



*inspiring people to protect
Bay Area birds since 1917*

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re: Notice of Preparation of a Subsequent Environmental Impact Report (SEIR) for a proposed mixed-use development project (Modified Project) on the former Point Molate Navy Fuel Depot and Winehaven Historic District (Point Molate Site or Project Site)

Dear Ms. Velasco,

On behalf of the Golden Gate Audubon Society (GGAS), please accept comments on the Notice of Preparation of a Subsequent Environmental Impact Report (SEIR) for a proposed mixed-use development project (Modified Project) on the former Point Molate Navy Fuel Depot and Winehaven Historic District (Point Molate Site or Project Site).

GGAS is a 102 year old non-profit organization with over 7,000 members who are dedicated to protecting native bird populations and their habitats. This comment addresses the adequacy and completeness of the SEIR to evaluate and mitigate for impacts to federal and state protected special-status and native bird species from the proposed mixed-use development project (Modified Project) on the former Point Molate Navy Fuel Depot and Winehaven Historic District (Point Molate Site or Project Site).

The Modified Project makes certain changes in land use and intensities to the project (Casino Project) and alternatives analyzed in the Final Environmental Impact Report for the Point Molate Mixed-Use Tribal Destination Resort and Casino Project that was certified by the City in 2011 (2011 FEIR). The SEIR must address the potential physical and environmental effects of the Modified Project per the requirements of the California Environmental Quality Act (CEQA), Public Resources Code [PRC] section 21000, et seq., and the CEQA Guidelines (Title 14, California Code of Regulations section 15000, et seq.)

This comment addresses the remarks in the NOP which state that “the City of Richmond will continue to consider ...the scope and adequacy of the 2011 FEIR [as it] appl[ies] to the Modified Project.” GGAS questions the adequacy of the 2011 FEIR as a basis for determining potentially significant environmental effects in the SEIR. The FEIR lacks adequate baseline data by which

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to analyze new impacts of the scope and magnitude contemplated in this NOP. Without a comprehensive review and analysis of the baseline function of biological resources in the now much expanded project area, the scope of the 2011 FEIR is inadequate. Therefore, an SEIR that may not adequately analyze the potentially significant environmental effects from the proposed increase that triples the number of residential units that were previously analyzed. Even if the footprint of the increased residential units remains only moderately changed, the new project will triple the number of residents and cumulative impacts will result from the increased human activity.

The increased human activity and associated additional infrastructure must be analyzed to determine the significance of effects from cumulative impacts. Such a dramatic increase in the size of the proposed development arguably meets the CEQA standard for changed circumstances that were not previously examined and that may require a new EIR. Given the outdated information in the 2011 FEIR, the SEIR should thoroughly analyze the structure and function of the varying habitats so that impacts by this Modified Project may be measured and avoided.

GGAS incorporates by reference and with permission, adapts comments, and inserts verbatim language about EIR and SEIR requirements from a February 13, 2019 comment letter submitted by the State of California Department of Justice to the County of Alameda Planning Department that pertains to an NOP SEIR Conditional Use Permit at the Altamont Pass Wind Resource Area. See Appendix A.

The substantial changes in the modified project and changed circumstances and significant new information require that the City as lead agency prepare a project-specific SEIR that analyzes in detail the site-specific effects of a new triple increase in residential units. The SEIR should address (1) the appropriate baseline for analysis; (2) the nature and extent of impacts from the proposed increase of allowable residential units; and (3) the specific alternatives and mitigation measures for the project that should be considered in depth in the SEIR in light of these revised impact determinations.

In order to be legally adequate under CEQA, the SEIR must incorporate the foregoing analysis and public disclosure of the project's significant effects on avian and other biological resources. *See* Pub. Res. Code § 21002 (“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”) and 14 Cal. Code Regs. §§ 15002, 15003 (describing fundamental purposes and policies of CEQA and EIRs); *see also* Pub. Res. Code § 21002.1(a)-(c).

