



Making San Francisco Bay Better

July 28, 2011

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SUBJECT: BCDC Inquiry File SC.SJ.7008.1; Draft Program Environmental Impact Report for the Envision San Jose 2040 General Plan; SCH# 2009072096

Dear Mr. Davidson:

Thank you for the opportunity to comment on the Draft Program Environmental Impact Report (PEIR) for the Envision San Jose 2040 General Plan distributed in June 2011. The San Francisco Bay Conservation and Development Commission (BCDC or Commission) has not reviewed the PEIR, but the following staff comments are based on the San Francisco Bay Plan (Bay Plan) as amended through January 2008, the McAteer-Petris Act, and staff review of the PEIR.

Jurisdiction. Under the federal Coastal Zone Management Act of 1972, the Commission's coastal management program is the approved program for the San Francisco Bay segment of the California coastal zone. The Commission's coastal management program is based on the provisions and policies of the McAteer-Petris Act, the Suisun Marsh Preservation Act of 1977, the San Francisco Bay Plan, the Suisun Marsh Protection Plan, and the Commission's administrative regulations.

The Commission has "Bay" jurisdiction over all areas of the Bay subject to tidal action which is defined by the shoreline. The shoreline is located at the mean high tide line, except in marsh areas, where the shoreline is located at five feet above mean sea level. The Commission's "Bay" jurisdiction extends to certain waterways identified in the McAteer-Petris Act consisting of all areas of the waterways that are subject to tidal action including submerged lands, tidelands, and marshlands up to five feet above mean sea level. Additionally, the Commission has "shoreline band" jurisdiction over an area 100 feet wide inland and parallel to the shoreline. The Commission controls filling and dredging within its "Bay" jurisdiction through the permit system established by the McAteer-Petris Act. The Commission also administers permits for development within its 100-foot "shoreline band" jurisdiction. However, the Commission's authority along the shoreline is more limited; it may deny a permit application for a proposed project only if the project fails to provide maximum feasible public access to the Bay and shoreline consistent with the project, or is inconsistent with a priority use designation.

In accordance with provisions of the McAteer-Petris Act, the Commission has designated certain areas within the 100-foot "shoreline band" for specific priority uses for ports, water-related industry, water-oriented recreation, airports and wildlife refuges. The Commission is authorized to grant or deny permits for development within these priority use areas based on appropriate Bay Plan development policies pertaining to the priority use.

Staff comments in this letter address strategies and analysis in the General Plan update and PEIR that pertain to Alviso Planning Area to which BCDC's jurisdiction is potentially relevant.

Bay Plan Map 7 (South Bay) identifies a wildlife refuge priority use area in the Alviso area. Policies 7 and 8 for Bay Plan Map 7 apply to this area, as does the Commission Suggestion A for Alviso-San Jose which states "Provide continuous shoreline public access." The PEIR states that "Approximately 25,500 jobs are planned for Alviso to utilize the undeveloped land owned by the Water Pollution Control Plant" (Section 2.2.3.3, p. 47). On page 84 the PEIR references the development of a Water Pollution Control Plant (WPCP) Master Plan for reuse of these buffer lands for new uses including additional employment capacity. It is unclear if these General Plan strategies address areas within BCDC's jurisdiction as defined in the McAteer-Petris Act. If this is the case, the WPCP Master Plan should consider impacts to the wildlife refuge priority use area and/or other relevant Bay and shoreline areas based on provisions of the McAteer-Petris Act and the San Francisco Bay Plan policies.

Additionally, we recommend the following changes to the PEIR: identify the McAteer-Petris Act in the discussion of Existing Land Use in section 3.1.1.5, the Regulatory Framework; in sections 3.5.1.6 and 3.1.7.8, under the description of BCDC, correct the name of the agency in the first sentence to read San Francisco Bay Conservation and Development Commission, and replace the rest of this first paragraph with the description of BCDC's jurisdiction and permit system provided in this letter.

Sea Level Rise. We applaud your careful consideration of climate change impacts in sections 3.7.1.7 and 3.7.3.1 and in Appendix G, as well as proposed policies EC5.13 and EC5.20 which will help the City of San Jose adaptively address risks of flooding related to future sea level rise.

On page A-23 of the Climate Change Appendix (in Appendix G) there is a discussion of the proposed climate change policies for amending the Bay Plan that may be relevant to the City. The referenced proposed policies have changed significantly through the amendment process. We recommend updating this section with the current proposed policy language, available at BCDC's website (<http://www.bcdc.ca.gov/>) or, at a minimum, noting that the proposed policies have been significantly revised since the preparation of the Climate Change Appendix.

Thank you again for this opportunity to comment on the PEIR. If you have any questions regarding this letter, or any other matter, please contact me by phone at 415-352-3654 or email sarap@bccdc.ca.gov.

Sincerely,

SARA POLGAR
Coastal Planner