

July 21, 2023

Seaport Planning Advisory Committee
San Francisco Bay Conservation & Development Commission
375 Beale St., Suite 510
San Francisco, CA 94105
publiccomment@bcdc.ca.gov

Comments: Bay Plan Amendment (“BPA”) #1-19 - Draft Seaport Plan, June 2023

Seaport Planning Advisory Committee Members:

On behalf of the members of the Pacific Merchant Shipping Association (PMSA), thank you for the opportunity to provide comments on the Draft San Francisco Bay Seaport Plan, June 2023 version (BPA #1-19). PMSA represents marine terminal operators and ocean-going vessel owners and operators that operate at all of the San Francisco Bay’s public ports, and we are committed to the preservation of the scarce resource that is working industrial waterfront lands. We commend BCDC for endeavoring to update the Seaport Plan and the work of this Committee and Staff to finalize this multi-year process.

We have several comments regarding the proposed plan revisions and Staff preliminary recommendations for BPA #1-19.

In general, PMSA supports the adoption of BPA #1-19 as the expression of the fundamental premise that a Seaport Plan is a critical component of the Bay Plan that emphasizes the need to preserve bayfront lands and access to navigation, commercial seaport development, and the industrial needs of a working waterfront. These are unique and legally protected and preferred uses which not only should be preserved and planned for as a critical component of the California economy but must be in order to achieve the goals of the McAteer-Petris Act to relieve and avoid future development pressure from seaports to increase the intensity of Bay fill.

In light of the nature of this pressure, it is important at this time to point out that there have been significant developments in our California supply chain that have created additional specific cargo pressures and land-use trends effecting ports and the waterfront that are not directly reflected in the Draft Seaport Plan or the Cargo Forecast upon which it was based. Specifically, these include:

- Advent of the offshore wind energy market in California coastal waters, which will create massive new demands for seaport infrastructure for construction, maintenance, and support of Central Coast and North Coast offshore windfarms. Windfarm seaport supporting infrastructure decisions are now in their infancy but will put unprecedented and unknown development pressure on port infrastructure statewide. The State Lands Commission has recently completed a Study on this subject (see California State Lands Commission AB 525 Port readiness Plan). The Plan, for example see page 112, clearly demonstrates that the scope and scale of the new demands that this industry will place on the industrial waterfront has good candidates for growth in the San Francisco Bay. The Draft Seaport Plan does not account for these demands.

- Increased demand for Zero-Emissions truck charging and powering infrastructure that will be necessary to support accelerated implementation of California’s transition to its Advanced Clean Truck and Advanced Clean Fleet rules. The state’s new rules focus its transition to ZE trucking on seaports and its need for new infrastructure by accelerating ACT/ACF compliance for intermodal drayage fleets. This has spurred new needs to identify on-port and near-port land to dedicate for truck charging infrastructure – new demands which will compete directly with the lands already identified in the Cargo Forecast for future cargo operations. For example, the Port of Oakland is now taking its first steps to try and identify locations for this infrastructure, and while it is intent is clearly to minimize potential conflicts in its initial study some potential locations – including the Roundhouse – are also identified in the Draft Seaport Plan as locations for future cargo operations. These properties clearly cannot achieve both ends, and the Draft Seaport Plan does not account for these demands.
- As demonstrated by the pandemic, the economy and extraordinary circumstances will not produce cargo volumes which are always grown in a smooth, linear progression, and the market will react to the need to accommodate cargo surges. While the Cargo Forecast itself does a good job of explaining that its projections are not reflective of individual business cycles and commodity needs per se, and that they need to be taken in a historical context, the Draft Seaport Plan does not explicitly create a policy which would be specific to the need for an additional buffer for surge-demand, like we experienced during the pandemic.

These new and additional pressures need not hold up approval of BPA #1-19, but they do need to be reflected in the Draft Seaport Plan as appropriate and be factored into future updates to the Plan.

With respect to specific provisions of the Draft Seaport Plan, we offer the following observations:

Seaport Planning Advisory Committee - Policy #1, Composition (pg. 15)

PMSA supports the proposed revisions to SPAC Policy #1 to broaden the composition of the SPAC to include community groups and maritime industry stakeholders. The planning process that BCDC Staff and the SPAC undertakes is a broad and regional effort that benefits from having direct and indirect stakeholders at the table and participating in the creation of a vision of the future of the Bay’s waterfront. Adding maritime industry stakeholders is naturally a position that is supported by PMSA, which represents those industry stakeholders at California’s public seaports.