THE SEIR SHOULD ADDRESS THE APPROPRIATE BASELINE AND EXISTING CONDITIONS FOR ANALYSIS

CEQA Requires A Comprehensive Analysis Of Baseline And Existing Conditions

An EIR's assessment of project impacts should ... be limited “to changes in the existing physical conditions in the affected area as they exist at the time the notice of preparation is published.” *Id.* § 15126.2(a); *see also* *Communities for a Better Env't. v. SCAQMD*, 48 Cal.4th 310, 320-21

(2010).

The NOP states that “the Modified Project makes certain changes in land use and intensities... include, but are not limited to, the elimination of the proposed casino, increasing allowable residential units and rehabilitating the buildings that contribute to the historic Wine haven District (similar to the rehabilitation in Alternative B1). The SEIR will address the potential physical and environmental effects of the Modified Project per the requirements of the California Environmental Quality Act (CEQA), Public Resources Code [PRC] section 21000, et seq., and... include, but are not limited to, the elimination of the proposed casino, increasing allowable residential units and rehabilitating the buildings that contribute to the historic Wine haven District (similar to the rehabilitation in Alternative B1). The SEIR will address the potential physical and environmental effects of the Modified Project per the requirements of [CEQA] and the CEQA Guidelines.”

In Order To Be Legally Adequate Under CEQA, the SEIR Must Incorporate Adequate and Accurate Analyses

This NOP fails to identify with adequate specificity a requirement that the SEIR to provide a detailed baseline analysis of the environmental condition of the project site. The 2011 FEIR in Section 3.5 Biological Resources is an inadequate basis for this requirement because the list of birds is incomplete, the biological surveys and environmental conditions are not current, and the impacts as analyzed are based on circumstances that have significantly changed. A complete and accurate list of bird species, a detailed description of the varying habitats and their current characteristics and condition, and a detailed accounting of changed circumstances must be provided in detail in the SEIR.

The SEIR Should Undertake A Thorough Analysis of The Structure and Function of Each of The Varying Habitats in the Project Area.

The NOP states: “The Project Site contains a variety of terrestrial and aquatic habitat types. Terrestrial habitat types identified within the Project Site include annual grassland, coastal scrub, mixed riparian, eucalyptus woodland, invasive scrub, landscape plantings, ruderal/developed, and beach strand. Aquatic habitats within the Project Site include seasonal wetland, ephemeral drainage, eel-grass bed, tidal marsh, and navigable waters. The 2011 FEIR provides a detailed description of the conditions and setting of the Project Site at that time; where conditions have changed, the SEIR will contain updated descriptions.”

Under CEQA and case law, the NOP cannot rely on the 2011 FEIR project description in its SEIR.

To comply with CEQA requirements for the SEIR, the 2011 FEIR project description must be updated to describe in detail the “existing physical conditions in the affected area as they exist at the time the notice of preparation is published.” *Id.* § 15126.2(a); *see also Communities for a Better Env't. v. SCAQMD*, 48 Cal.4th 310, 320-21 (2010).

THE PROJECT DESCRIPTION MUST INCLUDE ENVIRONMENTAL CHARACTERISTICS IN A PRECISE LOCATION

The NOP Project description would be inadequate for the SEIR because it fails to describe and fails to ensure that the SEIR will describe in detail existing environmental conditions in the project area as they exist at the time this NOP was published. The SEIR must include a project description that describes in detail – as required in an SEIR under CEQA – existing physical environmental conditions that should identify the varying habitats and key environmental characteristics, and describe the primary plant and associated faunal communities in a precise location. The NOP on pages 6 and 7 describes acreage, modified project components, planning areas, water supply, wastewater collection and treatment, stormwater, off-site improvements but fails to provide assurance that the SEIR will describe in detail biological resources, their characteristics, or existing conditions at the time this NOP was issued.

The SEIR must describe in detail the environmental characteristics at the time this NOP was issued and the location must be precisely described.

