

**SURFACE TRANSPORTATION BOARD
OFFICE OF ENVIRONMENTAL ANALYSIS**

FINAL ENVIRONMENTAL ASSESSMENT

ENVIRONMENTAL RECOMMENDATIONS IN
DOCKET NO. AB-1090X

June 11, 2012

ABANDONMENT TYPE

The time for comments on the Environmental Assessment (EA) has expired in this:
(X) Notice of Exemption () Petition for Exemption () Regulated Abandonment

() **NO NEW COMMENTS WERE RECEIVED**

(X) **NEW COMMENTS WERE RECEIVED**

The Office of Environmental Analysis (OEA) served an EA for this proceeding on May 22, 2012 for public review and comment. In the EA, OEA recommended three environmental conditions and concluded that the proposed action would not significantly impact the quality of the human environment.

Comments on the EA

During the EA comment period, OEA received comments from Charles Montange, counsel for the City of Alameda (see attached). In his comments, Mr. Montange clarifies that the San Francisco Bay Conservation and Development Commission (BCDC), rather than the California Coastal Commission, has jurisdiction over coastal resources within the City of Alameda. Mr. Montange also restates the City of Alameda's commitment to obtain all necessary permits and approvals from BCDC. This commitment by the City of Alameda is reflected in OEA's recommended environmental condition #3 in the EA.

Modifications to the EA

Considering the additional correspondence received after the EA was issued, OEA believes that recommended environmental condition #2 in the EA should be deleted (i.e., the condition that would require consultations with the California Coastal Commission). OEA continues to recommend the remaining two environmental conditions in the EA.

Conclusions

The EA comment period has ended and OEA recommends the following environmental conditions:

1. The City of Alameda d/b/a Alameda Belt Line Railroad shall consult with the National Geodetic Survey (NGS) and notify NGS at least 90 days prior to beginning salvage activities that could disturb or destroy any geodetic station marker.
2. Prior to beginning any salvage activities, the City of Alameda d/b/a Alameda Belt Line Railroad shall consult with and obtain any necessary approvals from the San Francisco Bay Conservation and Development Commission.

If the recommended conditions are imposed, OEA believes that the proposed action would not significantly affect the quality of the human environment.

Attachments: Comments from Charles Montange, Counsel for City of Alameda

OEA CONTACT: Dave Navecky
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Distribution: Andrea Pope-Matheson, Office of Proceedings
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ECT



EA served May 22, 2012 in City of Alameda d/b/a ABL, AB 1090X

Charles Montange to: david.navecky

05/23/2012 01:30 PM

Please respond to "Charles Montange"

History:

This message has been replied to.

Mr. Navecky, the comments section of the EA referenced above indicated that questions concerning the EA could be directed to you by telephone or email. I have left a telephone message, and this email is basically a repetition of it. The EA, "pending clarification of this matter," recommends a condition be placed on the abandonment authorization in 1090X requiring no alteration of the line until Federal Consistency review requirements are met under the CZMA, specifically as follows: that the RR report back to OEA concerning consultations with the Federal Consistency Unit of the Cal Coastal Commission. The recommended condition would bar the RR from consummating abandonment (railbanking for the most part) or removing track or ties until CZMA "consistency certification is obtained, if applicable, and the Board has removed this condition."

Please consider this email an effort to provide clarification such that the recommendation for a Cal Coastal Commission federal consistency review, and a stay on any consummation and salvage pending such review and STB action on it, be rescinded.

The California Coastal Commission does not have jurisdiction over CZMA matters in or around the City of Alameda. This is handled exclusively by the Bay Conservation and Development Commission ("BCDC"). Because the Cal Coastal Commission lacks jurisdiction, it does not make federal consistency certifications for City of Alameda on any matter, and I have specifically confirmed with the head of the Federal Consistency Unit of the Commission that it would not do so in 1090X. Mr. Mark Delaplaine, who heads the Federal Consistency Unit for Cal Coastal Commission, has offered to verify this to you directly if you telephone him. His tel number is 415-904-5289.

