

San Francisco Bay Conservation and Development Commission

375 Beale Street, Suite 510, San Francisco, California 94105 tel 415 352 3600

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

November 9, 2023

TO: Commissioners and Alternates

FROM: Larry Goldzband, Executive Director (415-352-3653; larry.goldzband@bcdc.ca.gov)
Cory Mann, Principal Coastal Planner (415-352-3649; cory.mann@bcdc.ca.gov)

SUBJECT: **Final Staff Recommendation for Proposed Bay Plan Amendment No. 1-19, an update to the *San Francisco Bay Area Seaport Plan***
(For Commission consideration on November 16, 2023)

Final Staff Recommendation

The staff recommends that the Commission adopt the attached Resolution No. 2023.02 (Appendix A) that would:

1. Adopt the new *San Francisco Bay Area Seaport Plan (Seaport Plan)* to replace the existing Seaport Plan (Appendix A, Exhibit A);
2. Approve the final Environmental Assessment (Appendix A, Exhibit B);
3. Amend *San Francisco Bay Plan* Maps 2, 3, 4, 5, and 6, to modify existing Port Priority Use Area boundaries in the Cities of Concord, Oakland, Redwood City, Richmond, San Francisco, and the unincorporated community of Selby in Contra Costa County (Appendix A, Exhibit C);
4. Amend the *San Francisco Bay Plan* Part IV - Development of the Bay and Shoreline findings and policies for Ports (Appendix A, Exhibit D);
5. Amend Resolution 16 to modify the above-referenced Port Priority Use Area boundaries within the shoreline band (Appendix A, Exhibit E);
6. Make necessary findings that the *San Francisco Bay Plan (inclusive of the Seaport Plan)* amendment conforms to all applicable findings and declarations of policies in the McAteer-Petris Act (Appendix A, p. 3), and;
7. Authorize the Executive Director to execute an Addendum to abandon an historic Memorandum of Understanding between BCDP and the Metropolitan Transportation Commission (MTC) regarding the Seaport Plan and the Seaport Planning Advisory Committee (Appendix A, p. 3).

An affirmative vote of two-thirds of the Commission membership (18 members) is required to amend the *San Francisco Bay Plan* and *Seaport Plan*.



Background

The Commission, in collaboration with the five Bay Area ports and other stakeholders, first adopted the *Seaport Plan* in 1982 as a more specific application of the *Bay Plan*. The purpose of the *Seaport Plan* is to minimize the risk of uncoordinated, haphazard Bay fill and to encourage the ports to coordinate their planning and development.

The Commission uses the *Seaport Plan* in making port-related decisions on permit applications, federal consistency determinations, and related matters. The *Seaport Plan* also provides land use guidance to local governments for planning port areas. The *Seaport Plan's* findings and policies reflect BCDC's role as a state agency with regional, rather than city or port-specific, authority and jurisdiction.

The existing *Seaport Plan* was adopted in 1996, although it has been amended several times since. In January 2019, the Commission voted to initiate BPA No. 1-19 to undertake a comprehensive update to the *Seaport Plan*. There were several reasons to update the *Seaport Plan* at this juncture, including:

- Updating the regional *Cargo Forecast*, which informs various policies of the *Seaport Plan*, which expired in 2020.
- Removing outdated information and updating findings and policies.
- Introducing new topic areas.
- Amending Port Priority Use Area boundaries to reflect shifts in regional need for cargo activity.
- Realigning the *Seaport Plan* to better reflect the scope of BCDC's authority and encourage regional coordination.

The *Seaport Plan* has not been substantially overhauled since its 1996 publication. In addition to the *Cargo Forecast's* expiration, most of the information in the 1996 *Plan* is outdated. Topics reflected in recently adopted *Bay Plan* policies like environmental justice or climate change are not specifically addressed in the 1996 *Plan*. Port activities have physically moved over the past 30 years and some Port Priority Use Area boundaries are outdated, accounting for real-world conditions and needs. For these reasons, staff undertook a comprehensive update to the *Seaport Plan* via BPA No. 1-19.