The Cargo Forecast – Finding C, Other Cargos (pp. 16-19)

Growth in wind energy supporting seaport demand should be reflected either Finding C (“C. Other Cargos”) or, alternatively, the topic could be a subject of a new Finding G. These findings should reflect the fact that the current Cargo Forecast does not include any analysis of future demand for port infrastructure to support the offshore wind industry, and that the development of the wind industry will likely have significant impacts on demand for Port cargo.

Preserving and Enhancing Port Priority Use Areas – Tables 2 & 3, Marine Terminals (pp. 21-22) These tables do not include Howard Terminal at the Port of Oakland, which is a significant omission, especially given the proposed new language in Policy #3, which specifically limits justifications for

requests to change PPUA status to “a designated Marine Terminal (see Table 2 and Table 3).” As described here, Howard Terminal would no longer be given this same protective status.

Preserving and Enhancing Port Priority Use Areas – Policy #3, Removal of PPUAs (pg. 24)

PMSA opposes the revision of this Policy such that it explicitly removes the SPAC from the existing policy and requires a SPAC determination.

The current Cargo Forecast Policy #4 provides:

“Deletions of the port priority use and marine terminal designations from this plan should not occur unless the person or organization requesting the deletion can demonstrate to the satisfaction of ***the Seaport Planning Advisory Committee*** that the deletion does not detract from the regional capability to meet the projected growth in cargo. ...”

The proposed new language for PPUA Policy #3 would revise this language as follows:

“Requests to remove Port Priority Use Areas should not occur unless the person or organization requesting the deletion can demonstrate to the satisfaction of ***the Commission*** that the deletion does not detract from the region’s ability to meet the projected growth in cargo. ...”

We do not believe that the SPAC should be removed from the PPUA deletion process. The SPAC is convened in order to provide expertise and specific focus on the issues of regional capability to meet projected growth in cargo. If the intent of this change is to recognize that the Commission has the ultimate approval authority to revise the Bay Plan, including revisions to PPUA designations in the Seaport Plan, then the revisions to Cargo Forecast Policy #4 should be identical to the proposed revisions to Cargo Forecast Policy #3, where the Commission is ADDED to the policy along with the SPAC, not replacing the SPAC. (See proposed revisions to Policy #3: “The *Commission and SPAC* ~~Seaport Planning Advisory Committee~~ should monitor the region’s maritime cargo volumes, marine terminal use, and ship calls *as needed on an ongoing basis*. The data collected should be *assessed by the SPAC and the Commission to* ensure that ... “)

If revised consistently with Cargo Forecast Policy #3, the new PPUA Policy #3 should instead read:

“Requests to remove Port Priority Use Areas should not occur unless the person or organization requesting the deletion can demonstrate to the satisfaction of ***the SPAC and the Commission*** that the deletion does not detract from the region’s ability to meet the projected growth ...”

Preserving and Enhancing Port Priority Use Areas – Policy #7, Layberthing (pg. 25)

PMSA supports the inclusion of the proposed Layberthing policy.

Preserving and Enhancing Port Priority Use Areas – Policy #9, Public Access (pg. 25)

PMSA opposes the Deletion of the original language of Port Priority Use Area Policy #2, as revised in proposed Policy #9. The original language should be retained. Current PPUA Policy #2 reads:

“Within port priority use areas, non-port uses such as public access and commercial recreation development may be allowed provided that the use would not impair existing or future use of the area for port purposes.”

The proposed new Policy #9 does not maintain this language regarding restrictions on uses which may result in PPUA impairment. Indeed, the proposed new language does the opposite, it proposes that public access “should be encouraged” with the only limitation being consistency with all other “Bay Plan Public Access policies.” This is a recipe for conflict and potentially significant and severe economic as well as public safety consequences. PPU Areas are industrial and working waterfront areas that are largely incompatible with public access and likely introduce pedestrians, bicyclists, and motorists into situations where they could very literally and physically impede the very purpose of the PPUA. In addition, it is an unfortunate circumstance that this could also result in the public placing themselves in situations which may have higher than average likelihoods of accidental injury and death.