Compliance with CZMA is fully secured by the commitment of City d/b/a ABL to obtain all necessary permits or approvals from BCDC before undertaking any action requiring such permits or approvals, and by the separate condition recommended in the EA that City d/b/a consult with BCDC and obtain such permits or approvals.

In light of this clarification, we request that the OEA rescind the second of the three conditions it recommends. The condition cannot be complied with because Cal Coastal Commission lacks jurisdiction.

I would also note that the City of Alameda filed a "statement of willingness" seeking a Trails Act condition, and City of Alameda d/b/a ABL consented to same, at the same time as the two year out of service abandonment application was filed. We believe the request met the requirements of 49 CFR 1152.29. It might be appropriate for the EA to so note in the "Trails Use" section of the EA. The City believes that railbanking the portion of the Line indicated in our statement of willingness will preserve the corridor for future rail use and provide additional benefits to the public through interim trail use.

Please feel free to contact me at 206-546-1936 should further information be required.



EA served May 22, 2012, in City of Alameda d/b/a ABL, AB 1090X

Charles Montange to: David.Navecky

05/24/2012 06:53 PM

Please respond to "Charles Montange"

History:

This message has been replied to.

1 attachment



ccmp_description.pdf

Mr. Navecky, the attachment is a document prepared by the California Coastal Commission. It indicates (in the first paragraph) that the Bay Conservation and Development Commission (BCDC) is the designated coastal management agency for the San Francisco Bay Area, and (on page 3, point 3) that Cal Coastal Commission lacks jurisdiction over the area covered by the BCDC. The McAteer-Petris Act (available via the internet), referenced in the attached document, establishes BCDC. Please let me know if OEA requires any further information to delete the recommendation from the EA that City d/b/a ABL approach the CCC for a federal consistency determination, and not do anything to consummate an abandonment or to alter the Line prior to STB action in connection with that effort to obtain a consistency determination.

Chas. Montange, counsel for City

CALIFORNIA COASTAL COMMISSION

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**Description of California's Coastal Management Program (CCMP)**

The California Coastal Program, approved by NOAA in 1978, is comprised of three parts. The California Coastal Commission manages development along the California coast except for San Francisco Bay, where the San Francisco Bay Conservation and Development Commission oversees development and is the designated coastal management agency. The third agency, the California Coastal Conservancy, purchases, protects, restores, and enhances coastal resources, and provides access to the shore. The primary authorities for the Coastal Program are the California Coastal Act, McAtter-Petris Act, and Suisan Marsh Preservation Act.

The California Coastal Commission's coastal zone generally extends 1,000 yards inland from the mean high tide line. In significant coastal estuarine habitat and recreational areas it extends inland to the first major ridgeline or five miles from the mean high tide line, whichever is less. In developed urban areas, the boundary is generally less than 1,000 yards. For federal consistency reviews under the Coastal Zone Management Act (CZMA), the Coastal Commission reviews activities that affect the coastal zone, regardless of their location.

The Coastal Commission's coastal program uses a variety of planning, permitting, and non-regulatory mechanisms to manage its coastal resources. The Coastal Commission implements a well-established permitting and planning program, including issuing coastal development permits (CDPs), reviewing local governments' Local Coastal Programs (LCPs), reviewing appeals of locally permitted CDPs, and, under the CZMA, federal consistency reviews of federal agency, federally permitted, and federally funded (to state and local government) activities. For the last of these (federal consistency reviews under the CZMA), the Commission's standard of review is the enforceable policies of the CCMP, found in Chapter 3 of the Coastal Act. The Commission's federal consistency web page: <http://www.coastal.ca.gov/fedcd/fedcdx.html> contains the current Chapter 3 policies, as well as a number of other documents explaining and assisting an understanding of the federal consistency review process.

The excerpts below, taken from pages 10-16 of the August 1977 Combined CCMP & Final EIS, further describe the content of the CCMP.

