreline treatment design process so that Project engineers can redesign the treatments to avoid or minimize any direct impacts to eelgrass beds.

If the shoreline treatments can be adjusted so that no direct impacts to eelgrass beds would occur, no further mitigation under this measure would be required for shoreline treatment construction. Management of water quality concerns is addressed through mitigation measure MM BI-5b.4 and shall be required to minimize sediment accumulation on the eelgrass. If direct impacts to eelgrass beds cannot be avoided, either by Hunters Point shoreline treatments or Yosemite Slough bridge construction, mitigation measure MM BI-5b.3 shall be implemented.

Response to Comment 47-89

Refer to Master Response 3 (Impacts of the Project on Yosemite Slough [Biological Resources]) for a discussion of potential effects of the Yosemite Slough bridge, including noise effects, on wildlife near the bridge. Even if noise were to impact birds nesting or roosting on Double Rock, the impact would be less than significant due to the low effects such impacts would have on regional populations of the species in question. Double Rock supports fewer than 10 pairs of western gulls. If these birds were displaced as a result of noise associated with the bridge, they would likely find alternative nesting habitat (possibly on the piers that will be enhanced as waterbird habitat on Hunters Point Shipyard, providing vastly more potential nesting habitat than Double Rock). In addition, roosting habitat for waterbirds that might roost on Double Rock does not limit regional waterbird populations; again, the piers that will be enhanced by being separated from the mainland on Hunters Point Shipyard would provide extensive potential roosting habitat for shorebirds, gulls, terns, or other birds that might roost on Double Rock. Thus, noise associated with the Yosemite Slough bridge would not result in a significant impact to birds.

Response to Comment 47-90

With respect to whether project impacts to the western red bat could reach the threshold of significance, Impact BI-8a discusses in detail the reasons why such impacts, if they were to occur at all, would be considered less than significant. Therefore, no further response is required.

Response to Comment 47-91

The commenter suggests that low-frequency noise emitted by construction equipment may not be detectable by western red bats, and thus may not be sufficient to alert bats to disturbance in sufficient time to allow them to flee the area before individuals are impacted. The bats may hear the noise or feel the vibrations of approaching heavy equipment and flush, but even if they do not, they will flush as soon as

any tree in which they are roosting is disturbed. As a result, there is a very low potential for mortality of individual western red bats due to project activities.

Response to Comment 47-92

The commenter suggests that temporal loss of oyster habitat should be considered a significant impact requiring mitigation. Based on examination of riprap and other hardened substrates along the Candlestick Point and Hunters Point Shipyard shorelines, there is no evidence that large or mature oyster beds are present anywhere in the project area, and ample hard substrate providing potential oyster habitat will be present during any project activities that result in modification or replacement of hard substrate along the project's shoreline areas. Therefore, any temporal impacts to oysters resulting from shoreline modifications are expected to affect only small, low-density, and/or immature oyster beds rather than large, high-density, long-established beds. Impacts to oysters will be less than significant.

Response to Comment 47-93

The commenter suggests that shading from the Yosemite Slough bridge will adversely affect Essential Fish Habitat (EFH) and special-status fish species and that mitigation should be proposed to offset these impacts. Potential shading impacts to aquatic habitats were discussed in Impact BI-4c, pages III.N-67 to III.N-68 of the Draft EIR, and MM BI-4c on page III.N-68 of the Draft EIR will help to offset any adverse effects of shading from the bridge on aquatic species, including fish. Shading impacts from the bridge are further discussed in Master Response 3 (Impacts of the Project on Yosemite Slough [Biological Resources]).

In response to the comment, the Impact BI-12c discussion, Draft EIR page III.N-93, first and second paragraphs, has been revised as follows:

Construction of the Yosemite Slough bridge would impact EFH through the construction of pilings required to support the bridge. As detailed in Table III.N-4, the amount of area impacted is approximately 1.28 acres of temporary impacts and 0.40 acre of permanent impacts, which includes both on site and off site areas. These impacts would have a substantial adverse ~~effect~~effect on EFH because the function of portions of the impacted habitat would be permanently altered by the Project, a significant impact. In addition, shading from the bridge could adversely affect aquatic and mud flat habitat, and fish that use these habitats, under the bridge (refer to Impact BI-4c).

Any loss or modification of EFH that would result from the Yosemite Slough bridge would be mitigated via the compensatory mitigation for impacts to jurisdictional waters (mitigation measures MM BI-4a.1 and MM BI-4c). ...

Also, in the discussion following Impact BI-11c, Draft EIR page III.N-87, a sentence has been added to the first paragraph after the sixth sentence, and the second sentence of the second paragraph has been revised, as follows:

Construction of the Yosemite Slough bridge would impact designated critical habitat for green sturgeon and ... loss of 0.11 acre of mudflat and aquatic habitat in the footprints of the bridge piers. In addition, shading from the bridge could adversely affect aquatic and mud flat habitat, and fish that use these habitats, under the bridge (refer to Impact BI-4c). Because of the regional rarity of all these special-status fish, any impacts to individuals or to habitat used by these fish would be significant.

As described under Impact BI-11b above, some Project components would benefit these fish by increasing the extent of open water in the Project area through removal of existing structures and by

reducing coastal erosion. In addition, compensatory mitigation for impacts of the bridge to aquatic habitat would be provided as described by mitigation measures MM BI-4a.1 and MM BI-4c, and mitigation measure MM BI-4a.2 shall be implemented to minimize impacts to wetlands, aquatic habitats, and water quality during construction. Implementation of mitigation measure MM BI-12a.1 and MM BI-12a.2 would reduce effects of construction activities on special-status fish by avoiding in-water construction during periods when sensitive species are most likely to be present in waters of the Project site and by educating construction personnel regarding measures to be implemented to protect fish and their habitats. Implementation of these measures would reduce potential adverse effects on special-status fish species to less-than-significant levels.

