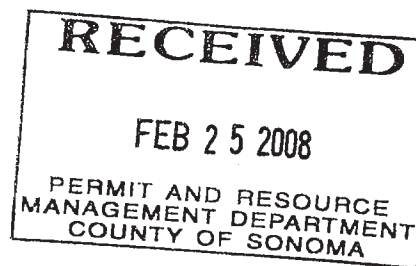




Making San Francisco Bay Better



February 22, 2008

Steve Dee, Senior Environmental Specialist
 Sonoma County Permit and Resource Management District
 2550 Ventura Avenue
 Santa Rosa, California 95403-2829

SUBJECT: Notice of Completion of Draft Environmental Impact Report for Proposed Dutra Haystack Landing Asphalt Plant and Recycling Facility; SCH # 2006022107 (BCDC Inquiry File No. MC.MC.8702.1)

Dear Mr. Dee:

Thank you for requesting the Commission's comments on the draft Environmental Impact Report (EIR) for the Dutra Haystack Landing Asphalt Plant and Recycling Facility and received in our office on January 18, 2008. The San Francisco Bay Conservation and Development Commission ("BCDC" or "Commission") is a responsible agency for this project, a portion of which must be authorized by a Commission permit. Although the Commission itself has not reviewed the draft EIR, the Commission's staff has reviewed the draft EIR and is submitting its comments regarding the project. The staff comments are based on the McAtter-Petris Act, the Commission's *San Francisco Bay Plan* (Bay Plan), the Commission's federally-approved management program for the San Francisco Bay, and the federal Coastal Zone Management Act (CZMA). The Commission will rely partly on the EIR prepared by the lead agency when it considers the project.

A3-1

Commission permits are required for construction, changes of use, dredging, and dredged material disposal within its area of jurisdiction. Permits are issued if the Commission finds the activities to be consistent with the McAtter-Petris Act and the findings and policies of the *San Francisco Bay Plan*. In addition to any needed permits under its state authority, federal actions, permits and grants that affect the Commission's jurisdiction are subject to review by the Commission, pursuant to the federal Coastal Zone Management Act (CZMA), for their consistency with the Commission's federally-approved management program for the Bay. It appears that some of the proposed project would occur within the Commission's jurisdiction and would require Commission authorization.

A3-2

On April 19, 2006, Andrea Gaut of the Commission's staff transmitted a letter to you in response to the Notice of Preparation for the EIR. The letter outlined the most relevant policy concerns for the project. We feel that a number of the concerns were not adequately addressed by the draft EIR, as discussed below.

A3-3

Jurisdiction and Proposed Project

The Commission's jurisdiction includes all tidal areas of the Bay up to the line of mean high water and the inland edge of marsh vegetation (up to five feet above mean sea level) in marshlands, all areas formerly subject to tidal action that have been filled since September 17, 1965, the "shoreline band," which extends 100 feet inland from and parallel to the Bay shoreline, and "certain waterways" as specified in Section 66610 of the McAteer-Petris Act up to the mean high water or the edge of marsh vegetation (up to five feet above mean sea level) in marshlands. The Commission has no shoreline band jurisdiction on certain waterways.

A3-4

At the proposed project site, the Commission has certain waterways jurisdiction over the Petaluma River in Area A to the edge of marsh vegetation up to five feet of mean sea level, including the tidal inlet and marsh vegetation in the vicinity of the conveyor belt and dock. The portion of the proposed project that would be constructed within the Commission's jurisdiction would include a pier supported by approximately 15 piles, four groups of dolphins adjacent to the pier to facilitate barge unloading, a hopper and drawbridge-style enclosed conveyor, and water intake structures and associated pipelines.

Bay Plan Policies on Fill

As previously stated in our April 19, 2006 letter, the Commission may only authorize Bay fill for any use when that fill is consistent with the McAteer-Petris Act and the Bay Plan. The placement of fill in the Bay, or in this case, the Commission's certain waterway jurisdiction, may be authorized when it meets the fill requirements identified in Section 66605 of the McAteer-Petris Act, which states in part, that: (1) the public benefits of fill must exceed the public detriment from the loss of water areas and should be limited to water oriented uses (such as ports, water-related industry, etc.); (2) no alternative upland location is available; (3) the proposed fill is the minimum necessary to achieve the purpose of the fill; (4) the nature, location, and extent of the fill must minimize harmful effects to the Bay Area; (5) the fill would be constructed in accordance with sound safety standards; and (6) the fill should establish a permanent shoreline. The Bay Plan states that, among other things, fill may be approved for ports, water-related recreation, and public access.

