

March 3, 2017

Chair Graden and Planning Commission Members (via email)
Submitted Via Email to: Planning Executive Secretary Leslie Trybull

SUBJECT: Summary of Critical Errors and Omissions in Staff Report and Draft FEIR for Orcem & VMT Projects

Dear Commission Members,

Your commission conducted a hearing on 2/27/17 to consider a staff recommendation to adopt a Categorical Exception under CEQA and deny the applications filed by Orcem California and Vallejo Marine Terminal. As was called to your attention in a separate appeal letter filed on 2/09/17, the staff has incorrectly determined that a complete and accurate EIR need not be certified prior to any consideration of the project itself.

In our presentation to you Monday evening, Arthur Coon of Miller Starr Regalia emphasized the clear legal requirement for your commission to first correct critical defects in the Draft FEIR, and then certify the corrected document, before proceeding to any decision on the project. In addition to the statutory, contractual and moral obligations which compel the City to complete and certify the EIR, elimination of the glaring defects in the current document is essential to having a factual basis for findings either in support of or to deny the project.

This letter and its supporting attached documentation have been prepared to provide you with a "roadmap" to better understand where the critical mistakes have been made in the Staff Report dated 2/06/17 and the Draft FEIR dated February 2017. Our team of CEQA and other technical experts will be in attendance on Monday evening March 6th should you have further questions. We urge you to direct the City's staff to correct their report and the Draft FEIR, and to then schedule a separate hearing (as required by City Code Sec. 16.82.030) to consider certification of the corrected FEIR as the legally required next steps in this process.

Sincerely,



Richard T. Loewke, AICP

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- Attachments: (1) Summary of Staff Report and DFEIR Critical Errors – Loewke
(2) Miller Starr Regalia Letter on Errors in Staff Report on EIR Procedure
(3) Changes Made in ROA and Resulting Environmental Benefits - Loewke
(4) Ramboll-Environ Letter on Errors in DFEIR on Air Quality Issues
(5) AWN Letter Addressing Errors in DFEIR on Noise and Vibration Issues
(6) Analysis of Errors in DFEIR on Truck Movements - Loewke
(7) Analysis of Errors in DFEIR on Rail Impacts – Loewke
(8) Final BCDC Staff Correspondence Confirming Consistency for ROA
(9) Community Benefits Package – Orcem & VMT

Summary of Critical Errors Presented in Vallejo Staff Report and Draft FEIR for Orcem & VMT Projects

The following summary is derived from initial review of the Vallejo Staff Report posted 2/06/17 for the Planning Commission meeting of 2/27/17 and the February 2017 Draft FEIR. This summary and the referenced Attachments reflect the opinions of Richard T. Loewke AICP, and the other experts who have contributed to the Attachments and the other referenced earlier technical studies.