Incorporate the City of Richmond’s Open Space Zoning Policies in the SEIR

The NOP states that “The Point Molate Site currently is within multiple zoning districts, [that includes the zoning code for] Open Space (OS) [and] approximately 180 acres of the Point Molate Site would remain as open space.” Therefore, the SEIR should include a comprehensive analysis of the relevant OS policies to ensure that the SEIR requires strict adherence to the following relevant OS policies. See 2011 FEIR Biological Resources, Section 3.5 pages 9, 10: OSC-A.1: Preserve habitats shown to be necessary for the preservation of rare and endangered plants and animals.

OSC-A.2: Preserve unique plant communities and wildlife habitats. These include:

- . 1) Particularly good examples of typical area habitats, which can be used for classroom ^[L]_[SEP]study purposes. For example, the mixed evergreen woodland in Wildcat Canyon, buffer zone transitional upland areas adjacent to tidelands at Pt. Pinole, and the marsh areas at the mouths of San Pablo and Wildcat Creeks. ^[L]_[SEP]
- . 2) Habitats, which are unique or rare in the Planning Area, such as the native grassland community on Brooks Island. ^[L]_[SEP]

OSC-A.3: Minimize removal of vegetation in all new developments. In particular, the cutting of mature native woodland trees, especially on unstable slopes and in creek beds, should be controlled.

OSC-B.1: Discourage filling, dredging and/or development that would have a significant adverse impact on the biological productivity or aesthetic character of the physical features of the area.

OSC-B.2: Require mitigation measures to avoid any detrimental impacts of development on the biological productivity or aesthetic character of open water, marsh, mudflat or tideland.

OSC-C.1: Require mitigation measures, to avoid any significant detrimental impacts of development on the biological productivity of existing open water, marsh, mudflat and tideland areas to the maximum extent feasible. Such measures shall include, but shall not be limited to, preservation of transitional upland areas adjacent to tidelands to serve as a buffer zone.

OSC-C.2: Require all new waterfront development, and encourage existing waterfront development, to provide a reasonable degree of buffering between such development and adjacent marsh and mudflat areas. (Buffering size should be determined in consultation with the CDFG and other relevant agencies).

OSC-F.1: Protect the predominantly natural character of the hills and ridges listed in Goal OSC-F by regulating height, color, material and siting of structures, amounts of cut and fill, placement of utility crossings, and removal of vegetation.

OSC-I.2: Preserve streambeds, watercourses and channels in their natural state except where needed for flood and erosion control.

OSC-I.4: Prevent creek bank erosion, preserve wildlife habitat, protect the scenic quality of the creeks, and secure public access to the natural waterways.

OSC-Q.1: Conserve those natural wildlife habitats, which support native species of plants and animals.

OSC-T.3: Assist public resources and park agencies in acquiring or preserving unique natural areas as determined through the environmental review process, subsequent environmental study, and/or as identified through independent assessment by a qualified biologist on a case-by-case basis.

THE SEIR MUST DESCRIBE IN DETAIL THE CHANGED CIRCUMSTANCES AND NEW INFORMATION SINCE THE 2011 FEIR

Since the 2011 FEIR and because the Modified Project triples the allowable residential units, the SEIR must describe in detail these and associated changed circumstances in the project area. As previously mentioned, the site description must provide in detail a physical description that includes environmental conditions at the time the NOP is issued. The changed circumstances of the project's modification and the new information about the site itself must be thoroughly analyzed for direct, indirect, and cumulative impacts in the SEIR.

THE SCOPE OF IMPACT ANALYSIS FOR THE PROPOSED ADDITIONAL RESIDENTIAL UNITS SHOULD BE COMPREHENSIVE

The SEIR's impact analysis should comprehensively evaluate how the new project and related changed circumstances and new information affect biological resources and associated analyses.

The SEIR impact analysis should include a precise evaluation of how the project's effects on biological resources differ in both nature and extent from the FEIR evaluation.

1. Thresholds of Significance

Any revised threshold of significance must account for the population status as well as the cumulative impacts that the modified project may have on special status and listed wildlife species.