From 2019 to 2023, BCDC staff worked with the Seaport Planning Advisory Committee (SPAC) and other stakeholders to create a new draft *Seaport Plan*. A more detailed summary of this process can be found in the Preliminary Staff Recommendation. The first draft of the new *Seaport Plan* was publicly released in June 2023. In July 2023, BCDC staff presented this draft to the SPAC at a public meeting and received in-depth feedback from both the SPAC and interested members of the public. The SPAC voted 7-0 to recommend Commission approval of the *Seaport Plan*, with the understanding that BCDC staff would revise the plan in response to SPAC feedback and other public comment. After the SPAC meeting, staff revised the *Draft Plan*. The revised *Draft Plan* with an accompanying staff report, draft Environmental Assessment, and

response to initial public comments, was circulated to the Commission, all interested parties, and published on BCDC's website on September 29, 2023.

On November 2, 2023, a public hearing was held to provide an opportunity for the public to comment and Commissioners to also ask questions and comment about the revised *Draft Plan*. A response to public comments and Commissioner feedback can be found below.

If the Commission votes to approve the new *Seaport Plan*, it will then be sent to the CA Office of Administrative Law for approval and the NOAA Office of Coastal Management for adoption into the California Coastal Management Program under BCDC's federal Coastal Zone Management Act (CZMA) authority.

Response to Public Comments

On September 29, 2023, the Commission released the revised draft *Seaport Plan*, accompanying Staff Report and Preliminary Staff Recommendation and draft Environmental Assessment, and opened a 30-day public comment period. On November 2, 2023, the Commission held a public hearing on BPA No. 1-19, and public comment was received. The Commission closed the public hearing at the end of the November 2, 2023 meeting. The Commission received one written comment and eight oral public comments during the public comment period inclusive of the public hearing (September 29 to November 2), for a total of 9 public comments. A response to public comments can be found below.

I. Written Comment and Oral Comment

Mike Jacob, Pacific Merchant Shipping Association (PMSA)

Received October 30, 2023

This comment expressed general support for the adoption of BPA No. 19. As noted in the comment letter and reiterated in oral comment, PMSA submitted comprehensive feedback on the *Draft Seaport Plan* on a range of topics at earlier stages in the planning process. Staff responded to PMSA's more detailed feedback in the Preliminary Staff Recommendation.

See a response regarding Howard Terminal below (Oral comment, Sung Lee et al). Regarding the point that new issues could add to cargo capacity pressure on marine terminal sites, revised *Seaport Plan* Cargo Forecast Policy 1 states that the Commission and SPAC should monitor regional cargo volumes as well as emerging trends that could impact regional cargo capacity, including infrastructure for zero-emissions truck charging or offshore wind development.

II. Oral Comments

Sung Lee (Customs Brokers and Freight Forwarders Association of Northern California), Evey Wong (Customs Brokers and Freight Forwarders Association of Northern California), William Dow (member of Local 6 ILWU), Mike Jacob (Pacific Merchant Shipping Association), Susan Ransom (SSA Terminal) and Melvin Mackay (ILWU)

November 2, 2023

These commenters stated that the *Seaport Plan* should include a stipulation regarding Howard Terminal being returned to Port Priority Use on January 1, 2025, per the terms of AB 1191.

The *Seaport Plan* includes Howard Terminal in Table 3 “Existing Marine Terminal Expansion Sites” with a footnote explaining its unique status. The footnote quotes Assembly Bill 1191 and includes the statement: If the Port of Oakland and Oakland Athletics have not entered into a binding agreement by January 1, 2025, that allows for construction of the Oakland Sports and Mixed-Use Project, the Port Priority Use Area designation that was removed for the Howard Terminal property at the Port of Oakland that was the subject of BPA No. 2-19 will be automatically reinstated on the Howard Terminal property as if it had not been deleted.

Susan Ransom, SSA Terminal, November 2, 2023

This commenter also stated that *Seaport Plan* should include a stipulation regarding Howard Terminal being returned to Port Priority Use on January 1, 2025, per the terms of AB 1191. Please see the reply about Howard Terminal above. In response to a Commissioner comment about environmental impacts resulting from port operations, the commenter pointed to environmental improvements being made at the Port of Oakland. The commenter also expressed support for the expansion of the inner harbor turning basin. Comment noted.