	Critical Factual Errors Identified in Staff Report and Draft Final EIR	See Documentation in Attachment
1.	Application of CEQA: After nearly completing the EIR, City staff have incorrectly determined that the project is not subject to CEQA, has refused to complete/certify EIR prior to consideration of project, and has interfered with the Commission's decision-making. (Staff Report pages 1, 37, 42, 44)	2
2.	Evaluation of Project Based on Incomplete & Flawed FEIR: Staff has proceeded to judge the ROA project based on a faulty Draft FEIR, while refusing to complete and certify the EIR as complete and accurate. (Staff Report pages 3, 7, 18, 20)	2 through 8
3.	Review of Orcem Mill as a Cement Factory: City staff and the EIR consultant have incorrectly evaluated the Orcem Mill as a "cement manufacturing facility" utilizing a kiln with resulting "temperatures in excess of 1800 degrees Fahrenheit", rather than as a mill for production of GGBFS. Unlike an ordinary cement plant, the Orcem Mill has no kiln and does not involve the firing of clinker. The only heat involved is the warming of air in the Mill as GBFS is ground to produce the GGBFS power. This process takes place in a closed system with a high-performance filtration system, and results in no significant pollutant emissions. (DFEIR page 3.7-20, Staff Report pages 1, 28).	3
4.	ROA Not Evaluated: The staff report and DFEIR have focused on the original project application and not the modified and proposed June 2016 Revised Operations Alternative (ROA) Project, which has substantially fewer impacts and provides a substantial Community Benefits Package. (Staff Report pages 3, 32, 33, 39, 40, 41)	3, 4, 5, 6, 7 and 9
5.	False Conclusions About Significant Impacts: Staff report and DFEIR incorrectly conclude that the ROA Project would have significant remaining air quality, noise, and emergency services impacts after mitigation. These effects of the original project have been either avoided or fully mitigated in the ROA (Staff Report pages 3, 32, 33, 39, 40, 41)	3, 4, 5, 6 & 7
6.	Incorrect Analysis of Truck Traffic: The staff report and DFEIR provide a grossly-inflated count and description of total ROA Project trucks and frequency on Lemon Street and Sonoma Boulevard. A corrected analysis is provided identifying the source of the staff/consultant errors. (Staff Report pages 4-6, 24)	6
7.	Application of BAAQMD Offsets: Despite written evidence to the contrary (and in Attachment 4), the staff have concluded that the landlord, rather than the Terminal Operator, is subject to a regulatory permit from BAAQMD. As has been confirmed directly with BAAQMD, the District requires a Permit from those parties who operate fixed equipment and facilities. Because in the original project VMT as the landlord simply owned the site (and would lease portions of it to other entities such as Orcem to operate the Terminal and other elements), VMT itself would not have been subject to a District Permit. However, in the ROA Project, VMT has voluntarily taken on the responsibility as operator of the Terminal, and will therefore apply for a District Permit and submit to BAAQMD's BACT requirements and qualify for applicable offsets for vessel, rail and equipment NOx emissions. (Staff Report page 41)	3 & 4

Attachment #1 Summary of Errors

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8.	<p>No Remaining Significant NOx Impact: While City staff are correct that BAAQMD cannot provide offsets for emissions from trucks through its Small Facility Bank, the ROA includes focused mitigation to guarantee the complete elimination of all remaining potentially significant NOx emissions (see Attachment 4). Following mitigation, the ROA will have no significant air quality impacts of any kind, including NOx impacts.</p>	3 & 4
9.	<p>False Speculation About Effects on Area East of Project Site: The staff report (not the DFEIR) includes inaccurate speculation and judgements about the health risks and other effects of ROA Project on the existing industrial and mixed residential neighborhood to the east of the project site. These conclusions are false and not supported by the evidence in the DFEIR which documents “No Significant Impact”. (Staff Report page 5)</p>	3, 6 & 7
10.	<p>False Speculation of Impacts on Commuters: The staff report (not the DFEIR) asserts that the ROA Project would harm commuters, when project would improve the City’s jobs/housing balance, add jobs directly in South Vallejo, and avoid adding traffic volumes during commute periods, thereby actually reducing congestion. The staff conclusions are not supported by evidence in the DFEIR which shows “No Significant Impact”. (Staff Report page 5)</p>	3, 6, 7 & 9
11.	<p>Incorrect Conclusion of Rail Crossing Effects on Emergency Services: The staff report and DFEIR reach incorrect conclusions about the extent of rail delays on traffic in general and emergency services specifically, based on not having evaluated the full set of mitigation measures included in the ROA Project (Staff Report page 5)</p>	3 & 7
12.	<p>Misrepresentation of Impact on Bicycle Traffic: Staff report relies on “<i>perceptions</i>” about the number of trucks, the capacity of the City’s roadways, and bicycle and pedestrian safety, rather than the facts presented in the EIR. The facts directly contradict the staff’s subjective assertions, and shows that based on the extensive roadway, bicycle, and pedestrian improvements paid for by the ROA Project (estimated to totaling over \$1 Million), no significant bicycle or pedestrian safety impacts and no significant service level impacts will occur. (Report Page 5-6)</p>	3, 6 & 9
13.	<p>Misrepresentation of Impacts on Pedestrians: Staff report asserts that “<i>heavy truck traffic</i>” would have “<i>negative impacts</i>” on pedestrians. This assertion is contradicted by evidence in the EIR. The ROA Project’s truck volumes represent only 1% of the Lemon Street volume, and 3% of the Sonoma Boulevard volume (arterial-level industrial district roadways which currently serve as truck routes). The EIR documents the fact that pedestrian safety will be protected by the planned pavement enhancement, sidewalk construction, and crosswalk safety improvements which are part of the project. (Report Page 6)</p>	3, 6 & 9
14.	<p>False Conclusions as to Consistency with San Francisco Bay Plan: Staff report fails to incorporate the final correspondence from BCDC, and incorrectly concludes that the ROA Project (a verified Water-Related Industrial Use) may be inconsistent with the Bay Plan, as well as related zoning rules, and general plan policies. Following literally years of preliminary review and six months of meetings, BCDC staff confirmed in writing that the proposed Modified ROA Project is fully consistent with the Bay Plan. The project was modified in June 2016 by eliminating the previous VMT Phase 2 component, to demonstrate full consistency as a Water-Related Industrial Use. The report reference to public access is not a consistency issue at all; Rather it is a reflection of the staff’s position that the alternative access accommodation supported by BCDC staff, ABAG staff and interested local groups may not be enough. As clearly documented in the EIR and stated by BCDC staff, there is a Permit Process in place with BCDC to assure full compliance and consistency (Staff Report pages 6, 32, 33, 35, 36, 37)</p>	3, 8 & 9