Policy #9 should retain the original language of PPUA Policy #2 and be revised to read: “Within port priority use areas, non-port uses such as public access and commercial recreation development may be allowed provided that the use would not impair existing or future use of the area for port purposes. Public access amenities that enhance the public’s access to or understanding about the working waterfront, including visual corridors, temporary access, or other programmatic elements may be allowed, provided that such proposals are consistent with all other applicable Bay Plan Public Access policies.”

Climate Change – Policy #2, Seaport Plan and Cargo Forecast Updates. (pg. 27)

PMSA supports the inclusion of findings and policies for sea level rise based on the trustee assessments required to be submitted by Bay ports to the State Lands Commission under AB 691 (Muratsuchi). To the extent, however, that the Seaport Plan goes beyond the plans submitted to the SLC, it is unclear whether the Ports would be put in an untenable situation of seeking approval for the same sea level rise adaptation plans between two entities. In the event of discrepancies or conflicts between the two plans PMSA would recommend that the plans as submitted by ports to the SLC pursuant to AB 691 govern.

Environmental Justice & Social Equity – Policy #2, Projects to Reduce Air Emissions (pg. 28)

PMSA supports the policy supporting Port developments that transition to zero-emissions seaports. However, the use of the phrase “whenever possible” sets an unreasonable standard for this transition, as there are many things which are “possible” but entirely infeasible. Port projects should not be held to a standard of impossibility instead of a standard of infeasibility.

These standards will be entirely different for different types of cargo and different types of ports and vessels. For instance, the Policy language explicitly identifies “shore power improvements” – but this is regulated entirely differently by the California Air Resources Board for container ships at the Port of Oakland, than for Ro-Ro ships at the Port of Richmond, than for bulk ships at the Port of Redwood City. This policy should reflect the fact that while it is physically possible for bulk ships to be retrofitted for shorepower, it is studiously infeasible to the degree that the State of California has never even proposed such activity be required by rule; while, by contrast 100% of container vessel calls at the Port of Oakland are subject to at-berth regulations as these have been determined to be feasible.

This policy should be revised to read:

“Port development that supports the transition to zero-emissions seaports (e.g., shore power improvements and other infrastructure modifications) should be encouraged and facilitated whenever feasible.”

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Treatment of Howard Terminal Under the Draft Seaport Plan

PMSA is a signatory to a separate comment letter by a coalition of interested parties submitting comments specific to Howard Terminal and incorporates those comments by reference here. Howard Terminal is a working seaport terminal that is accorded special status under state law, including a requirement that may require it to be treated as a PPUA-designated marine terminal effective January 1, 2025. That special PPUA designation should be recognized and accorded in the Draft Seaport Plan.

Thank you for the opportunity to address our issues with the June 2023 Draft Seaport Plan. Please do not hesitate to contact me regarding any of these issues.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Mike Jacob', is written over a light blue horizontal line.

Mike Jacob
Vice President & General Counsel

cc: Erik Buehmann, BCDC
Cory Mann, BCDC



July 24, 2023

Seaport Planning Advisory Committee
San Francisco Bay Conservation & Development Commission
375 Beale St., Suite 510
San Francisco, CA 94105
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Re: Bay Plan Amendment (“BPA”) #1-19, June 2023 DRAFT Seaport Plan; Treatment of Howard Terminal

Seaport Planning Advisory Committee Members:

The undersigned organizations thank the Seaport Planning Advisory Committee (“SPAC”) and BCDC Staff for your ongoing work and efforts to finalize an update to the BCDC Seaport Plan through BPA #1-19. Our commendation and thanks to this Committee include all of the work and efforts undertaken to address the situation that has involved the application to remove Howard Terminal from Port Priority Use Area (“PPUA”) designation at the Port of Oakland in Bay Plan Amendment #2-19.

Our request of the SPAC is to have the final adopted new Seaport Plan actually reflect the reality of Howard Terminal’s situation as it exists at the time of the adoption of the new updated Seaport Plan to reflect the restoration of the PPUA designation to Howard Terminal as part of the Plan.

