

# **OAKLAND TURNING BASINS WIDENING PROJECT COMMISSION STAFF SUMMARY PRESENTATION**

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**COASTAL ZONE  
MANAGEMENT ACT &  
FEDERAL  
CONSISTENCY \***

# PURPOSE OF THE CZMA

- “Preserve, protect, develop, and where possible, to restore or enhance the resources of the Nation’s coastal zone.” (16 USC 1452(1).)
- Encourages States to develop coastal zone management programs (CZMP). (16 USC 1451(i).)
  - Incentivized by federal matching grants to administer CZMPs. (16 USC 1455(a)-(c).)
- A CZMP should include “objectives, policies, and standards to guide public and private uses of lands and waters in the coastal zone.” (16 USC 1453(12).)
- Once approved by NOAA, a State’s CZMP is the standard for federal agency activity in that coastal zone. (16 USC 1456(c)(1)(A).)

# BCDC's CZMA AUTHORITY AND RESPONSIBILITIES

- Two coastal zone segments in California for CZMA purposes:
  - BCDC administers the San Francisco Bay Area coastal zone segment.
  - The Coastal Commission administers the rest of the coastal zone.
- The McAteer-Petris Act (MPA) (1965) and the *Bay Plan* (1968) both predate the CZMA (1972).
- In 1977 NOAA approved BCDC's CZMP, which wholly incorporated the MPA and the *Bay Plan*.
  - Updates to BCDC's CZMP must be accomplished through CZMA program changes.\* (16 USC 1455(e).)

# CD PROCESS – FEDERAL AGENCY ROLE

- A federal agency must submit a consistency determination (CD) to BCDC prior to undertaking any activity “that affects any land or water use or natural resources of the coastal zone.”\* (16 USC 1456(c)(1)(A).)
- The activity must “be carried out in a manner which is ***consistent to the maximum extent practicable with the enforceable policies*** of approved State management programs [BCDC’s CZMP].”\*\* (16 USC 1456(c)(1)(A), (c)(2).)
- The federal agency shall not proceed with the activity over BCDC’s objection unless the federal agency has concluded:
  - (1) consistency with BCDC’s enforceable policies is prohibited by law; or
  - (2) the action is consistent with BCDC’s enforceable policies. (15 CFR 930.43(d).)

# CD PROCESS – STATE AGENCY ROLE

- BCDC responds to the CD submitted by the federal agency by: concurring; conditionally concurring; or objecting. (15 CFR 930.4, 930.6, 930.43.)
- Conditional concurrence means the federal agency must meet specified conditions to be consistent with BCDC’s policies. (15 CFR 930.4.)
  - BCDC must identify specific enforceable policies of the CZMP and explain why conditions are “necessary to ensure consistency with those specific enforceable policies.” (15 CFR 930.4(a)(1).)
  - BCDC’s CZMP includes enforceable policies of the MPA and *Bay Plan*.
  - If the federal agency rejects any condition(s) in the State’s conditional concurrence, the concurrence is effectively an objection. (15 CFR 930.4(b).)

# CD PROCESS – CONFLICT RESOLUTION

## Objection to CD Is Not a Denial

- If the federal agency decides to proceed with the activity that is objected to by BCDC, the federal agency must notify BCDC of its decision to proceed before commencement. (15 CFR 930.43(e).)

## Available Remedies

- For “serious disagreement,” either party may request mediation by NOAA’s Office of Coastal Resource Management (OCM) or the Secretary of Commerce. (15 CFR 930.44, 930.111.)
- If mediation is unsuccessful or not utilized, either party may seek judicial review. (15 CFR 930.116.)

# CD PROCESS – SUMMARY

- BCDC's CZMP includes enforceable policies of the MPA and *Bay Plan*.
- Federal agencies must undertake activities consistent to the maximum extent practicable with enforceable policies of BCDC's CZMP.
- A federal agency submits a CD for its proposed activities, to which BCDC can concur, conditionally concur, or object.
- For serious disagreements between a federal agency and BCDC, BCDC may request mediation from NOAA OCM or the Secretary of Commerce, and/or seek judicial review.

