

## Issues Raised During Project Hearings and in the Appeal

During the hearing process and in their written appeal, the applicant team made representations about the mitigation of air quality, noise and vibration, transportation and traffic, and land use compatibility impacts that were not supported by data and/or verified in the Draft Final EIR. Although the Draft Final EIR is being presented solely for informational purposes and staff is not recommending certification of the document, it does contain a description of the proposed project and its environmental impacts; the information in the Draft Final EIR provided the factual basis for some of the Planning Commission's findings of denial. Below is a summary of the key statements made by the applicant team and Staff's response.

### 1. Air Quality Impacts

*1.1 Applicant Statement: The air quality conclusions were predicated on erroneous statements in the staff report and EIR indicating that the project was a cement manufacturing facility that will use a kiln.*

*Response:* The staff understands that Orcem is not proposing to install or use a kiln as part of the project. In addition, the air quality analysis in the Draft Final EIR did not include the use of a kiln in the project. This was clarified by staff at the March 6<sup>th</sup> Planning Commission hearing.

*1.2 Applicant Statement: The purchase of NOx offsets outside Bay Area Air Quality and Management District (BAAQMD) program will reduce the Air Quality impacts to a less than significant level.*

*Response:* As stated in the Draft Final EIR, the project would result in significant and unavoidable air quality impacts. The NOx emissions exceed the threshold set by the BAAQMD. NOx emissions are the precursor to the formation of ozone, and exceeding the NOx threshold conflicts with the Clean Air Plan's goal of bringing the San Francisco Bay Area Air Basin into attainment for ozone. This is considered a regional impact. The BAAQMD does allow for the purchase of offsets through their program for stationary equipment, vessel, and rail equipment, but not for trucks. As stated in the Draft Final EIR, with the purchase of offsets the NOx impacts would remain significant and unavoidable. The applicant's claim the purchase of additional offsets outside the BAAQMD system would reduce the NOx impact to a less than significant level. However, as clarified by Dudek's air quality expert, this approach can be used as a show of good will only, but it is not considered a quantifiable mitigation measure under CEQA. As such, the NOx impact remains significant and unavoidable.

## 2. Noise and Vibration Impacts

*2.1 Applicant Statement: The Planning Commission resolution makes vague and unsupported claims that the project would substantially increase noise and as a result would alter the character of the existing residential neighborhoods along Lemon Street and Sonoma Boulevard.*

*Response:* The noise generated by the project operations and truck traffic has been determined to be mitigated to a less than significant level in the Draft Final EIR. Noise impacts are averaged over a 24-hour period and in this instance, the noise associated with the project will not increase the ambient noise in the affected neighborhoods to a level that triggers the City's noise threshold. However, this does not mean that the passage of large semi-tractor trailers through a residential neighborhood seven days per week and 24 hours per day would not result in noise spikes that could negatively impact the quality of life for residents. The Planning Commission found that the addition of 536 truck trips on the local roadways, particularly Lemon Street and Sonoma Boulevard, would have a harmful effect on the desirability of those residential neighborhoods and their character. Truck noise was one factor of several considered by the Planning Commission when reviewing the compatibility of the project with the surrounding area.

*2.2. Applicant Statement: The applicant team claims that all noise and vibration impacts associated with train traffic generated by the project would be mitigated to a less than significant level based on a letter dated March 2, 2017 from AWN Consulting.*

*Response:* The Draft Final EIR found that vibration impacts associated with the train traffic generated by the project were significant and unavoidable. After review of the applicant's supplemental submittal from AWN which indicated that vibration impacts could be reduced to a less than significant level, Dudek's noise expert reviewed the AWN memo (March 2, 2017) and found that AWN did not include a factor for worn wheels on freight trains, which must be considered when addressing a reasonable worst-case scenario. With the worn wheel correction, the noise and vibration threshold would still be triggered, resulting in a significant and unavoidable vibration impact from the non-welded rail.