CCMP Description Excerpts:**INTRODUCTION: COMPONENTS OF THE CALIFORNIA COASTAL MANAGEMENT PROGRAM**

The California Coastal Management Program is a combination of Federal, State, and local planning and regulatory authorities for controlling the uses of land, air, and water resources along the coast. For the purposes of meeting CZMA requirements the management program for the main coastline segment described in this document is the major component of a two-segment program, San Francisco Bay being the smaller segment. A Coastal Management Program for the San Francisco Bay segment was approved by the Assistant Administrator of NOAA on behalf of the Secretary of Commerce on February 16, 1977. The relationship between these two segments will be reviewed in accordance with Section 30410 of the California Coastal Act by July 1, 1978.

The California Coastal Management Program for the main segment of the State's coastline includes the following:

- A. California Coastal Act of 1976. Division 20, California Public Resources Code Sections 30000 et seq. (Appendix 1)
- B. California Coastal Conservancy Act of 1976. Division 21, California Public Resources Code Sections 31000 et seq. (Appendix 2)
- C. California Urban and Coastal Park Bond Act of 1976. Division 5 California Public Resources Code Sections 5096.777 et seq. (Appendix 3)
- D. California Coastal Commission Regulations. California Administrative Code, Title 14, Sections 13000-14000. (Appendices 2, 4, and 5)
- E. Program Description. Part II, State of California Coastal Management Program (Introduction and Chapters 1 through 14)

The major elements of the CCMP are summarized below.

A. California Coastal Act of 1976. Effective January 1, 1977, California has a permanent, comprehensive, coastal management program. The California Coastal Act is the foundation of the California Coastal Management Program. The Act defines the State's coastal management goals and policies, establishes the boundaries of the State's coastal zone, and creates governmental mechanisms for carrying out the management program.

1. Goals

The Coastal Act specifies basic goals for coastal conservation and development aimed at protecting, enhancing and restoring coastal environmental quality and resources, giving priority to "coastal dependent" development, and maximizing public access to the coast.

2. Policies

The Coastal Act specifies detailed policies on which conservation and development decisions in the coastal zone are to be based. These policies are generally based on the 162 policy recommendations in the Coastal Plan published in 1975 by the California Coastal Zone Conservation Commissions and deal with the following topics:

Public access - covers access to the coast, prescriptive rights, dedication of accessways, and provision of low- and moderate-income housing.

Recreation - covers shorefront lands and recreational boating.

Marine environment - covers dredging, filling, and diking of wetlands and estuaries, and structures that affect sand transport for beach replenishment.

Land resources - covers wildlife habitats, coastal-related agriculture, soil productivity, and archaeological resources.

Development – provides for future development in existing developed areas, covers visitor facilities, gives priority to coastal-dependent development, includes considerations of geological instability, sets priorities and guidelines for

expansion of public services, addresses public scenic vistas to and along the coast, and covers compatibility of new development with its setting.

Industrial development – covers offshore oil and gas development, refinery construction and expansion, powerplant and liquefied natural gas facility siting on coast, roads, and coastal-dependent industrial development.

In carrying out its policies, the Coastal Act requires conflicts to be resolved in a manner which, on balance is most protective of significant coastal resources.

3. Jurisdiction

The Coastal Act defines "coastal zone" as an area, shown on a map filed with the California Secretary of State, extending three miles seaward and inland generally 1,000 yards. In significant coastal estuarine, habitat, and recreational areas, it extends inland to a maximum of five miles; in developed urban areas it generally extends inland less than 1,000 yards. The area of jurisdiction of the San Francisco Bay Conservation and Development Commission (BCDC) and Federal lands are excluded.

...

6. Local Coastal Programs

By April 1, 1977, the Coastal Commission was required to adopt procedures for the preparation, approval, certification, and amendment of local coastal programs. By January 1, 1980, all local governments within the coastal zone must prepare a local coastal program or request (by July 1, 1977) the Coastal Commission to prepare one. Local coastal programs include the relevant portions of a local general plan, zoning ordinances, zoning district maps, and actions which implement the Coastal Act at the local level.

...