Response to Comment 47-94

The commenter suggests that creation of EFH in San Francisco Bay has not generally been successful, and that this mitigation measure has thus not proven to be feasible. For the purpose of the impact assessment in the Draft EIR, all tidal aquatic and mud flat habitats were considered EFH without regard for habitat quality. With the exception of a small amount of permanent impact within Yosemite Slough, areas of permanent project impacts to EFH will be limited to relatively low-quality habitat along developed/disturbed shorelines of Candlestick Point and Hunters Point Shipyard. In contrast, restoration of tidal waters of equal or greater quality to fish, which would be feasible by removing fill and restoring natural habitat in any number of areas within the Bay, would feasibly mitigate Project impacts to EFH. The Project applicant will be consulting with the NMFS regarding project impacts to federally listed fish and EFH and associated mitigation.

Response to Comment 47-95

The commenter suggests that long-term impacts to EFH may occur as a result of operation of the marina aside from maintenance dredging but that such impacts, such as fuel spillage and motorized boat use, were not analyzed in the Draft EIR. However, MM BI-12b.1, page III.N-91 of the Draft EIR includes the following measure:

- *Use Best Management Practices (BMPs) for controlling pollution from marina operations, boatyards, and fueling facilities that meet, as applicable, the BMPs listed in the National Management Measures to Control Nonpoint Source Pollution from Marinas and Recreational Boating⁸¹⁹*

Thus, mitigation for such impacts has already been identified. Nevertheless, for purposes of clarification, the text for Impact BI-12b, pages III.N-89 to -90 of the Draft EIR has been revised as follows in response to this comment:

The same three fishery management plans and the species covered in those plans discussed in the previous impact statement apply to HPS Phase II. The modifications to EFH that could arise from HPS Phase II are associated with the proposed marina, placement of rock fill to buttress existing bulkheads, and the shoreline treatments. Marina operations could affect EFH through potential impacts to water quality and fish habitat resulting primarily from spills or intentional discharges of fuel or other harmful substances from boats using, or fueling facilities associated with, the marina. The most substantial loss of EFH would result from the placement of rock buttress fill necessary to protect the integrity of existing bulkheads. Although aquatic habitat would remain above the buttresses, this rock would occupy existing fish habitat, and the Project would thus substantially modify EFH within the waters adjacent to the HPS Phase II site.

Response to Comment 47-96

Refer to Response to Comment 47-58 for a discussion of the project's consistency with the BCDC San Francisco Bay Plan.

Response to Comment 47-97

As discussed in Master Response 3 (Impacts of the Project on Yosemite Slough [Biological Resources]), the Project will not cause any significant harm to the slough. Refer to Response to Comment 47-47 for a discussion of the potential for the proposed bridge pilings to impede or alter currents in Yosemite Slough.

Response to Comment 47-98

Please refer to Response to Comment 47-20 regarding the bridge's impact on future recreational boaters using Yosemite Slough. As noted in that discussion, clearance under the bridge would be between 8 feet 7 inches and 13 feet, depending on the magnitude of future sea level rise. The commenter refers to a diagram from Appendix N2 to the Draft EIR, showing a 4-foot clearance under the bridge. As explained in the annotations to this diagram depicts the bridge with Yosemite Slough at its 100-year flood level and assumes the sea level rise of 55 inches—the high end of the range of sea level rise estimates used in the Draft EIR. Although some amount of sea-level rise is likely, this scenario was chosen to represent extreme conditions in order to determine the bridge's design parameters and is not meant to be a prediction about the typical future level of the slough surface, nor an analysis of its effect on navigation. A 100-year flood is a very rare event, and such conditions do not represent the recreational experience. In any event, it is highly unlikely that recreational boaters would attempt to navigate the slough during a 100-year flood event. On the vast majority of days, as explained in Response to Comment 47-20, the bridge would not pose an obstacle to watercraft.

Response to Comment 47-99

Refer to Responses to Comments 47-3 and 47-28 for a discussion of the role of the proposed improvements in the analysis of impacts to CPSRA.

Response to Comment 47-100

Refer to Responses to Comments 31-9 and 31-11 regarding the Bay Trail alignment.

Response to Comment 47-101

This comment contains introductory, closing, or general background information and also reflects the commenter's opinions. No response is required. However, each of the commenter's general issues is specifically responded to in Responses to Comments 47-67 through 47-101.

Response to Comment 47-102

This comment contains introductory, closing, or general background information and is not a direct comment on environmental issues or the content or adequacy of the Draft EIR. No response is required.

Response to Comment 47-103

The comment is acknowledged. No response is required.

Response to Comment 47-104

The game-day stadium traffic control plan, as shown in Figure III.D-13 in the Draft EIR and revised in Response to Comment 7-17 to reflect a transit only lane along Harney Way to Bayshore Boulevard, includes a total of eleven traffic lanes exiting the Hunters Point Shipyard site as well as two travel lanes entering the site (one on Griffith Street/Crisp Avenue providing access to the south side of the Hunters Point Shipyard site and another on Innes Avenue providing access to the north side of the Hunters Point Shipyard site). The commenter suggests that these lanes that are proposed to provide “inbound” traffic access to the Hunters Point Shipyard site following football games could be reversed to provide additional “outbound” traffic capacity exiting the stadium. In this case there would be no vehicular traffic lanes providing “inbound” access to the Hunters Point Shipyard site. The commenter notes that if this were done, emergency vehicle access would continue to be provided via the transit only lanes along the BRT route and along Palou Avenue, which would be closed to through traffic on game days.