Attachment #1 Summary of Errors

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15.	<p>False Assertion of Visual Impact: Contrary to a clear determination in the EIR, the staff report falsely states that the “<i>second stockpile</i>” (a Phase 2 building) and other unenclosed raw material storage areas on the site would “detrimentally impact” the existing viewshed of the abandoned and deteriorated wharf and former mill structures. Evidence shows that the storage areas are screened by landscaping and walls and other buildings, and would replace old pilings and damaged structures. (Report page 7)</p>	3
16.	<p>Inaccurate Description of Project Mitigation for Bay Fill: Staff report incorrectly states that as mitigation for Bay fill, the project would merely remove “<i>approximately eighty (80) 14-inch-diameter creosote timber piles and deteriorated dock facilities</i>” from the Vallejo Marina. In fact, the project’s mitigation is far more extensive, and includes removal of an additional 440 decaying creosote piles and deck remnants at the project site (for a total of 520 piles). These measures result in enhancement and continued protection of the marine environment for protected fish and invertebrate species (such as Pacific herring), reduced shading of the bottom (mudflat) and water above, reduced restrictions to the flow of water and movement of sediment, and restoration of the ecosystem, including intertidal mudflats, and sand flats. (Report Page 32)</p>	3 & 9
17.	<p>Faulty Analysis of Stack Height and Equipment Screening Standards: In Table 5, the staff report incorrectly (and in contradiction of the DFEIR) states that the project is “<i>not</i>” in conformance with the Intensive Use District height limits, based on the Mill vent stack. However, the “exception” standard in MCS 16.80.060 is normally approved administratively and is customary for such necessary mechanical or ventilation appurtenances. The staff report also incorrectly concludes that the project is not in conformance with Code Section 16.70.020 “<i>Required Screening</i>” because some of the Orcem equipment would be visible from the Mare Island Strait. In fact, the performance standard established by 16.70.020 calls for such equipment to be screened where “<i>visible from a public street</i>” and “<i>along the perimeter of open off-street parking adjacent to residential zoning districts</i>”. In this case, the Orcem conveyor equipment clearly complies with the standard because it would not be clearly visible from any nearby public street or adjacent residential parking lot. (Report Pages 33 & 35)</p>	3
18.	<p>Faulty Analysis of General Plan Consistency: The staff report states that the project is fully consistent with all General Plan policies, with the one exception of conformity with “<i>BCDC Public Access Design Guidelines</i>”. The ROA Project has been demonstrated to satisfy the applicable General Plan policy because the Guidelines “<i>were used in reviewing</i>” the development proposal. The basis for substantive fulfillment of the intent behind BCDC’s Guidelines, is confirmed in Attachment 8 and addressed under issue #8 above. The project is in <i>full conformity</i> with all applicable Vallejo General Plan Policies. (Report Page 36)</p>	8 & 9
19.	<p>Failure to Disclose Economic Benefits of ROA Project Linked to Funding of Services: Staff report provides no discussion or disclosure of the important economic benefits of the project, as documented in the 11/07/14 economic impact study. This information bears directly on consistency with General Plan policies, and the project’s ability to provide funding for needed services, restore funding for maintenance of the improved public streets, and further the General Plan goal to support manufacturing in Vallejo.</p>	9
20.	<p>Community Benefits Package Serves as Basis for Overriding Findings: Neither the staff report or the DFEIR fully acknowledge the extensive Community Benefits package proposed to accompany the ROA Project. Following certification of the corrected FEIR, these benefits will serve as the basis for acceptance of the remaining 3 significant impacts for cultural, GHG, and rail traffic delays. (Staff Report page 33)</p>	3 & 9