Section 30008 of the Coastal Act states that, "This division shall constitute California's coastal zone management program for purposes of the Federal Coastal Zone Management Act of 1972". However, the CCMP is not necessarily limited to the Coastal Act itself because Section 30009 of the Act provides that, "This division shall be liberally construed to accomplish its purposes and objectives". It is clear that one of the purposes and objectives of Section 30008 is to declare the Legislature's intention that California's coastal management program satisfy the CZMA requirements for a state coastal management program. ...

Therefore, California's coastal management program, as submitted to the Department of Commerce for approval, includes the following components in addition to the Coastal Act.

B. California Coastal Conservancy Act of 1976. This Act is integrally related to the Coastal Act by Section 3 of the Conservancy Act which states, "This act shall become operative only if the Coastal Act is enacted and shall become operative at the same time as the Coastal Act". The Conservancy Act establishes a State Coastal Conservancy based on a recommendation in the Coastal Plan. The Conservancy, which is composed of three members in addition to the Secretary for Resources (the Coastal Commission is part of the Resources Agency) and the chairperson of the Coastal Commission, is responsible for implementing a program of agricultural lands protection, area restoration, public access, and resource enhancement in the coastal zone. The establishment of the Conservancy adds acquisition and restoration capabilities to the CCMP to complement the planning and regulatory authorities created by the Coastal Act.

The actions of the Conservancy will be integrated with the implementation of the management program.

C. California Urban and Coastal Park Bond Act of 1976. This measure was submitted to the California electorate by the Legislator for consideration at the November 1976 general election. In approving the measure, the voters provided \$145 million for the acquisition of coastal areas and \$10 million for the State Coastal Conservancy to begin its program. The Bond Act provides funds for the acquisition of a number of the sites recommended for public purchase by the Coastal Commission. These sites will be acquired by the California Department of Parks and Recreation using purchase criteria that are based largely on those developed by the Coastal Commission.

D. California Coastal Commission Regulations. Included in the CCMP are governmental regulations, adopted by the Coastal Commission pursuant to Coastal Act requirements. These documents are summarized below.

- (1) Permit and Port Planning Regulations. These regulations cover: (1) the administrative procedures of the Coastal Commission; (2) the procedures for the submission, review, and appeal of coastal permit applications and claims of exemption; and (3) the procedures for the preparation and review of port master plans.
- (2) Local Coastal Program Regulations. These regulations establish procedures for the preparation, submission, approval, appeal, certification, and amendment of local coastal programs. Included are a common methodology for the preparation of LCPs, criteria for the scope of an LCP, a schedule for processing LCPs, and recommended uses of more than local importance that must be considered in the preparation of LCPs.

E. Program Description. Part II of this document [i.e., the CCMP/FEIS] is a narrative description of the legislative and administrative measures embodied in the CCMP, organized to correspond to the specific requirements of the Coastal Zone Management Act of 1972, as amended. As such, the bulk of Part II is explanatory, descriptive, historical, and interpretive in nature. Chapter 11 is quite different in that it is a definitive policy statement adopted by the Coastal Commission. Chapter 11 explains how national concerns were addressed in the development of the CCMP, illustrates how Federal agencies were involved in California's coastal planning, and outlines a general approach for implementing the Federal Consistency provisions of Section 307 of the CZMA in California. Several public hearings have been held on this material as it has evolved over the past two years. An earlier version of this chapter was included in the California Coastal Plan as a statement entitled "National Interest in the Coast". This statement has been refined to include Federal consistency procedures that are based, in part, on the successful program of cooperation with Federal agencies that the San Francisco Bay Conservation and Development Commission has developed for the voluntary application of the San Francisco Bay Plan to Federal activities over the past decade.

In response to comments made by reviewers of the draft program--many of whom alleged that the Coastal Commission was not sufficiently responsive to national interest needs--the Commission adopted the current version of Chapter 11 on July 19, 1977. In adopting this material the Commission made numerous revisions to the chapter as it appeared in the draft program to clarify how national concerns and especially energy issues have been incorporated into the development of the CCMP and will be considered by the Commission in carrying out the program.