However, these two “inbound” lanes provide the only vehicular access to the Hunters Point Shipyard, which in addition to the NFL stadium, would include:

- 2,650 residential dwelling units
- 125,000 square feet of neighborhood retail
- 2,500,000 square feet of research and development space
- 255,000 square feet of artists studios
- 50,000 square feet of community services facilities
- 231 acres of public parks

It is unclear from the comment how non-stadium traffic, particularly residents of the 2,650 residential units, would access their destinations in the Hunters Point Shipyard if the only two inbound travel lanes providing access were reversed. Therefore, the modification to the game-day traffic configuration proposed is considered infeasible.

The commenter also suggests that on-street parking be prohibited on the north side of Carroll Avenue, Gilman Avenue, and Ingerson Avenue, between Third Street and Ingalls Street, as well as on Paul Avenue, between San Bruno Avenue and Third Street. The parking lanes on Carroll Avenue and Gilman Avenue are planned to be seven feet wide. This would not be adequate width to provide an additional travel lane on either of these streets.

However, even if additional travel lanes were possible on these streets, stadium exit capacity would not be increased. The exiting capacity of the stadium is limited by the number of lanes exiting the stadium area on Crisp Road. Without the Yosemite Slough bridge, there would only be three exiting lanes on the route along Crisp Road, Griffith Street, Thomas Avenue, and Ingalls Street. These three lanes then split into one lane along Carroll Avenue and two lanes on Gilman Avenue. If additional east-west capacity were provided along Carroll Avenue, Gilman Avenue, and/or Ingerson Avenue, there would continue to be just three lanes exiting the route along Crisp Road, Griffith Street, Thomas Avenue, and Ingalls Street, which represents the exiting capacity constraint. It is not feasible to widen these streets to provide additional exit

capacity along this route because that would involve severe reductions in sidewalk width, which would be inconsistent with the City's Draft Better Streets Plan, or require acquisition of private property. This would be considered infeasible, particularly because the property in question is a PDR use, which the City has made considerable effort to retain. In particular, the *San Francisco General Plan* Policy 8.1 (Maintain industrial zones for production, distribution, and repair activities in the Northern Gateway, South Basin, Oakinba, and India Basin Industrial Park subdistricts) supports retention of PDR uses in the Bayview.

The commenter also questions whether there is evidence to support the statement that the NFL would not be willing to consider a stadium with severely increased exit times as would be the case without the Yosemite Slough bridge. This statement was the product of previous conversations between the City of San Francisco and the NFL. Further evidence is provided in Comment 92-1, a letter drafted by the NFL to the City of San Francisco dated January 12, 2010. In this letter, the NFL notes that the Yosemite Slough bridge is a critical piece of infrastructure for providing access to the stadium.

Also, refer to Master Response 4 (Purpose and Benefits of the Yosemite Slough Bridge) regarding the necessity of the Yosemite Slough bridge.

Response to Comment 47-105

The commenter suggests that the “reverse” of the post-game lane configuration shown in Figure III.D-13 in the Draft EIR (i.e., the pre-game configuration) would not be required to provide eleven inbound lanes since traffic arrival patterns would be dispersed over time. (Figure III.D-13 has been revised in Response to Comment 7-17 to reflect a transit only lane along Harney Way to Bayshore Boulevard.) While the commenter is correct in one sense, that is, that pre-game conditions are not as critical as post-game conditions, traffic volumes prior to games are still substantially increased over non-game-day conditions and additional inbound capacity is certainly warranted. The pre-game configuration has been designed to be similar to the post-game configuration because it reduces driver confusion since patrons know they can exit the way in which they arrive. Further, anecdotal evidence suggests that patrons have a higher tolerance for traffic congestion following a major sporting event than prior to the event. Thus, fans expect to be able to enter the venue reasonably quickly, but typically expect some congestion leaving the event. So, even if arriving patrons are spread out over a longer time, the additional capacity is warranted to maximize ingress. Ultimately, though, the game-day roadway configuration was primarily designed for the critical post-game period, in which eleven travel lanes would be required.

The commenter notes that although the Yosemite Slough bridge allows for a quicker clearance time, congestion on regional facilities may last for some time following the clearance of the parking lot and that fans would still have the same overall travel times between the proposed stadium and their homes as they do today. The commenter is partially correct, that congestion along primary exit routes, including freeway facilities, may not dissipate immediately following the parking lot clearance. However, providing additional egress routes would spread out the post-game congestion, and provide a quicker parking lot clearance time, and therefore the overall travel times for patrons to leave the stadium would be improved over existing conditions. Refer to the discussion associated with Impact TR-38: (Stadium 49ers Game Site Access and Traffic Impacts) on Draft EIR pages III.D-127 to III.D-133.

The improved stadium exit capacity is due to its location (combined with the proposed infrastructure, including the Yosemite Slough bridge). Whereas the existing stadium is connected to regional freeway facilities through a single primary connection, at Harney Way, the new stadium site offers both a northern and southern exit route. The Yosemite Slough bridge provides the needed connection to the southern route at the Harney Way interchange, and Innes Avenue/Evans Avenue/Cargo Way offer an alternate northern exit route toward I-280 and US-101 north of the stadium. By spreading out the traffic to multiple freeway interchanges, rather than overloading a single interchange as is the case today, egress from the stadium would be more efficient and travel times would improve.

Response to Comment 47-106

Refer to Response to Comment 17-1 for a discussion of the process that would be required for the bridge to be open for public use.

Response to Comment 47-107

Refer to Response to Comment 17-1 for a discussion of the process that would be required for the bridge to be open for public use.

Response to Comment 47-108

Refer to Response to Comment 17-1 for a discussion of the process that would be required for the bridge to be open for public use.

Response to Comment 47-109

Refer to Response to Comment 47-15 for discussion of rail-readiness of the bridge. Refer to Response to Comment 17-1 for a discussion of the process that would be required for the bridge to be open for public use.