# COMMISSION AUTHORITY AND JURISDICTION

# RELEVANT LEGAL REGIMES\*

## Decisional Framework

- Coastal Zone Management Act (CZMA)
  - Federal law
- McAteer-Petris Act (MPA)
  - State law
- *San Francisco Bay Plan*
  - State enforceable policies

## Environmental Documentation

- National Environmental Policy Act (NEPA)
  - Federal law
- California Environmental Quality Act (CEQA)
  - State law

# DECISIONAL FRAMEWORK – CZMA\*

- USACE submitted a first phase Consistency Determination (CD) that its proposed actions will be consistent to the maximum extent practicable with the enforceable policies of BCDC's CZMP.
- BCDC's CZMP includes enforceable policies of MPA and *Bay Plan*.
- BCDC can concur, conditionally concur, or object (which is not a denial).
- Phased CDs (15 CFR 930.36(d))
  - Allowed when federal decision on an activity will be made in phases based on developing information not available at the time of the original CD, with each phase subject to federal agency discretion to implement decisions based upon the information (*e.g.*, planning, siting, design).
  - A CD is required for each major decision.

# DECISIONAL FRAMEWORK – MCATEER-PETRIS ACT (MPA)

- The project would occur within and outside BCDC's Bay (66610(a)) and shoreline band (66610(b)) jurisdictions which may affect resources within these jurisdictions of BCDC's coastal zone segment.
- Enforceable policies of BCDC's CZMP as identified in the application summary:
  - 66602 (water-oriented land uses and public access)
  - 66605 (limitations on filling Bay)
  - 66632.4 (maximum feasible public access)
  - 66663 (dredging as essential)
  - 66664 (definition of Bay for dredging purposes)

# DECISIONAL FRAMEWORK – *BAY PLAN*

## ENFORCEABLE POLICIES IN APPLICATION SUMMARY\*

- Fish, Other Aquatic Organisms and Wildlife
- Water Quality
- Water Surface Area and Volume
- Subtidal Areas
- Environmental Justice
- Climate Change
- Safety of Fills
- Dredging
- Water Related Industry and Ports
- Public Access
- Fills in Accord with the Bay Plan
- Mitigation
- Public Trust
- Navigational Safety and Oil Spill Prevention

# ENVIRONMENTAL DOCUMENTATION COMPLIANCE

## NEPA\*

- USACE prepared an Integrated Feasibility Report and Environmental Assessment (IFR/EA) as lead agency.
  - Draft Finding of No Significant Impact (FONSI).
- Under CZMA, State agencies cannot require submittal of NEPA document as part of CD, but here USACE provided the EA.\*\*  
(15 CFR 930.37.)

## CEQA\*\*\*

- Port of Oakland prepared a DRAFT Environmental Impact Report (DEIR) as lead agency.
  - Significant and Unavoidable impacts: AIR-1, AIR-2, AIR-3; C-AIR-1; NOI-1.
- BCDC staff is reviewing and commenting on the DEIR as a responsible agency and will consider it when the Port applies for a BCDC permit.\*\*\*\*

# BCDC JURISDICTION AND AUTHORITY – SUMMARY

- USACE submitted a phased CD as required and allowed by the CZMA.
- BCDC must concur, conditionally concur, or object to the CD that USACE's proposed actions are consistent to the maximum extent practicable with enforceable policies of BCDC's CZMP.
- BCDC's CZMP includes enforceable policies of the MPA and *Bay Plan*.
- Objection is not denial, though BCDC may seek mediation or judicial review.
- USACE prepared an EA under NEPA, though this is not a CZMA requirement.
- The Port prepared a DEIR, which is also not a CZMA requirement, but will be considered by BCDC when the Port needs a BCDC permit.