2. General CEQA Requirements for Project Impact Analysis

The NOP states in Section K. Probable Environmental Impacts on page 10:

“Given that Modified Project is most similar to Alternative D of the alternatives and Casino Project studied in the 2011 FEIR, the environmental impacts of the Modified Project likely would be similar to Alternative D. Ultimately, the SEIR will determine whether the Modified Project would involve new or substantially more severe impacts than those analyzed in the certified 2011 FEIR, or would result in impacts for topics not previously analyzed. Based on existing information and the analysis completed for the 2011 FEIR, most impacts identified for Alternative D were determined to be less than significant or could be reduced to a less-than-significant level with mitigation.”

However, no reference to a detailed analysis method is provided. The expectation that the SEIR will determine whether the Modified Project would involve new or substantially more severe impacts than those analyzed in the 2011 FEIR or would result in impacts for topics not previously analyzed lacks any reference and appears on its face to be speculative.

The SEIR under CEQA must establish accurate details by which new or substantially more severe impacts will be analyzed. Avoidance, minimization, and mitigation measures must be analyzed and reported in either a checklist format or a detailed narrative that is supported with quantifiable data and the best available science.

PROJECT ALTERNATIVES

CEQA Guidelines § 15126.6(a) provides that “[a]n EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives.” 14 Cal. Code Regs. § 15126.6(a). The “reasonable range of potentially feasible alternatives” must be selected on the basis of “foster[ing] informed decision-making” and “meaningful public participation.” *Id.* § 15126.6(a), (f).

The EIR's alternatives discussion must “focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly.” *Id.* § 15126.6(b); see also *id.* § 15126.6(c), (f). The EIR must “include sufficient information about each alternative to allow meaningful evaluation, analysis, and

comparison with the proposed project.” *Id.* § 15126.6(d). The EIR also must discuss the lead agency’s reasoning for selecting the alternatives to be discussed in detail, and the reasons for rejecting other alternatives as infeasible. *Id.* § 15126.6(a), (c).

The range of alternatives discussed in an EIR also must include the “no project” alternative. *Id.* § 15126.6(e)(1). The purpose of such alternative “is to allow decisionmakers to compare the impacts of approving the proposed project with the impacts of not approving the proposed project.” *Id.* The “no project” analysis must discuss existing conditions at the time of publication of the NOP and:

what would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans ... If the environmentally superior alternative is the “no project” alternative, the EIR shall also identify an environmentally superior alternative among the other alternatives. *Id.* § 15126.6(e)(2).

For site-specific development projects, the “no project” discussion must “compare the environmental effects of the property remaining in its existing state against environmental effects which would occur if the project is approved.” *Id.* § 15126(e)(3)(B). If project disapproval “would result in predictable actions by others, such as the proposal of some other project,” the no project alternative should discuss this potential consequence. *Id.*

Here, the SEIR must meaningfully consider a reasonable range of alternatives that will avoid or reduce or otherwise minimize or mitigate for unavoidable impacts to biological resources of the project as proposed, including the no project alternative, reduced project size (number and size of residential properties), various construction and landscaping activities intended to avoid and minimize impacts to biological resources, and other reasonable and feasible alternatives.¹

THE SEIR SHOULD DESCRIBE IN DEPTH SPECIFIC ALTERNATIVES AND MITIGATION MEASURES FOR THE PROJECT THAT SHOULD BE CONSIDERED IN LIGHT OF THESE REVISED IMPACT DETERMINATIONS.

The 2011 FEIR alternative analysis cannot apply to the SEIR because the modified project includes changed circumstances that represent significant effects that were not contemplated or analyzed in the FEIR. Therefore, the SEIR must describe in depth specific alternatives and mitigation measures for the modified project that should be considered in the light of the project revisions and altered impact determinations that were not analyzed in the 2011 FEIR.