Response to Comment 47-110

Refer to Master Response 4 (Purpose and Benefits of Yosemite Slough Bridge) regarding the necessity of the Yosemite Slough bridge. It would be prohibitively costly to tunnel under the neck of the slough for a BRT crossing due to the relatively short length (less than 1,000 feet) of the crossing. In general, tunnel construction is several times more expensive than the cost of a bridge. Tunnel construction at the site would require boring through soft soil conditions, rubble fill, and bedrock, which would require several different tunneling methods, and would likely add significant additional costs.

In addition, a tunnel would require more extensive approaches than an aboveground bridge—a tunnel would need to be approximately 2,400 feet long, and would extend 700 feet into Candlestick Point and about 800 feet into Hunters Point Shipyard—which could create additional environmental impacts or increase the severity of impacts identified for the Project. On the Hunters Point Shipyard side, extending the tunnel 800 feet would bring the tunnel into an area that will require substantial remedial actions under the Navy's cleanup program, due to the presence of a landfill. Trying to place a tunnel through this area raises a number of issues concerning hazardous materials, water quality, and geology.

Response to Comment 47-111

Although, as noted by the commenter, a scenario without the bridge would not constitute a significant impact to pedestrian circulation, the Yosemite Slough bridge does provide a substantial benefit to cyclists and pedestrians. Refer to Master Response 4 (Purpose and Benefits of the Yosemite Slough Bridge) regarding the necessity of the Yosemite Slough bridge.

In conversations with ABAG Bay Trail planners in January 2010, SFMTA staff confirmed that one of the purposes of the Bay Trail extends beyond recreational function and is indeed to provide attractive bicycle and pedestrian circulation alternatives to driving as a form of commuting and meeting other transportation and access needs. At that meeting, it was recognized that the directness and short length of the Yosemite Slough bridge's exclusive bicycle and pedestrian lanes as links between the two neighborhoods (Candlestick Point and Hunters Point Shipyard) would make them a more useful and convenient path for this purpose than the much longer and more circuitous path along the shoreline.

Response to Comment 47-112

Under conditions with a new NFL stadium, the proposed Yosemite Slough bridge would be 81 feet wide, and would provide a 12-foot-wide Class I bicycle path and 7-foot-wide sidewalk on the east side and a 40-foot bicycle/pedestrian promenade on the west side. Under conditions without a new stadium, the bridge would provide a bicycle path and a sidewalk on the east side of the bridge. In either case, the proposed facilities would comply with minimum design standards, including the Caltrans Highway Design Manual, as cited by the commenter. Although the Highway Design Manual notes that pedestrians and bicycles should be separated if significant volumes are expected, it does not specify a threshold at which separate facilities are recommended; instead, the Highway Design Manual relies on the engineering judgment of designers and planners. Although the facility is expected to form an important connection between Candlestick Point and the Hunters Point Shipyard, bicycle and pedestrian volumes are not expected to be so high as to warrant separating the uses.

On game days, pedestrian and bicycle travel on the bridge would be limited to the 12-foot shared path on the east side of the bridge. As noted in Impact TR-41 on page III.D-137 of the Draft EIR, before and after games, pedestrian travel near the new stadium would experience crowding. However, the Draft EIR notes that pedestrian crowding and conflicts with traffic and bicycles is expected and understandable for large events. This phenomenon would apply also to the facility on Yosemite Slough bridge, where pedestrian volumes would be heavy before and after games. However, these circumstances are expected at large events and no special treatment to the 12-foot facility is required.

Response to Comment 47-113

The commenter notes that the Yosemite Slough bridge would cross the Bay Trail route around Yosemite Slough. South of Yosemite Slough, it is anticipated that the Bay Trail would veer to the south of the edge of the slough by about 250 feet to the signalized intersection of Arelious Walker Drive and Carroll Avenue. Pedestrian- and bicycle-actuated signals and crosswalks would be provided at the intersection. A separate path would also be provided to connect with overlook decks on either side of the bridge, to the 12-foot wide Class I bicycle lane and 7-foot-wide sidewalk on the east side of the bridge, and to the 40-foot-wide

bicycle/pedestrian pathway on the west side of the bridge. North of Yosemite Slough, it is anticipated that the Bay Trail would veer to the south of the proposed Bay Trail alignment to a pedestrian- and bicycle-actuated crossing of Yosemite Slough Bridge about 150 feet north of the slough. The crossing would also connect with the Class I bicycle path and the sidewalk that would be provided on the east side of the Yosemite Slough Bridge and to the 40-foot wide bicycle/pedestrian parkway.

Response to Comment 47-114

Intersection LOS is a qualitative description of traffic operating conditions commonly used to assess traffic operating conditions because intersections typically form the constraints to traffic flow in a network. Crossing streams of pedestrians, bicycles, transit, and vehicular traffic create the need to control certain movements through the use of signals and stop signs. These periodic stops in traffic flow create “bottlenecks” and as a result, intersection capacity typically dictates the capacity of the overall transportation network.

Although intended as a qualitative description as described in the Highway Capacity Manual, intersection LOS is determined based on average vehicular delay, which is calculated based on traffic volumes, pedestrian and bicycle volumes, parking maneuvers, and intersection control devices (i.e., signals or stop signs). The calculations account for the statistical variation in vehicle arrivals over time and the regularity of control devices at restricting vehicular capacity.

In the approximately one to two hour period following a football game at the new stadium, at many locations, intersection control would be manually overridden, either by an on-site traffic control officer or remotely through the proposed Traffic Management Center at the stadium. This manual control would allow the controller to prioritize large streams of traffic exiting the stadium for longer than normal periods of time. As a result of these unique circumstances, it is impossible to forecast the resulting average delay per vehicle at intersections using methodologies that were developed for application in more typical settings.