# OAKLAND HARBOR TURNING BASINS WIDENING PROJECT



# CONTEXT

- First Phase Consistency Determination
- Second Phase anticipated in 2025-2026
  - Planning, engineering, and design phase
- Supports USACE Staff Report to Headquarters “Chief’s Report”
- Allows for potential authorization and appropriations by Congress



# PROJECT DESCRIPTION

For current and future deep draft vessels calling at the Port:

- Optimize transit efficiencies for longer vessels;
- Maintain the Port's competitiveness for international cargo shipments in Northern California;
- Improve flexibility for vessels to connect to shore power while at berth to reduce air emissions;
- Move towards zero emissions Port
- Improve vessel maneuvering and safety and reduce environmental risk associated with existing turning basins
- Modernize essential waterway infrastructure to accommodate the fleet mix of vessels

**2005**      **1,139-ft long**  
(6,500 containers)



**Today**      **1,310-ft long**  
(20,000 containers)



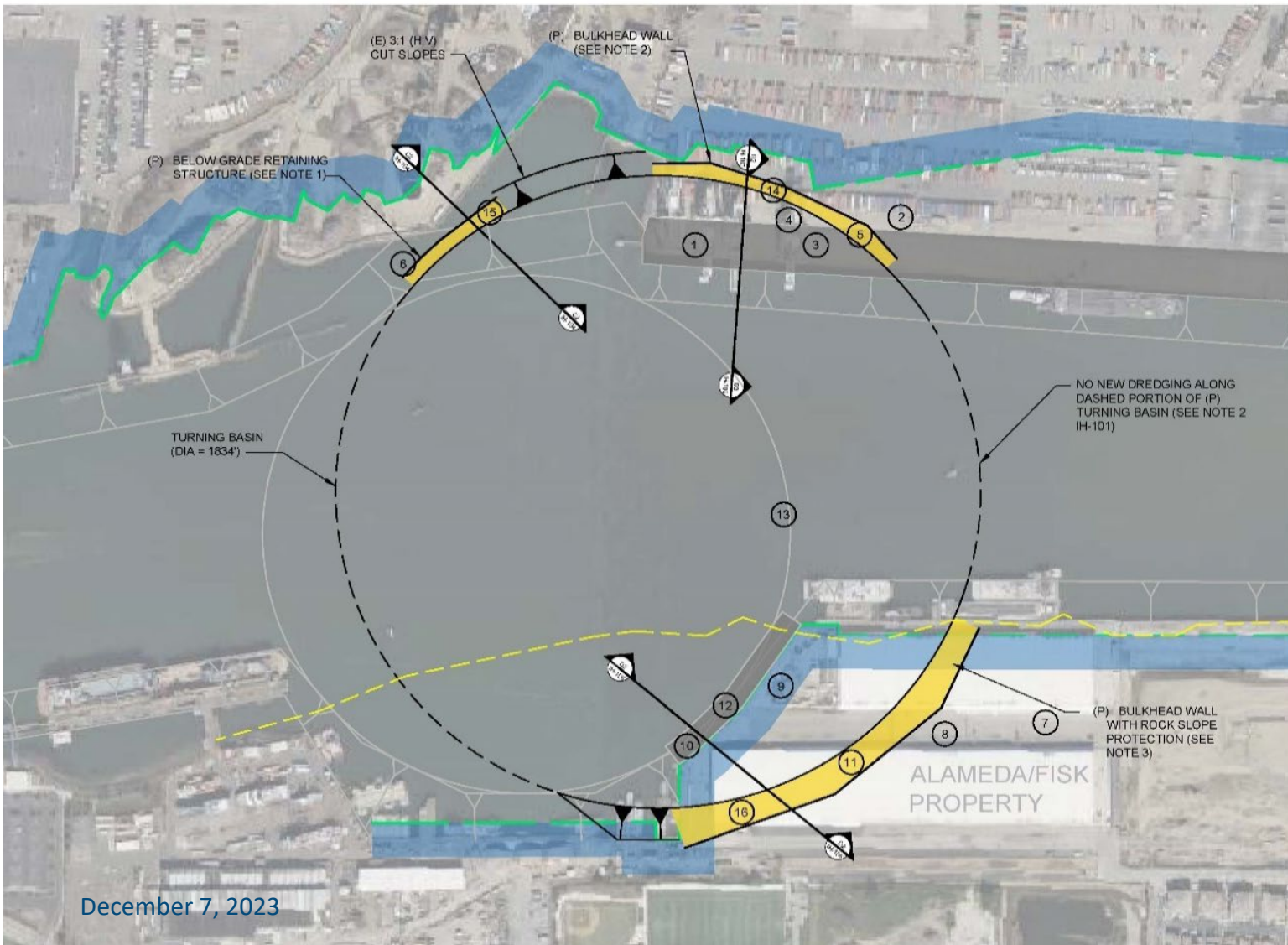
# OUTER HARBOR TURNING BASIN



December 7, 2023

- Expand the Basin 21 acres
- Dredge ~1.34 Million cubic yards of shallow subtidal habitat
- Minus 50 Feet MLLW
- Beneficially reuse all clean dredged sediment
- Upgrade existing electrical infrastructure near berth 26

# INNER HARBOR TURNING BASIN



- Expand the Basin 20 acres
- Demolish a portion of Howard Terminal ~ 3.6 acres
- Demolish a portion of Alameda Landing ~ 6.5 acres
- Demolish portions of two warehouses (Alameda)
- Remove rock dike, piles, and sheetpiles
- Install two new bulkheads & subtidal retaining wall
- Dredge ~825,000 cubic yards of sediment
- Minus 50 Feet MLLW
- Beneficially reuse all clean dredged sediment
- Recycle/dispose of construction debris