UNDERTAKE A YEAR-LONG BIOLOGICAL SURVEY THAT ESTABLISHES BASELINE ENVIRONMENTAL INITIAL CONDITIONS, INCLUDING HIGH VALUE HABITATS THAT ARE OCCUPIED OR ARE POTENTIALLY OCCUPIED BY SPECIAL STATUS SPECIES

The SEIR should describe in detail the potential for occupancy by special-status species in the Project area. The 2011 FEIR lacked information and provided incomplete reports of occurrence,

¹2011 FEIR found at: <https://www.ci.richmond.ca.us/1863/Point-Molate-Resort-and-Casino>

frequency, or occupancy. The SEIR should describe a detailed year-long biological survey and evaluation of the baseline environmental condition of the project area including the high value habitats that are occupied by special-status species.

Under CEQA, an EIR must sufficiently explain how significant impacts will be avoided or minimized to less than significant in a manner that is adequate, reasonably complete, and that demonstrates a good faith effort at full disclosure. Referencing Section 15151 of the State *CEQA Guidelines*. A complete description and implementation of a year-long biological survey for the purpose of providing baseline environmental conditions in the project area would constitute a good faith effort of full disclosure of existing conditions on which impacts may be evaluated.

DESIGNATE HIGH VALUE HABITAT AS SPECIAL PROTECTION AREAS THAT ENCOMPASS SENSITIVE HABITATS FOR SPECIAL STATUS SPECIES THAT OCCUR OR HAVE THE POTENTIAL TO OCCUR IN THE PROJECT AREA

The City should partner with the East Bay Regional Park District and apply the designation of Special Protection Areas to high value and sensitive habitats as a means to reduce environmental impacts from this Project to less than significant.

The East Bay Regional Park District San Francisco Bay Trail at Point Molate report identified “habitat types [that] provide habitat for a number of resident and migratory birds and makes the general area particularly rich in avian fauna. Pelagic birds, shorebirds, waterfowl, passerines, raptors and others can be found in the vicinity from time to time. These and other birds may nest, forage, or winter in habitats on or adjacent to the site.”²

The SEIR should provide accurate details that describe the potential for the 16 listed and special status species that occupy the varying habitats in the project area. Where possible, the City should apply its Open Space Policies to designate special protection areas that protect high value habitat for the listed and protected species. With the application of a year-long baseline environmental condition survey, qualified biologists can identify high value habitats that have high to moderate potential for occupancy by special status species and supplement the information in the SEIR. These habitats should be considered for designation as Special Protection Areas as a means for reducing environmental impacts from this Project to less than significant.

CEQA REQUIRES THAT CUMULATIVE IMPACTS THAT RESULT IN SIGNIFICANT EFFECTS MUST BE AVOIDED

Under CEQA, cumulative impacts must be avoided to the extent feasible.³ “[C]ompliance with the threshold does not relieve a lead agency of the obligation to consider substantial evidence

² San Francisco Bay Trail At Point Molate Draft Mitigated Negative Declaration, 2018p22 found at:

<https://www.ebparks.org/civicax/filebank/blobdload.aspx?BlobID=30128>

³ An EIR shall examine reasonable, feasible options for mitigating or avoiding the project's contribution to any significant cumulative effects. *See* 14 Cal. Code Regs. § 15130

indicating that the project’s environmental effects may still be significant.” 14 Cal. Code Regs. § 15064(b)(2). “The determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved, based to the extent possible on scientific and factual data” and considering a project’s direct, indirect and cumulative effects. *Id.* § 15064(b)(1), (d), (h)(1).

The NOP does not address cumulative impacts in the Modified Project. Therefore, the SEIR must undertake a new analysis of direct, indirect, and cumulative impacts that is distinguished from that in the 2011 FEIR. In order to fully determine the effect that changed circumstances will have on the varying habitats described in the 2011 FEIR, the new analysis should be based on careful judgment based to the extent possible on scientific and factual data.