*2.3 Applicant Statement: The PC Resolution relies on unsupported claims that the project would create negative conditions such as increased noise and that the operation of the facility would result in the disruption of the quiet enjoyment adjacent residential neighborhoods.*

*Response:* As stated in the resolution, the project would generate 509 trucks per day through areas zoned for low density residential uses along Lemon Street and Sonoma Boulevard. The facility and the trucks would operate seven days per week, 24 hours per day. The Planning Commission found that the significant number of daily truck trips along Lemon Street and Sonoma Boulevard would negatively impact the character of the neighborhoods and the quality of life of the residents.

### 3. Traffic and Transportation Impacts

*3.1 Applicant Statement: A maximum of 209 trucks will leave the project site on a daily average basis (418 total inbound and outbound). A maximum of 117 loaded trucks will use Lemon Street east of Sonoma Boulevard and 82 loaded trucks would use Sonoma Boulevard south of Lemon Street.*

*Response:* The Draft Final EIR concludes, based on information provided by the applicant team, that the Revised Operations Alternative would generate 268 round trip truck trips (87 VMT trips and 181 Orcem trips) or 536 one-way trips per day. Of the 536 trips, 56% (150 round trips and 300 one way trips) would travel north on Lemon Street and 39% (104.5 round trips and 209 one way trips) would travel south on Sonoma Boulevard. The applicant team introduced a revised number of truck trips outlined in the statement above during the Planning Commission hearings on the project. No data has been provided data to support their revised estimated truck trips and therefore cannot be verified by Fehr & Peers, the transportation consultant hired by the City to assess project impacts.

*3.2 Applicant Statement: The truck trips generated by the project were analyzed under “Worst Case” conditions for VMT Terminal Operations. The Draft Final EIR assumes that use of trucks is maximized, and the VMT Terminal would be operating at its peak level of capacity. The applicants are proposing to use rail as the principal mode of transportation with barges.*

*Response:* The applicants’ statement that the project was analyzed under “Worst Case” conditions is not correct. The project was analyzed under a “reasonable worst case” scenario as required by CEQA. The applicant team would like to use rail and barges as the predominant mode of transportation, but this is a goal. CEQA requires the City to look at the impacts created under the most intensive possible scenario for the project. At this time, there is no guarantee that the applicants will be able to utilize barges although we understand that this is their desire. The Draft EIR was thus correctly based on an assumption that truck and rail would be the predominant mode of transportation. In addition, the applicants have indicated that rail improvements will likely be made after occupation of the site, but within one year.

*3.3 Applicant Statement: The EIR and staff report did not account for the use of barges. The use of barges is subject to market demand. If the 3.5 barges and other smaller vessels per month are utilized, they will reduce truck volumes by 25%.*

*Response:* As noted above, the Draft Final EIR analysis was correctly based on truck and rail being the predominant modes of transportation since reliance on barges is currently aspirational and uncertain. The applicant has provided no evidence that the use of 3.5 barges per month would result in 25% reduction in truck trips.

*3.4 Applicant Statement: The Planning Commission relied on false “perceptions” about the number of trucks, the capacity of the City’s roadway network, and opportunities to protect {sic} bicycle and pedestrian safety.*

*Response:* As noted above, the Draft Final EIR states that the project would result 536 one way truck trips per day. The Draft Final EIR also concludes that the project would not have significant roadway capacity or safety impacts. However, the Planning Commission found that the significant increase in truck trips in the residential neighborhoods would negatively affect the pedestrians and cyclists that are traveling along Lemon Street and Sonoma Boulevard. Neighborhood impacts or compatibility problems may occur even where there is no “significant environmental impact” as is defined under CEQA. In addition, because of the lack of sidewalks and bike lanes along sections of these roadways, the added truck traffic could impact pedestrians’ and cyclists’ perception of safety when walking or cycling along them, a concern that is not addressed by CEQA but is a legitimate community concern. These roadways provide access to Lake Dalwigk Park and Grace Patterson Elementary School.