We were disappointed by the vote of the full Commission in 2022 that diverged from the SPAC’s recommendation that BPA #2-19 should be denied. Fortunately, the situation regarding Howard Terminal has largely resolved itself outside of the BCDC planning process due to the Oakland A’s announced plans to abandon Howard Terminal and relocate to Las Vegas.

As widely reported in the press, the Oakland A’s have turned their sole focus on ballpark development to a site in Las Vegas, Nevada. As a result, the Oakland A’s did not seek renewal of their Exclusive Negotiating Agreement for Howard Terminal with the Port of Oakland, which has now expired, and let their Non-Binding Term Sheet with the Port of Oakland lapse by its own terms as of May 2023 as well. This abandonment of Howard Terminal eliminates the basis for BPA #2-19.

This is noted at page 8 of the June 12, 2023 Staff Report for BPA #1-19, which notes the “ongoing uncertainty around the future of Howard Terminal,” and the condition in state statute (AB 1191, Sec. 8(b)) that requires the Port Priority Use designation will be automatically reinstated on the Howard Terminal property as a matter of law if a binding agreement is not in place by January 1, 2025 between the Oakland A’s and the Port of Oakland for the ballpark project on the site.

In sum, it is highly likely that the PPUA designation for Howard Terminal will be reinstated. We agree with the characterization of the BCDC Staff that this renders the future of Howard Terminal uncertain.

We also agree with the BCDC Staff that AB 1191 provides for explicit re-designation of Howard Terminal as a Port Priority Use as a matter of law by 2025 if no ballpark project goes forward.

In light of the recent actions by the applicant for BPA #2-19, we believe it is unnecessary and inappropriate to wait until a future time to restore the PPUA designation and acknowledge the present condition in the draft Seaport Plan. The facts and the law are clear and well known, and therefore the new Seaport Plan should not be silent regarding these existing conditions. Therefore, to be as accurate and comprehensive as possible, the Draft Seaport Plan should be revised prior to its adoption to either (i) include full reinstatement of the PPUA designation for Howard Terminal, or (ii) at least reflect the current conditions and automatic reinstatement by law as of 1/1/2025.

Specifically, we recommend all of the following revisions regarding the treatment of Howard Terminal in the Draft Seaport Plan:

- **Howard Terminal should be included in “Table 2: Existing Active Marine Terminals”**
(Draft Plan, page 21)

Table 2 is described as “the existing active marine terminals in San Francisco Bay and lists the current uses of those sites as of 2023.” However, it omits Howard Terminal from the list of active marine terminals. This is in error. Howard Terminal as of 2023 remains an active marine terminal at the Port of Oakland that provides vessel lay-berthing and container port ancillary services. While it may have been designated for removal of PPUA designation in 2022 by BPA #2-19 to make it possible to potentially redevelop at a future point in time (or possibly never), that does not eliminate it from a listing of existing terminals that exist in 2023. Howard Terminal should be included in this list.

If the Committee would wish to acknowledge the situation by adding an asterisk to Howard Terminal that notes that the property was removed from PPUA by BPA #2-19, but remains subject to AB 1191 reinstatement, that would be consistent with the Staff Report.

- **Alternatively, Howard Terminal should be included in “Table 3: Existing Marine Terminal Expansion Sites”** (Draft Plan, page 22)