- Install electrical infrastructure at Howard Terminal

# Reduction of Bay Fill

Location	Area	Volume
<b>Fill Removed</b>		
Howard Terminal	3.9 acres	279,600 cy
Alameda Landing	6.5 acres	138,800 cy
Schnitzer Steel	0	0
<b>Total Fill Removed</b>	<b>10.4 acres</b>	<b>418,400 cy</b>
<b>Fill Placed</b>		
Howard Terminal	0.86 acres	8,000 cy
Alameda Landing	1.6 acres	18,000 cy
Schnitzer Steel	0.35 acres	3,000 cy
<b>Total Fill Placed</b>	<b>2.81 acres</b>	<b>23,000 cy</b>
<b>Net Fill Reduction</b>	<b>7.6 acres</b>	<b>395,400 cy</b>

# ISSUES TO CONSIDER

The staff believes the primary issues raised by the proposed- first phase consistency determination for the project are:

1. Whether it is generally consistent with the Commission's fill policies, including those related to safety of fills, water quality, natural resources, mitigation, dredging, ports, sea level rise, and navigation safety;
2. Whether the proposed project is generally consistent with the Sea Port Plan;
3. Whether the USACE has conducted equitable and culturally relevant outreach and public engagement; has addressed community concerns, and whether disproportionate impacts have been identified and mitigated for in collaboration with the disadvantaged community consistent with the Commission's environmental and social justice policies; and
4. Whether the proposed delay on addressing public access and scenic views to the next phase consistency determination is appropriate.

# PORT POLICIES AND RELATIONSHIP TO THE SEA PORT PLAN

- 1996 San Francisco Bay Area Seaport Plan, as Amended in 2012
  - 2023 Seaport Plan requires Office of Coastal Management review and approval
- Supports redevelopment of Port to improve water borne commerce and supports the Bay Area economy
- Includes dredging to deepen and maintain navigation channels