*3.5 Applicant Statement: The Planning Commission reached an incorrect conclusion that the impact of rail delays on both general traffic and emergency services would be “significant”.*

*Response:* The Draft Final EIR concludes that the operation of trains would result in significant traffic delays during gate down times at railroad crossings. The approximately 4 minute delays would result in significant traffic impacts that cannot be mitigated. In addition, this delay has a significant and unavoidable impact on emergency service provider response times.

*3.6 Applicant Statement: Train operations will be avoided during peak-hour periods in an effort to reduce traffic impacts.*

*Response:* As described above, CEQA requires that the City analyze the most intensive possible impacts of a project, a reasonable worst case scenario. CEQA also requires that mitigation measures reducing impacts be fully enforceable. Since Cal Northern is exempt from local regulation, there is no way to require the project to limit operations to non-peak hours. Therefore, the impact remains significant and unavoidable.

*3.7 Applicant Statement: A 24-hour advance notice of railroad operations will be provided to emergency service providers to alert them to use alternate routes.*

*Response:* Since a long train may block several intersections at once, or one immediately after another, preventing access to certain areas by emergency services with 24-hour advance notice would not reduce the transportation and traffic impacts on emergency services to a less than significant level.

*3.8 Applicant Statement: Real-time operational movement of trains will be made available to emergency service providers and analyzed to make adjustments over time to better improve efficiency and minimize delays. In addition, signals will be synchronized at affected intersections with non-affected intersections on parallel routes to efficiently handle the re-routing of traffic to minimize delays.*

*Response:* These proposals were first presented to City staff at the February 27<sup>th</sup> Planning Commission hearing. There has been no analysis of feasibility pertaining to signalization timing, or of their ability to reduce the significant impacts caused by rail operations.

*3.9 Applicant Statement: The Draft Final EIR dismisses mitigation measures due to the assumption that the rail operator cannot be compelled to comply with the requirements (e.g., avoid peak hour train travel). The applicants will assume responsibility for implementation of these measures, which would dramatically reduce impacts.*

*Response:* As described above, Cal Northern is exempt from local regulation and there is no way to require them to limit rail operations to non-peak hours or to make improvements to the rail facilities. In addition, Cal Northern does not allow third parties, such as the applicant team, to make improvements to the rail. If the mitigation measure is unenforceable, the impact remains significant and unavoidable. While vibration impacts could be reduced to a less than significant level if the railroad installed continuous welded rail, transportation and traffic impacts would not be reduced to a less-than-significant level even if the railroad avoided running trains during the peak hour.

*3.10 Applicant Statement: The trains are limited to 50 Cars under the ROA, but traffic delays remain "Significant" based on the Draft Final EIR's threshold of 1 minute, but this level of delay is comparable to current delays at other local non-rail intersections, and the historic delays occurring when General Mills operated.*

*Response:* Under CEQA, an impact to traffic occurs when a proposed project will increase traffic or cause a delay that worsens the level of service (e.g., wait times) at an intersection in excess of what has been deemed acceptable by the local Agency. In this case, Fehr & Peers determined that the rail operations would cause significant traffic delays at rail crossings and this triggered a threshold resulting in a significant and unavoidable impact. Similar delays at comparable intersections are not considered when conducting environmental review under CEQA.

Similarly, the past operations on a site are not considered when evaluating traffic impacts under CEQA. Regarding the historical traffic/truck trips and rail operations associated with the General Mills plant, there has been no data submitted regarding the volume of truck trips/trains or related impacts at intersections. In addition, the closure of the plant over 13 years ago precludes the ability to consider the related truck traffic and

rail operations as part of the baseline for determining traffic impacts. The project results in significant/unavoidable impacts, regardless of previous operations of the plant.

#### 4. Land Use Compatibility Impact:

*4.1 Applicant Statement: The conclusions contained in the Planning Commission Resolution fail to incorporate the final correspondence from the Bay Conservation and Development Commission (BCDC). BCDC staff confirmed in writing that the project was fully consistent with the Bay Plan.*

*Response:* On June 9, 2016, BCDC staff stated in their correspondence to City staff that “the Commission was not in a position to make a formal determination of consistency and that the Commission will only make such a determination following submission and review of a complete application.” A copy of this email is attached.