Rather, the analysis describes traffic operating conditions along primary stadium exit routes qualitatively, based on magnitude, duration, and location of congestion. Although not based on average vehicular delay, which is not possible to calculate under these circumstances, this qualitative description is consistent with the intent of automobile LOS as defined by the Highway Capacity Manual (Transportation Research Board 2000), which is to provide:

... a quality measure describing operational conditions within a traffic stream, generally in terms of such service measures as speed and travel time, freedom to maneuver, traffic interruptions, and comfort and convenience.

Response to Comment 47-115

This comment contains introductory, closing, or general background information and is not a direct comment on environmental issues or the content or adequacy of the Draft EIR. No response is required.

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■ Letter 48: McRee, Richard (1/12/10)

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Letter 48

January 12, 2010

Richard McRee, Architect
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RE: CANDLESTICK POINT–HUNTERS POINT SHIPYARD PHASE II - Draft EIR
San Francisco Redevelopment Agency File No. ER06.05.07
City and County of San Francisco Planning Department File No. 2007.0946E
State Clearinghouse No. 2007082168

Gentlemen,

As a San Francisco Architect since the Fuel Crisis of the 1970's, I have had intensive experience with the Master Planning of sizable projects and with EIR's. So it was with great interest that I reviewed the referenced Draft EIR - particularly in regards to Energy, Alternatives, and History. With ever-growing urgency to reduce our Country's over-dependence on fossil fuels, it is my hope that these comments will serve to facilitate effective consideration by the relevant Agencies.

CEQA Guidelines, Section 15021 charge the Agency with the "duty" to:

- "...avoid or minimize environmental damage",
- "...not knowingly release a deficient document",
- "...give major consideration to preventing environmental damage,
- "...not approve a project ... if there are feasible alternatives ... that would substantially lessen any significant effects."

This EIR arrives at a crucial turning point for our Economy and the Public's realization of the serious choices our leaders must make as they regard Global Warming. The extensive coverage of many subjects in the EIR was quite impressive. Nevertheless, and for the sake of future generations, I believe that this EIR must more effectively weigh Alternatives and the Project's Impact related to Greenhouse Gasses.

In the mid-1970's, the Planning Commission required extended consideration for the planning and design of Levi's Plaza ("Greenwich Square") – an augmented study that resulted in a greatly-improved Project despite moderate delay. Similarly, the Agency now has an opportunity to encourage a more responsive and exemplary development for this major Project that is appropriate for a City widely-respected for its forward thinking regarding important issues.

48-1

Proposition G:

Although Proposition G authorized provisional study of a new stadium, there was no mandate to destroy and replace Candlestick Park stadium. One of its objectives was to provide an *"integrated development (that) should incorporate environmental sustainability concepts and practices"*. Another, was to *"...encourage the San Francisco 49ers—an important source of civic pride—to remain in San Francisco"*

48-2

With a fair and complete study and comparison of alternatives, the 49er's might realize that an exciting new development can harmoniously integrate new planning components with a rejuvenated Candlestick Park stadium, one which has meant much to San Franciscans for many years.

Alternatives:

Contrary to CEQA Guideline Section 15126.6, this Draft EIR fails completely to describe a *"reasonable alternative"* that both retains the long-time use of Candlestick Park and meets *"most of the basic objectives"* of the Project.

Alternative 3 is the only alternative that retains Candlestick Park stadium, which has the same seating capacity and function of the proposed new stadium, plus added obvious advantages of location and history. Any possibility of harmoniously integrating the existing stadium with new developments for the Project is completely overlooked.

48-3

Unfortunately, this alternative does not permit a *"reasoned choice"* (p.VI-1). First, it *intentionally reduces* the total amount of desired residential use, and then rejects the entire plan out of hand on the basis that its *"minimal development"* at Candlestick Point *"would not meet several "Project objectives"*. That rapid conclusion ignores the fact that the open area northeast of the existing stadium is denied significant housing components indicated for the Project. It also ignores the fact that the area at HPS-II designated for a new stadium is large enough to accommodate the remainder of the desired housing component.

From a Planning standpoint, "Reason" requires that Alternatives offered should be practically comparable to each other and provide a full consideration of their relative impacts and merits. A proper Master Plan will also indicate phasing of critical elements so the fortunes of the residents at Alice Griffith Housing, for example, do not worry that their future depends on the fortunes of a football team and a daunting 700 acres.

Energy and Greenhouse Gasses:

While this EIR's treatment of GHG's appears admirable, it essentially dismisses out of hand the issue of GHG's for Embodied Energy in materials. While the EIR repeatedly acknowledges that material manufacturing and handling do indeed constitute major GHG-producing activities, this Draft EIR seeks repeatedly to sidestep the issue with arguments that such energy is expended *"out-of-state"*, by *"other industries"*, or purporting that any such accounting would be *"purely voluntary"* - despite the fact that, as of last week, the 2010 Title 24 Code requires exactly such study.

48-4

However, the immediacy and reality of Global Warming - and the clear intention of related legislation - fully enacted or not - does not allow further avoidance of this consideration when weighing the decision to replace, in kind, any useful facility. Rejuvenation of existing facilities provides meaningful, labor-intensive jobs for many people while it conserves the intensive fossil fuel energy otherwise spent for high-energy replacement materials like concrete, steel, glass, and aluminum.

3 of 3

Both the existing stadium and its replacement represent considerable Embodied Energy that deserves to be appropriately quantified before making an informed choice. San Francisco has an EIR precedent for doing so. The certified 1978 Nieman-Marcus Final EIR was perhaps the very first EIR to provide a quantification of the Embodied Energy needed to construct a new building. The Responses in that Final EIR revealed that the fossil fuel energy expended for creating and placing the materials for the major 60,000 square-foot Department Store equaled the power needed to operate th at energy-heavy occupancy for nearly 60 years.