John Coleman, Bay Planning Coalition November 2, 2023

This commenter spoke to the important role of the ports in the regional, state, and national economy, and thanked staff for presenting to Bay Planning Coalition members on the new *Seaport Plan*. Comment noted.

Kristine Zortman, Port of Redwood City, November 2, 2023

This commenter spoke favorably about the process of developing the new *Seaport Plan* and expressed support for approving it. Comment noted.

Commission Feedback and Recommended Changes

At the November 2, 2023 public hearing, BCDC Commissioners had an opportunity to ask questions and provide feedback on the *Draft Seaport Plan*. In response to Commissioner Showalter’s question on whether Preserving and Enhancing Port Priority Use Areas Policy 5 on developing new marine terminals was overly rigid, staff explained that there are two policies related to Bay fill and marine terminal development. Policy 5 would only be relied on if a brand-new marine terminal were to be proposed where one doesn’t exist, which would require large volumes of Bay fill. The standard for this policy is consistent with McAteer-Petris Act requirements.

Commissioner Gunther asked about whether sea level rise vulnerability varied among the ports. The new *Seaport Plan* Climate Change Finding B summarizes the general vulnerabilities of the Bay Area ports. In part, the finding states that available data from the Bay Area ports indicates that at low levels of sea level rise, there may not be major impacts to port operations. However, beyond mid-century, the risk of extreme storm flooding and daily tidal inundation will begin to

dramatically increase. Individual ports have been assessing their vulnerabilities as a result of Assembly Bill 691. Proposed Seaport Plan Climate Change Policy 1 also speaks to this issue. This policy states that the ports should be included as critical stakeholders in BCDC's sea level rise planning efforts and speaks to the need to continue to update vulnerability assessments and adaptation plans in line with best available science.

In response to Commissioner Kishimoto's comment about the decision to remove the Ground Transportation topic area and rename it into Regional Coordination and Future Seaport Plan Updates, staff provided additional context about the role of MTC and the Seaport Plan. Earlier versions of the Seaport Plan were developed as a cooperative effort between BCDC and MTC, and the Seaport Plan constituted the maritime element of MTC's Regional Transportation Plan. MTC has since shifted its focus to the San Francisco Bay Area Goods Movement Plan and Plan Bay Area. The Seaport Plan itself just has not been an effective driver of regional transportation planning efforts. The scope of this Seaport Plan update has been more directly focused on BCDC's specific legal authority under the McAteer-Petris Act and the Bay Plan. However, BCDC and MTC staff coordinated on the update and continue to collaborate on these related, regional efforts.

Commissioner Gioia requested the Environmental Justice-related appointments on the Seaport Plan Advisory Committee should specify that the appointee should be from an organization or community close to and impacted by one of the ports subject to the *Seaport Plan*.

In response, staff have incorporated the following revision to that appointment in the final *Seaport Plan*:

Two (2) members from community-based and/or environmental justice organizations designated by BCDC. To the extent possible, BCDC should designate members from organizations that are located near port activities and/or engage with issues related to port activities.

Port Priority Use Area Boundary Changes

Commission approval of BPA No. 1-19 will modify the boundaries of the Port Priority Use Areas in the Cities of Concord, Oakland, Redwood City, Richmond, San Francisco, and the unincorporated community of Selby in Contra Costa County. These changes were described in detail in the September 29, 2023, Preliminary Staff Recommendation, which also included maps showing the changes within the *Bay Plan* as well as amendment to Resolution No. 16 to modify the boundaries of the Port Priority Use Areas within the Commission's shoreline band jurisdiction.

Per the requirements of 4 CCR section 11005(b)(4), the precise wording of the changes can be found in the accompanying Commission Resolution (Appendix A, Exhibit E).