*4.2 Applicant Statement: The Planning Commission’s conclusion that the project is inconsistent with the Bay Plan was erroneously based on a statement by the one commissioner that stated, “it all comes down to kayaks do not fit our lifestyle”.*

*Response:* Planning Commission Resolution 17-03 contained multiple findings. One of these findings was that the project was inconsistent with the City’s Waterfront Development Policy 1 that states “BCDC’s Public Access Design Guidelines should be used in reviewing all development proposals. In areas potentially hazardous to public safety or incompatible with public use, in-lieu access at another nearby location may be provided”. Because Bay access through the project site was not permitted due to Homeland Security concerns, the applicants proposed to develop a kayak ramp within the City Marina. The Planning Commission found that this proposal did not meet the intent of the Waterfront Development policy and the BCDC Public Access Design Guidelines.

Two key objectives of the Guidelines include: 1) design public access areas in a way that make the shoreline enjoyable to the greatest number of people; and 2) design public access for a wide range of users. The Planning Commission found, as stated in its Resolution, that the proposed location and type of public access did not serve a broad enough sector of the community to be consistent with the General Plan Waterfront Development policy and BCDC’s Public Access Design Guidelines.

Attached: Email Communication from Erik Buehmann, Principal Permit Analyst, San Francisco Bay Conservation and Development Commission (BCDC), June 9, 21016.



**Email Communication from Erik Buehmann, Principal Permit Analyst, San Francisco Bay Conservation and Development Commission (BCDC), June 9, 21016.**

The screenshot shows an Outlook email window titled "RE: VMT/Orcem Project - Message (HTML)". The interface includes a ribbon with tabs for "File", "Message", and "Adobe PDF". The "Message" tab is active, displaying various actions like "Ignore", "Junk", "Delete", "Reply", "Reply All", "Forward", "Meeting", "IM", "More", "Move", "OneNote", "Actions", "Mark Unread", "Categorize", "Follow Up", "Translate", "Find", "Related", "Select", and "Zoom".

The email content is as follows:

Thu 6/9/2016 1:18 PM  
BE Buehmann, Erik@BCDC <erik.buehmann@bcdca.gov>  
RE: VMT/Orcem Project

To: Plowman, Lisa A.; McCrea, Brad@BCDC

Cc: Ms. Andrea Ouse (Andrea.Ouse@cityofvallejo.net); Darcey Rosenblatt (drosenblatt@dudek.com); Richard T. Loewke, AICP; Johnck, Ellen@EllenJohnckConsulting.com; Zeppetello, Marc@BCDC

You forwarded this message on 6/9/2016 2:29 PM.

Lisa,

The City seeks confirmation that the DEIR's Bay fill mitigation measures calling for creosote timber and other piling removal, and in-lieu public access improvements at the Vallejo Marina, are potentially consistent with applicable Bay Plan policies for the Revised VMT Project with Phase 1 only. The Commission, not the City, is the appropriate entity to determine the consistency of the project with the McAteer-Petris Act and the San Francisco Bay Plan. BCDC staff advises the City that Commission staff is not in a position to make a formal determination of consistency, and that the Commission will only make such a determination following submission and review of a complete application, which will include the certified project EIR as well as other information required by BCDC's regulations. No such application would be approved unless a determination of consistency is made by the Commission. Commission staff currently believes, on the basis of what is presented in the City's DEIR, that the Commission may determine that the revised VMT Project (consisting of Phase 1 only) is consistent with all applicable policies in the Bay Plan. However, Commission staff cannot determine at this time whether the public access improvements and Bay fill mitigation as identified in the DEIR will be adequate, and we therefore reserve the right to further review the project when an application is submitted, and to make recommendations to the applicant to refine these improvements and mitigation measures as may be deemed necessary at that time.

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