48-4
cont'd.

By extrapolation, I estimate the total mass of a major sports stadium to be approximately 15 to 20 times that of the Department Store. Consequently, any stadium – whether new or old - represents the past or present expenditure of enough fossil fuel to operate all of the lights, heating, air-conditioning, elevators, escalators and displays at a Department Store for roughly **1,000 years**.

Contrary to the intention of much legislation and the growing urgency to do otherwise, it can only be concluded that this DRAFT EIR endorses nothing less than *"the expenditure of energy in a wasteful manner"*.

Cultural Resources:

The history of Candlestick Park stadium is completely disregarded *"(because it was not quite 50 years old)"* during the writing of the EIR. However, it is a well-designed structure and perhaps the only contemporary sports stadium to endure a major earthquake with a full load of people, yet suffer minimal damage. It has periodically housed the best team in the league, which young football players might consider inspiring. Last, but not least, it even hosted the final performance of the Beatles as their final venue for their last World Tour in August of 1966.

48-5

49ers:

For the past twenty years, the NFL has been inclined to replace existing football stadia and build replacements across the country. Today, both the Economy and Energy issues challenge them to embrace environmentally-responsive goals.

48-6

A more effective EIR could help encourage the San Francisco 49ers to become the *"Greenest Team in the League"* by staying here, improving Candlestick, and extending the life of the historic stadium. By doing so, they would:

- a) Spend less money, helping to keep ticket prices affordable,
- b) Conserve 1,000 "Department Store Years" (see above) worth of Embodied Energy,
- c) Conserve another "1,000 years" of fossil fuel by not building a replacement that will soon enough itself get "old", and
- d) Conserve a further estimated "300 years" of GHG's for additional infrastructure needed to accommodate 20,000 vehicles traveling to two extra miles to a distant site 12 times each year.

Most promising perhaps, rejuvenation of Candlestick would provide meaningful labor-intensive jobs that challenge designers and workmen alike.

Thank you for your attention to all of these matters.

Very truly yours,

Richard McRee, Architect

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■ Letter 48: McRee, Richard (1/12/10)

Response to Comment 48-1

This comment contains introductory or general background information and is not a direct comment on environmental issues or the content or adequacy of the Draft EIR. No response is required.

Response to Comment 48-2

Alternative 3, which is presented and analyzed on pages VI-60 through VI-92 of the Draft EIR, evaluates an alternative that retains the existing Candlestick Stadium.

Response to Comment 48-3

With regard to the range of alternatives and alternatives considered and rejected, as described in Chapter VI (Alternatives), page VI-1, of the Draft EIR, alternatives are by definition supposed to address the impacts of the Project. Alternatives should provide alternative designs or features that would reduce the Project's impacts, including reduced development scenarios. Chapter VI states:

In accordance with CEQA Guidelines Section 15126.6, EIRs are required to include a discussion of alternatives to a proposed Project. Section 15126.6(a) states that an EIR should describe a range of reasonable alternatives to a Project that would attain most of the basic objectives of a Project while reducing one or more of the significant impacts of the Project, and should evaluate the comparative merits of those alternatives.

Public Resources Code Section 21002 states, in pertinent part:

In determining the nature and scope of alternatives to be examined in an EIR, the Legislature has decreed that local agencies shall be guided by the doctrine of "feasibility." It is the policy of the state that public agencies should not approve Projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such Projects. In the event specific economic, social, or other conditions make infeasible such Project alternatives or such mitigation measures, individual Projects may be approved in spite of one or more significant effects thereof.

California has declared that the statutory requirements for consideration of alternatives must be judged against a rule of reason. CEQA Guidelines Section 15126.6(f) defines the "Rule of Reason," which requires that an EIR set forth only those alternatives necessary to permit a reasoned choice. The alternatives shall be limited to those that would avoid or substantially lessen any of the significant effects of the Project. Of those alternatives, the EIR need examine in detail only those that the lead agency determines could feasibly attain most of the basic objectives of the Project. Among the factors that may be used to eliminate alternatives from detailed consideration in an EIR is (i) failure to meet most of the basic Project Objectives, (ii) infeasibility, or (iii) inability to offer substantial environmental advantages over the Project proposal (CEQA Guidelines Section 15126.6(c))."

The methodology for identifying alternatives involved a several step process.

The general process for identifying alternatives for consideration in the document included these steps:

1. Review the significant effects resulting from the Project and identify possible strategies to avoid or lessen such impacts
2. Review ideas and alternative concepts suggested during the Project scoping process and any presented to the lead agencies during the preparation of the DEIR

3. Categorize and evaluate strategies and concepts for the ability to meet the basic Project Objectives and avoid or lessen significant impacts
4. Develop preliminary alternatives based on the strategies and concepts retained from preliminary screening and evaluate feasibility with respect to technical, institutional, costs and regulatory considerations
5. Select and refine a final set of alternatives for CEQA analysis

From this process, four alternatives, in addition to the required No Project Alternative, were selected for further evaluation and comparison to the Project and the Project Variants. Together, this set of five alternatives represents a broad range of options in terms of how key aspects of the proposed Project could be implemented. Each alternative differs from the Project in one or more of the following ways:

1. In the treatment of the Yosemite Slough bridge, either by changing the design or removing the Bridge proposal from the Project and substituting an alternative transportation component
2. In the intensity of development
3. In the location and type of land uses
4. In the treatment of the Candlestick Point State Recreation Area (CPSRA), either by changing the reconfiguration proposed or removing the CPSRA from the Project
5. In the treatment of the 49ers Stadium, either by changing the location of the Stadium or removing the Stadium from the Project
6. In the preservation of historic structures

The alternatives selected were judged the best to represent the range of identified strategies and concepts. Mitigation measures that have been identified for Project impacts would apply to impacts of the alternatives if the alternatives analysis indicates that mitigation is required to minimize a similar significant impact.