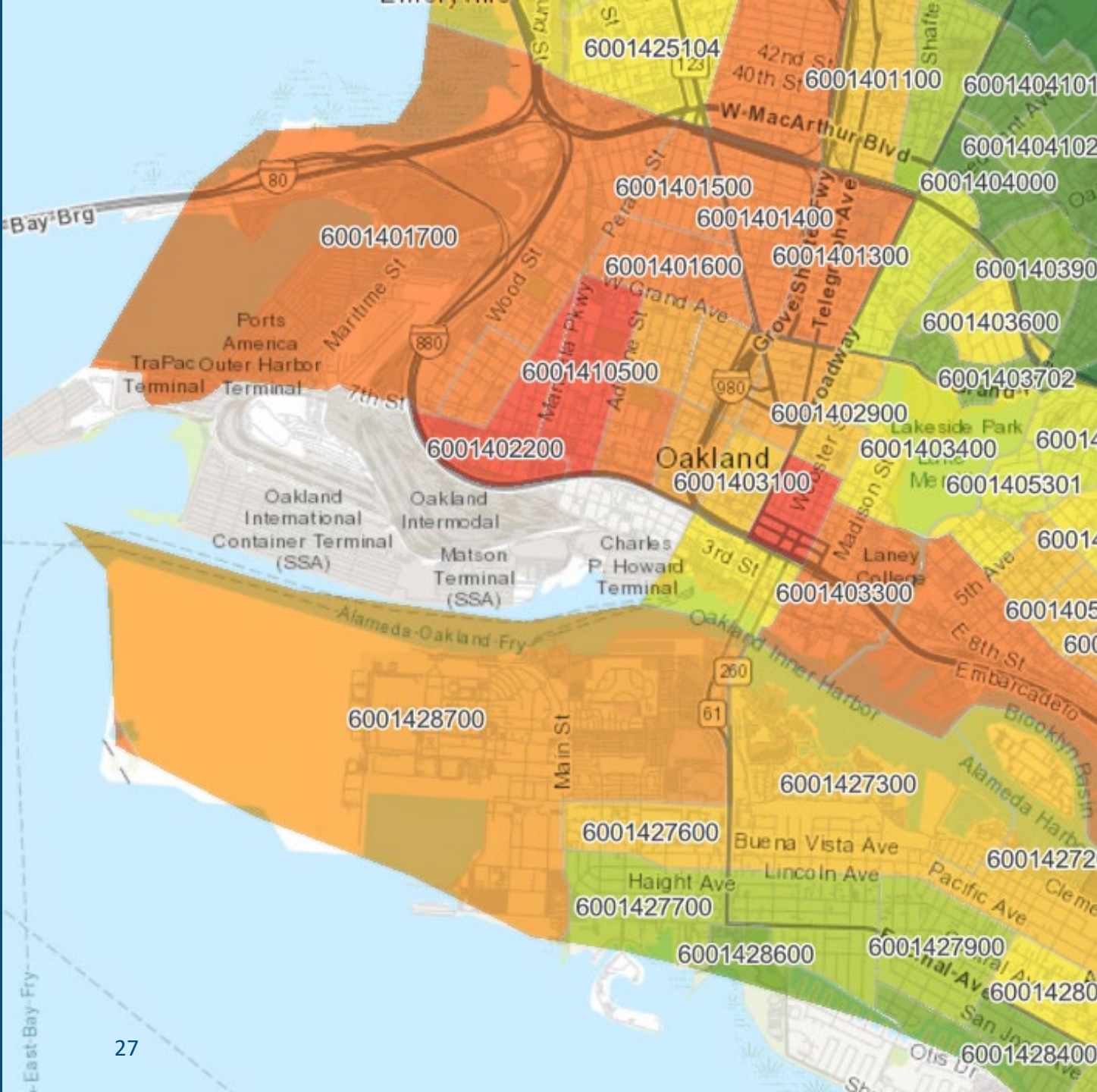
# PUBLIC ACCESS & DESIGN AND SCENIC VIEWS

- Maximum feasible public access consistent with the project McAteer-Petris Section 66602
  - Includes ports specifically
- Potential to affect current and future public access
- In lieu public access for Port properties is likely outcome due to safety
  - Nearby project
  - If not, provide for vulnerable or disadvantaged communities
- Alameda Landing anticipates and encourages public access and recreation
  - Bay Trail
- Ports should be designed, whenever feasible, to permit public access and viewing of port activities
  - View points
  - Openings between buildings and other site designs that permit views

# BCDC ENVIRONMENTAL JUSTICE POLICIES

# WEST OAKLAND

Environmental Justice  
Community



# BCDC'S ENVIRONMENTAL JUSTICE AND SOCIAL EQUITY POLICIES

1. The Commission's guiding principles on environmental justice and social equity should shape all of its actions and activities.
2. **Leadership and Collaboration:** ... the Commission should provide leadership in collaborating transparently with other agencies on issues related to environmental justice and social equity that may affect the Commission's authority or jurisdiction.
3. **Meaningful Engagement:** Equitable, culturally-relevant community outreach and engagement should be conducted by local governments and project applicants to meaningfully involve potentially impacted communities...
4. **Mitigation:** ... Local governments and the Commission should take measures through environmental review and permitting processes, *within the scope of their respective authorities*, to require mitigation for disproportionate adverse project impacts on the identified vulnerable or disadvantaged communities in which the project is proposed.