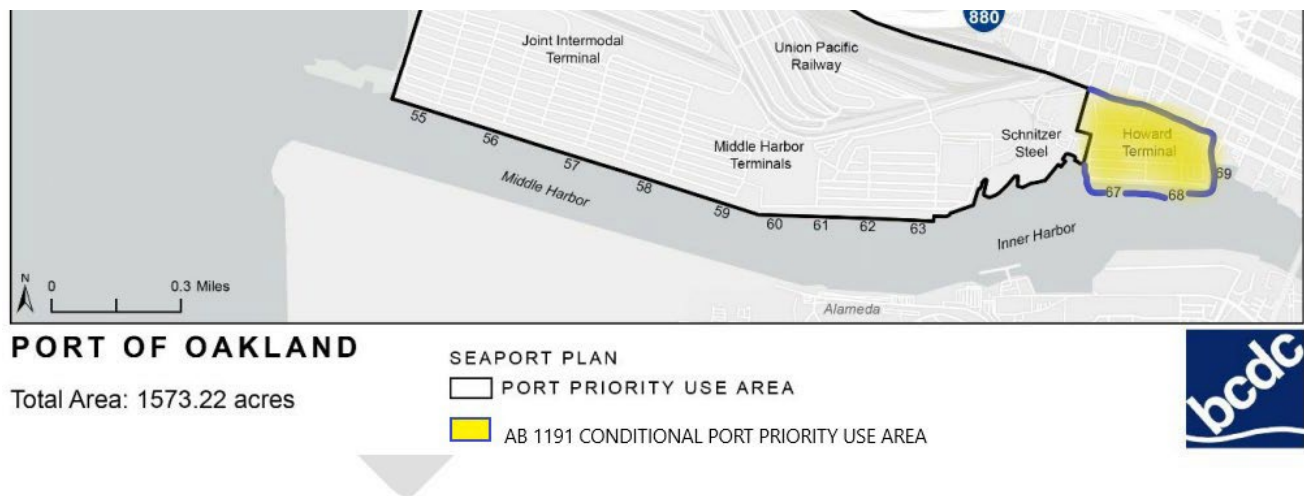
If the Committee choose not to include Howard Terminal on the list of active marine terminals in Table 2, alternatively, Howard Terminal should be included in Table 3, which is the list of existing marine terminal expansion sites. These are described by the Draft Plan as sites which “have the potential to accommodate active cargo handling in response to future demand.” Howard Terminal is included in the cargo forecast studies in this capacity, and much like the Oakland Roundhouse property, is currently used for ancillary, cargo-supporting activities. As above, if the Committee would wish to acknowledge the situation surrounding the site by adding an asterisk to Howard Terminal, that would be consistent with the Staff Report.

Howard Terminal should be included under Table 2 or Table 3 to insure that the property is properly protected under new Proposed PPUA Policy #3(b), which limits the protections for requests to remove PPUA property only to “designated Marine Terminals” under one of these two tables. Howard Terminal should not be excluded from these protections once the PPUA designation is reinstated – whether pursuant to this plan or subject to AB 1191’s provisions.

- **Howard Terminal should be included in “Figure 3: Oakland Port Priority Use Area” With Special Designation to Acknowledge Its Unique Treatment Under the Law**
(Draft Plan, page 32)

Figure 3 illustrates the “Oakland Port Priority Use Area” and it omits Howard Terminal and berths 67 and 68 from the map. However, while the property was removed from PPUA by BPA #2-19, it nonetheless remains subject to AB 1191 reinstatement of the Port Priority Use Area designation as a matter of law. This is a unique situation which should be reflected on the map, consistent with the Staff Report and AB 1191, by a conditional inclusion of Howard Terminal and Berths 67-68 with a conditional area designation (shading or striping), with revised legend.

For illustrative purposes, such a revision could be as roughly designated below:



- **Howard Terminal should be included in the Appendix A “Table 1: Port of Oakland Terminals and Acreages”** (Draft Plan, page 40)

In the discussion of the calculation of the Port of Oakland’s acreage in terminals and major off-dock parcels, the Draft Plan addresses the uncertainty of future Port of Oakland parcels that occurred in the consideration of the Howard Terminal removal in BPA #2-19, including the inclusion of acreage at STE. Specifically, the Draft Plan states that “During the Commission’s consideration of BPA 2-19, BCDC staff examined this issue and recommended displaying the site as a range of acreage. An acreage range more accurately represents uncertainty regarding the future use of the site. This table is an update to Exhibit 4 of the *Cargo Forecast*.” (pp. 39-40)

We agree, and given that the one parcel with the highest amount of uncertainty associated with it, as accurately summarized in the Staff Report, Howard Terminal and its acreage should be added to the list of Port of Oakland terminals and acreage with the same “***” consideration already included in Table 1 (“*** See explanation above and p. 13 of the Staff Final Recommendation for BPA 2-19.”), or with a new asterisk to identify the AB 1191 conditional Port Priority Use Area designation and current circumstances involving the site.

Thank you for the opportunity to raise these issues with the SPAC regarding this June 2023 version of the Draft Seaport Plan.

Sincerely,

California Trucking Association
Customs Brokers and Freight Forwarders of Northern California
GSC Logistics
Harbor Trucking Association
International Longshore & Warehouse Union
Pacific Merchant Shipping Association
Propeller Club of Northern California
SSA Terminals