CEQA Guidelines require that the range of alternatives addressed in an EIR be governed by a rule of reason. Not every conceivable alternative must be addressed, nor do infeasible alternatives need to be considered (CEQA Guidelines Section 15126.6). Section 15126.6 of the CEQA Guidelines states that the factors that may be taken into account when addressing the feasibility of alternatives are site suitability, economic viability, availability of infrastructure, other plans or regulatory limitations, and jurisdictional boundaries. The discussion of alternatives must focus on alternatives capable of either avoiding or substantially lessening any significant environmental effects of the Project, even if the alternative would impede, to some degree, the attainment of the Project Objectives or would be more costly. The alternatives discussion should not consider alternatives whose implementation is remote or speculative, and the analysis need not be presented in the same level of detail as the assessment of the Project.

A full analysis of alternatives is provided in Chapter VI (Alternatives to the Proposed Project) of the Draft EIR. The alternatives evaluated in the Draft EIR constitute a reasonable range of alternatives that would accomplish the major objectives of the Project, while avoiding or lessening the magnitude of the physical environmental effects of the Project, as is required under CEQA. The alternatives analysis includes an evaluation of five alternatives to the Project, including the No Project alternative. To develop the alternatives analysis, the objectives of the Project, as identified on page VI-3, and the significant impacts of the Project, as identified in Chapter V (Other CEQA Considerations), pages V-1 through V-4, were considered. The alternatives were developed to reduce the identified impacts with consideration for the Project Objectives. For each alternative, the purpose of the alternative is identified on page VI-3 through VI-5, as the second paragraph under each alternative. As stated on page VI-3, Alternative 1 is required by

CEQA as a comparison with baseline development; Alternative 2 is intended to reduce biological impacts from bridge construction; Alternative 3 is intended to reduce construction impacts and growth-related operational impacts by reducing the total development and using the existing stadium; Alternative 4 is intended to reduce construction impacts and growth-related operational impacts by reducing the total development by 30 percent and would also preserve historical resources; Subalternative 4A is intended to provide a preservation alternative combined with the land use plan of the Project, and Alternative 5 is intended to reduce construction impacts and growth-related operational impacts by reducing not constructing the stadium or affecting the biological resources adjacent to the Yosemite Slough bridge.

Chapter VI, Section VI.D.1 (Alternatives Considered but Eliminated from Further Analysis in the Draft EIR), describes why certain alternatives identified during the public scoping process were not evaluated in the EIR. As stated on page VI-161:

Alternatives considered, but eliminated from further analysis in the EIR, were evaluated in concept, but were eliminated for one or more factors, including (1) they did not reduce significant environmental effects; (2) they did not achieve most of the basic Project Objectives; and/or (3) they were not capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors. As stated above, according to CEQA Guidelines Section 15126.6(f)(1), factors that may be considered when a Lead Agency is assessing the feasibility of an alternative include:

[S]ite suitability, economic viability, availability of infrastructure, general plan consistency, other plans or regulatory limitations, jurisdictional boundaries (Projects with a regionally significant impact should consider the regional context), and whether the proponent can reasonably acquire, control, or otherwise have access to the alternative site (or the site is already owned by the proponent) (CEQA Guidelines, Section 15126.6(f)(1)).

The alternatives considered but eliminated from further analysis in this EIR include:

- Alternative San Francisco 49ers stadium locations (City of Brisbane or Port of San Francisco sites)
- Alternative land use plans and locations for the 49ers Stadium on HPS Phase II
- Alternative land use plan for Candlestick Point
- Develop Candlestick Point for parks and open space only
- Alternative locations for the Project within the City of San Francisco

Alternative locations for the Project outside the City of San Francisco are discussed in Chapter VI (Alternatives) (pages VI-160 through VI-173). Page VI-167 states:

Overall, the Arc Ecology land use alternatives are rejected because they do not reduce or avoid environmental effects of the Project in ways different from the Alternatives examined above. ...

Response to Comment 48-4

As stated on page III.S-24:

Short-Term (One-Time) Impacts

Short-term or one-time emissions from the development of this Project are associated with vegetation removal and re-vegetation on the Project site and construction-related activities. Construction activities also include a life-cycle analysis estimating the GHG associated with the manufacture and transport of building materials and infrastructure. As previously mentioned, this estimate for life-cycle emissions is used for comparison purposes only and is not included in the final inventory as these emissions would be accounted for under AB 32 in other industry sectors.

Further, on pages III.S-25 and -26, the Draft EIR identifies that an analysis of the embedded energy is speculative for the purposes of CEQA analysis:

... Furthermore, somewhat arbitrary boundaries must be drawn to define the processes considered in the life-cycle analysis of building materials.¹¹⁵⁴ Recognizing the uncertainties associated with a life-cycle analysis, the California Air Pollution Control Officers Association (CAPCOA) released a white paper that states: “The full life-cycle of GHG emissions from construction activities is not accounted for in the modeling tools available, and the information needed to characterize GHG emissions from manufacture, transport, and end-of-life of construction materials would be speculative at the CEQA analysis level.”¹¹⁵⁵

The Draft EIR did utilize a Life Cycle Assessment (LCA) for the embedded energy for the production of the materials that would be used to develop the Project’s commercial and residential structures, including the new stadium. As stated, on page III.S-26:

The LCA estimated the life-cycle GHG emissions for buildings by conducting an analysis of available literature on LCAs for buildings. According to these studies, approximately 75 to 97 percent of GHG emissions from buildings is associated with energy usage during the operational phase; the other 3 to 25 percent of the GHG emissions is due to material manufacture and transport. Using the GHG emissions from the operation of buildings, 3 to 25 percent of building emissions corresponds to approximately 0.9 to 9 percent of the Project emissions.