# MEANINGFUL COMMUNITY ENGAGEMENT

- 9 total meetings held as part of the NEPA and CEQA process
- Met with West Oakland Environmental Indicators Project, Jack London Improvement District, ACORN and Prescott Neighborhood Councils.
- BCDC's Sr. Manager for Climate Equity worked closely with Port to plan outreach.

# ENVIRONMENTAL JUSTICE CONCERNS

1. Significant and unavoidable effects to air quality from construction and dredging equipment.
2. Concerns that widening the turning basin could induce growth over time, contributing to worsening air quality, traffic, and safety issues from additional trucks
3. Concerns on where and how the contaminated soil will be disposed of (Residents don't want it passed off on another EJ Community i.e., Kettleman City)

# LEADERSHIP AND COORDINATION



# AIR QUALITY REGULATIONS

The Bay Area Air Quality Management District and the California Air Resources Board regulate air quality in California

1. **BAAQMD** regulates stationary equipment and comments on environmental documents
2. **CARB** regulates mobile equipment, vehicles, and ships in State waters

## Truck Regulations:

- All trucks, including drayage: 2010 or newer model engines (January 1, 2023)
- Nitrogen Oxide emission reduction from 2024 to 2027 (Omnibus Regulation 2021)
- Manufacturers transition from diesel trucks and vans to zero-emission trucks beginning in 2024 (Clean Fleets)
- All drayage trucks entering seaports and intermodal railyards zero-emission by 2035 (Clean Fleets)
- Phase in Tier 3 or Tier 4i engines (begins 2024) In-Use Off-Road Diesel-Fueled Fleets Regulation

## Vessel Regulations (Commercial Harbor Craft Regulation)

- Renewable Diesel fuel required (begins 2023)
- Phase-in Tier 4 engines and zero emissions (begins 2023, 2024, respectively)

## Cargo Equipment

- Developing Cargo Handling Equipment Regulation to Transition to Zero-Emissions

## Rail (In-use Locomotive Regulation)

- New switch locomotives zero-emission (2030)
- New line-haul locomotives operated zero-emission (2035)
- Locomotives over 23 years in age may not operate (2030)

# OCEAN GOING VESSEL EMISSION REGULATIONS

## International Maritime Organization – 200 mile “Emission Control Areas”

- Fuel regulation to reduce sulfur oxides <https://www.imo.org/en/OurWork/Environment/Pages/Special-Areas-Marpol.aspx>
- Green House Gas Emission reductions: [IMO’s work to cut GHG emissions from ships](#)

## US Environmental Protection Agency

- Regulates emissions from marine vessels: <https://www.epa.gov/regulations-emissions-vehicles-and-engines/regulations-emissions-marine-vessels>

## Jones Act

- Governs domestic shipping (not emissions) <https://www.maritime.dot.gov/ports/domestic-shipping/domestic-shipping#act>

## Federal Maritime Commission

- Governs other aspects of shipping (not emissions) <https://www.fmc.gov/law-regulation/>

## California Air Resources Board – State Waters (24 nautical miles from baseline)

- Ocean-Going Vessel Fuel Reduction <https://ww2.arb.ca.gov/our-work/programs/ocean-going-vessel-fuel-regulation>
- Ocean-Going Vessel At-Berth regulation <https://ww2.arb.ca.gov/our-work/programs/ocean-going-vessels-berth-regulation>

# COMMISSION NEXT STEPS (BG)

# PUBLIC HEARING

Next Up – USACE Presentation on Project  
Public Hearing

December 15<sup>th</sup> - Staff Recommendation released to public and  
Commission

December 21<sup>st</sup> - Vote - First Phase Feasibility Level Consistency  
Determination

Should the Commission Concur - Issuance of Letter of Agreement  
December 31, 2023



# COMMISSIONERS – WE NEED YOU ON DECEMBER 21<sup>ST</sup>!



# Questions?

## THANK YOU

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