PROTECT WILDLIFE CORRIDORS AND PRESERVE AND ENHANCE HABITAT PATCH CONNECTION

The Point Molate area is part of an extensive ecosystem in Segment L that is addressed in the **Baylands Ecosystem Habitat Goals Report** of 1999 as updated in 2016 (Goals Report).” The Goals Report emphasizes the value of connecting habitat patches and wildlife corridors and states: “Habitat quantity, quality, and connectivity are all fundamental drivers with respect to the long-term population trends, abundance, and resilience of every plant and animal species.”⁴ The SEIR should designate mitigation measures that protect wildlife corridors and connect habitat patches so that impacts are reduced to less than significant.

ESTABLISH BIOLOGICAL TRANSITION ZONES AND BUFFER ZONES

The Goals Report states: “The ecosystem services of the T-zone [or transition zone] relate strongly to its role in connecting the baylands and their local watersheds (e.g., Ewel et al. 2001). ...Much of the food web of the intertidal portion of the T-zone is [important to the survival of wildlife communities]. [The] functional relationships between the T-zone and local watersheds should be emphasized.”⁵ This same report states that “buffer zones [establish] setbacks along watercourses that link tidal marshes to healthy riparian corridors. Such buffers enable wildlife movement through the built environment.”⁶ The plan should establish transition and buffer zones that enhance ecosystem services and reduce significant impacts.” Sea level rise anticipates a loss of existing inter-tidal habitat. The SEIR should provide a full accounting of methods of establishing biological transition and buffer zones that conform to the City’s own Open Space Policies. Furthermore, the SEIR should establish transition and buffer zones that anticipate sea

⁴ p6. Risks from Future Change for Wildlife Chapt5, in Baylands Ecosystem Habitat Goals Science Update (2015)

Found at: https://baylandsgoals.org/wp-content/uploads/2015/10/BEHGU_SFC5.pdf

⁵ pp1, 4 Baylands Ecosystem Habitat Goals Science Update (2015)

Science Foundation Chapter 4 Connections to the Watersheds: The Estuarine-Terrestrial Transition Zone

Found at: https://baylandsgoals.org/wp-content/uploads/2015/10/BEHGU_SFC4.pdf

⁶ Ibid p34

level rise and establish secure upland habitat that will connect to inter-tidal regions in the Project area.

REVIEW A FULL INVENTORY OF SPECIAL STATUS BIRD SPECIES AND UPDATE THE STATUS OF ALL SPECIAL STATUS SPECIES

The 2011 FEIR only reported 30 bird species. Special status species, such as the Olive-sided Flycatcher, a California Species of Special Concern, were not included on the list. Therefore, GGAS urges that a full accounting of special status species be included in the baseline environmental conditions and assessed for potential impacts in the SEIR. Community science bird watching reports include 195 bird species sixteen of which are protected or have special status in the Project area.⁷ See Appendix B for a detailed list of bird species and their protected status.

CREATE AND REFER TO A BASELINE STUDY OF EXISTING ENVIRONMENTAL CONDITIONS THAT ASSESS ECOSYSTEM FUNCTION AND APPLY MEASURES THAT ARE SHOWN TO AVOID, MINIMIZE, OR MITIGATE IMPACTS TO LESS THAN SIGNIFICANT EFFECTS.

GGAS urges the City to require in their SEIR a comprehensive baseline analysis and measure impacts so that a reliable basis for avoiding and minimizing impacts will derive from the best available science. This approach may help reduce significant effects to less than significant. The SEIR should seek to avoid significant impacts to sensitive habitat, nesting birds, rare sensitive plants and other wildlife by restoring and protecting important bay and upland habitat, adhering to the City's own Open Space Policies and designating Special Protection Areas for high value habitat that is potentially occupied by special status species.

Thank you for this opportunity to comment on the SEIR for the Point Molate Mixed-Use Development Project.

Please keep GGAS informed about all activities and reports relating to this matter.

Respectfully,

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⁷ eBird Pt. San Pablo/Pt. Molate Hotspot

<https://ebird.org/hotspot/L1536861?yr=all&m=&rank=mrec>

195 species incl Olive-sided flycatcher and other special status and listed species