A3-5

Although the project appears to be generally consistent with the Commission's laws and policies, the EIR does not include an analysis of how proposed fill in the Commission's jurisdiction is the minimum size necessary. Additionally, we are especially concerned that the nature, location, and extent of the fill would not minimize harmful effects to the Bay. The conveyor would carry material over tidal marsh on the edge of the river, and is sited partially over a vegetated tidal inlet. Although the project description states that the conveyor would be enclosed, Impact BIO-2 seems to contradict the project description, as it identifies the potential for conveyor operation to result in side-casting of gravel that could accumulate below the structure and eventually fill the marsh and open water habitat. However, if the conveyor is enclosed as described by the project description, then it is unclear how side-casting would occur. Any side casting into river and marsh vegetation within BCDC's jurisdiction would be considered unauthorized fill. Revisions to the draft EIR should include clarification of whether

or not the conveyor will side cast material. If so, we suggest relocating the conveyor away from the tidal inlet, as outlined by Alternative C to the proposed project, thereby minimizing side casting into marsh habitat.

A3-5
(cont'd)

The proposed project would also involve installing an intake structure and pipeline to obtain water from the Petaluma River to use for dust suppression. However, the proposed intake and pipeline were not defined or mapped by the draft EIR, and therefore could not be fully analyzed for consistency with the Commission's laws and policies on fill. As stated in the draft EIR, such an intake structure would have the potential for significant impacts, including increased suspension of sediments due to bank erosion or scouring of a depression in the river bottom. Authorization of an intake structure and pipeline within the Commission's jurisdiction would be subject to the policies discussed above.

A3-6

Bay Plan Policies on Tidal Marshes and Tidal Flats and Bay Plan Policies on Fish and Wildlife

The San Francisco Bay Plan policies on tidal marshes and tidal flats state in part that, "[a]ny proposed fill, diking, or dredging project should be thoroughly evaluated to determine the effect of the project on tidal marshes and tidal flats, and designed to minimize, and if feasible, avoid any harmful effects."

As stated in our April 19, 2006 letter, the *San Francisco Bay Plan* policies on fish and wildlife state, in part, that "[s]pecific habitats that are needed to prevent the extinction of species, or to maintain or increase any species that would provide substantial public benefits, should be protected...." We feel that the project has the potential for significant impacts to tidal marshes and tidal flats and impacts to associated fish and wildlife that are not adequately analyzed by the draft EIR.

A3-7

The draft EIR states that the proposed project is not expected to have any adverse impacts on any nearby marsh areas, including marsh habitat associated with Shollenberger Park and Adobe Creek, located approximately 800 feet upstream of the proposed facility. The draft EIR states that the project would not affect this marshland because it is already affected by nearby industrial development, including Shamrock Material. However, the draft EIR should have included an analysis regarding the potential impacts associated with the proposed project rather than simply stating that the nearby marshlands are already impacted. Additionally, the draft EIR did not analyze potential impacts to the Petaluma Marsh Wildlife Area, which is located downstream of the proposed project. As discussed above, the draft EIR identified multiple scenarios, including conveyor side-casting and channel scour/erosion that could result in increased sediment loads. The revised EIR should also analyze potential sedimentation impacts to downstream marshland.

Other Issues

Although not in our jurisdiction, we are concerned about potential impacts to the heron and egret rookery resulting from construction and operation of the facility, and encourage all efforts to minimize such impacts.

A3-8

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Thank you for your consideration of these issues. Please contact me at (415) 352-3619 or erinb@bcdcc.ca.gov if you have any questions.

A3-9

Sincerely,



ERIN BOMKAMP
Coastal Analyst

EB/mm

cc: State Clearinghouse