Further, the Project would be required to comply with the City of San Francisco Construction and Demolition Debris Recovery Ordinance, requiring all construction and demolition debris to be transported to a registered facility that can divert a minimum of 65 percent of the material from landfills, and the City’s Green Building Ordinance. The City’s Green Building Ordinance includes a requirement to redirect at least 75 percent of construction and demolition waste from landfills. As such, the majority of the construction debris would be recycled, which would offset the loss of the embedded energy utilized in the construction of the original Candlestick Stadium.

Response to Comment 48-5

Refer to Response to Comment 39-4 on the evaluation of Candlestick Park stadium under NRHP and CRHR criteria. As discussed in that Response, Candlestick Park stadium would not meet NRHP or CRHR criteria as an historic resource.

Response to Comment 48-6

Refer to Response to Comment 47-14 about the 49ers stadium as a Project Objective. One of the Project Objectives is to “encourage the 49ers—an important source of civic pride—to remain in San Francisco by providing a world-class site for a new waterfront stadium and necessary infrastructure.” The comment regarding the retention of Candlestick Park stadium for NFL use is not a direct comment on the content or adequacy of the Draft EIR.

Alternative 3 (Reduced CP-HPS Phase II Development; San Francisco 49ers Stay at Existing Candlestick Park Stadium; Limited State Parks Agreement; Yosemite Slough Bridge Serving Only Transit, Bicycles, and Pedestrians), Draft EIR pages VI-60 through VI-92, would be a Project Alternative that would retain Candlestick Park Stadium.

■ Letter 49: Neighborhood Parks Council (1/12/10)

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Letter 49



January 12, 2010

Stanley Muraoka
San Francisco Redevelopment Agency
One South Van Ness Avenue, 5th Floor
San Francisco, CA 94103

Bill Wycko, Acting Environmental Review Officer
San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco, CA 94103-2479

Re: Candlestick Point - Hunters Point Shipyard Phase II DEIR
SFRA File No. ER06.05.07, Planning Dept Case No. 2007.0946E

Gentlemen:

The Neighborhood Parks Council has concerns about the adequacy of the environmental review of the captioned project, particularly as respects the Blue Greenway, which is a segment of both the Bay Trail and the Bay Area Water Trail between AT&T Park and Candlestick Point.

49-1

The DEIR should include reference to and appropriate proposed locations for elements of the Bay Area Water Trail in the Land Use section (IIIB).

Chapter III. D. Transportation and Circulation

This entire section should be rewritten. The focus of the DEIR is the traditional vehicle LOS analysis, without taking into consideration the new 2009 SB 97 Rules (http://ceres.ca.gov/ceqa/guidelines/proposed_guidelines_amendments_and_related_materials.html), where there's not only a requirement to reduce greenhouse gas emissions (Section VII), but a revised Transportation section (XVI). This project is expected to be built out over 20 years, and the transportation analysis should reflect current CEQA guidelines; most significantly, the criteria that determine whether the project would:

49-2

a) Conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, **taking into account all modes of transportation including mass transit and non-motorized travel** and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit?

49-3

b) Conflict with an applicable congestion management program, including, but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways?

49-4

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f) Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities supporting alternative transportation?

49-5

The Bicycle Plan outlined in the DEIR (Figure II-14) does not provide near-term improvements to the bicycle network between Innes Avenue (India Basin/Area C) and Crisp Avenue. Bicycle improvements should also be constructed in Phase I connecting Crisp Avenue, through the Shipyard to Candlestick Point. Class III bike markings will not be safe or adequate, particularly on streets with high vehicle traffic. Since the planned Bay Trail alignment along the shoreline is dependent on environmental remediation, and development of much of this area will not occur until at least Phase III, construction of an interim Class I bike path to provide a short-term connection that is not dependent on the possible Yosemite Slough bridge is very important. A comparable interim bicycle and pedestrian connection in Mission Bay on the south side of Mission Creek under the 280 freeway has been critical to the hundreds of residents and workers in that new neighborhood.

49-6

Chapter III. P – Recreation

While Mitigation measure RE-2 is a good beginning, in that phasing of parks and open space should be linked to residential and employment-generating uses, it does not adequately address the need.

49-7

Table III.P-3 should be amended to show, at each phase of development, the park-to-population ratio including the employee population, and should be maintained throughout the development at no less than 5.5 acres per 1,000 residents and employees. In addition, there should be an adjacency requirement, so that parks and recreation facilities (including facilities for families and children, if appropriate) are built adjacent to and concurrently with infrastructure and vertical development parcels, and connecting with existing open spaces (India Basin Shoreline Park and Hillside Park and Open Space, for example).


49-8

The proposed Marina and waterfront recreation areas should be sited to provide protection from summer winds (Chapter III.G – Wind) and southern surge in the winter. In addition to an analysis of Windsurfing in the Recreation section, there should be an analysis of appropriate conditions for kayaking and other non-motorized vessel operations along the Bay Area Water Trail.

49-9

Sincerely yours,

NEIGHBORHOOD PARKS COUNCIL


Corinne W. Woods
Blue Greenway Coordinator

For Meredith Thomas, Executive Director

■ Letter 49: Neighborhood Parks Council (1/12/10)

All of the comments provided in this letter are exactly the same as the comments provided in Letter 44. Letter 49 was submitted to the Agency, while Letter 44 was submitted to the San Francisco Planning Department. Full responses are provided in Letter 44.

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