Environmental Assessment

BCDC's planning and permitting programs under the McAteer-Petris Act are, as a result of having been certified by the California Natural Resources Secretary as a Certified State Regulatory Program pursuant to section 21080.5 of the California Environmental Quality Act (CEQA) and CEQA Guidelines section 15251(h) (14 CCR § 15251(h)), exempt from the CEQA requirements to prepare an environmental impact report (EIR), mitigated negative declaration, negative declaration, or initial study. Instead, BCDC's regulations provide for preparation of an Environmental Assessment ("EA"), which is considered the "functional equivalent" of an EIR. (14 CCR §11521.) An EA is required to be part of the staff planning report prepared and distributed prior to amending the Bay Plan. The EA must either: (1) state that the proposed amendment will have no significant adverse environmental impacts; or (2) describe the significant adverse environmental effects, the public benefits of the proposed amendments, any feasible mitigation measures that would lessen the significant adverse environmental impacts, and any feasible alternatives (*Id.* §§ 11003(b)(6), 11521 [contents of EA]).

As part of the Preliminary Staff Recommendation, BCDC circulated a draft Environmental Assessment, which concluded that there would be no significant adverse environmental impacts directly or indirectly as a result of BPA 1-19.

BCDC's regulations specify the requirements for preparation of the final Environmental Assessment (EA):

- First, the Executive Director must prepare written responses to all comments received on the draft EA. (14 CCR §§ 11523(b)(2), 11524(a), (b)(2).)
- The Staff Planning Recommendation must also include any revisions to the initial (draft) EA and analysis of the environmental effects of the proposed amendment. (*Id.* § 11005(b)(2).)
- If the EA identifies one or more significant environmental effects of BPA No. 1-19, the Commission must make any findings required by Public Resources Code section 21081 and 14 CCR section 15091(a)-(b). (*Id.* § 11524(c).) And if the Commission makes any such required finding, it shall adopt a program for monitoring or reporting on the revisions it has required of BPA No. 1-19 or the measures it has imposed as conditions of approval to mitigate or avoid significant environmental effects. (*Id.* § 11524(d).)

No comments were received on the draft EA. One Commissioner asked at the public hearing for staff to confirm the statements in the draft EA to the effect that no (development-level) project proposal was associated with BPA No. 1-19. Staff explained that any development-level projects "associated" with the Port PUA designation removals under BPA No. 1-19 did not amount to indirect effects of BPA No. 1-19 that warranted analysis of their potential environmental impacts within the EA because such projects did not amount to "reasonably foreseeable consequences" of BPA No. 1-19. This conclusion is further explained on pages 21 to 23 of the draft and final EA.

Staff did not identify any necessary revisions to the initial draft EA in preparing the final EA. Because the final EA does not identify any significant environmental effects of BPA No. 1-19, the requirements of 14 CCR section 11524(c)-(d) are not applicable here. A copy of the final Environmental Assessment has been included as an attachment.

BCDC and MTC Memorandum of Understanding

In 1978, BCDC and MTC entered a memorandum of understanding (MOU) regarding the subsequent development and establishment of the *Seaport Plan*. The MOU, in part, defined the composition of the SPAC and its responsibilities, but the MOU has not been updated since. As described in the Preliminary Staff Recommendation, the new *Seaport Plan* contains a section of findings and policies that clarify the purpose, responsibilities, and composition of the SPAC.

As explained in the Preliminary Staff Recommendation, earlier versions of the *Seaport Plan* were developed as a cooperative planning effort of BCDC and MTC. The *Seaport Plan* constituted the maritime element of MTC's Regional Transportation Plan and was used by MTC to assist in making project funding decisions and managing the metropolitan transportation system. MTC has since published the *San Francisco Bay Area Goods Movement Plan* and *Plan Bay Area 2050*, and the *Seaport Plan* itself has not been an effective driver for MTC of regional transportation planning work.

Thus, BCDC and MTC staff have prepared an addendum to the 1978 MOU that will effectively abandon the MOU for, among other things, establishing the composition of the SPAC. Instead, all matters pertaining to the *Seaport Plan*, including composition of the SPAC, are contained within the new *Seaport Plan* prepared under BPA No. 1-19. MTC's Executive Director has already signed the addendum. Staff recommends that the Commission correspondingly authorize its Executive Director to sign and fully execute the addendum as part of its approval of BPA No. 1-19.