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March 2, 2017

Vallejo Planning Commission
555 Santa Clara Street
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Re: Public Hearing on VMT (SD 13-0010, UP 13-0002)
and Orcem (SD 13-0011, VP 13-0010) Projects

Dear Planning Commissioners:

This will respond to certain assertions regarding CEQA's requirements and case law made by city staff (including the acting city attorney) following my brief presentation to the Commission regarding the above matter on the evening of Monday, February 27, 2017. I am submitting this letter because city's staff and attorney continue to ignore and misrepresent the law, and because the unusual procedure followed at the Commission's last "hearing" did not provide me or the Applicants' other representatives with any opportunity to address and rebut staff's erroneous contentions.

The primary error of law I will address here is the acting city attorney's assertion made at the meeting that the decision of *Los Lomas Land Co., LLC v. City of Los Angeles* (20009) 177 Cal. App. 4th 837 is "on point" with and governs this matter. As previously explained in detail in my letters to staff of October 3, 2016, and February 7, 2016, *Las Lomas Land* is not "on all fours" with the instant matter and, in fact, dealt with a materially different factual situation than is presented by this matter. Consequently, neither it nor the CEQA Guidelines § 15270 exemption for disapproved projects apply or authorize or excuse staff's unlawful refusal to complete and present a CEQA-compliant FEIR for certification here. The controlling precedent is that of *Sunset Drive Corp. v. City of Redlands* (1999) 73 Cal. App. 4th 215, which holds that a city has a "ministerial duty" and "no discretion to refuse to complete an EIR when a project requires one." (*Id.* at pp. 222, 225.) This was explained in further detail in my February 16, 2017 letter to City Attorney Claudia Quintana, and again in my portion of the VMT/Orcem Applicants' Power Point presentation at the February 27, 2017 meeting. Yet staff continues to misplace reliance on the *Las Lomas Land* case.

The material differences between the *Las Lomas Land* case and the facts here, which belie the contention that that case is "on point," are numerous and include the following:

- In *Las Lomas Land*, the project consisted of proposed *legislative* approvals – an annexation, specific plan, rezoning, and development agreement – which generally require no findings and to which due process protections do not apply (*Las Lomas Land*, 177 Cal. App. 4th at 843, 855), and the plaintiff developer there also possessed no relevant contract or property interests to which due process protections could apply. (*Id.* at pp. 852-854.)
- Here, by contrast, VMT/Orcem neither seek or require *any* legislative approvals; their proposed project is wholly consistent with the project site's General Plan and zoning designations, as conceded by the staff report. Unlike in *Las Lomas Land*, VMT/Orcem seek only *adjudicatory* land use approvals – approvals of use and site permits – to which due process protections and Code of Civil Procedure § 1094.5's requirements for a *fair hearing* and adequate findings supported by substantial evidence *indisputably* apply. Further, unlike in *Las Lomas Land*, VMT/Orcem possess *contractual* rights under the Reimbursement Agreements and the VMT Tidelands Lease, and the covenants of good faith and fair dealing implied in those contracts, which give them a legitimate claim of right to a complete CEQA review and to which due process and taking protections *do* attach.
- In *Las Lomas Land*, while the developer spent much money on *preliminary* studies and planning, the proposed legislative approvals were rejected by the decisionmaking body (City Council) after an initial study but at an *early* stage of formal project processing, i.e., *before any Draft EIR was prepared* and, in fact, *shortly after the developer's formal applications were filed*. (*Las Lomas Land, supra*, 177 Cal. App. 4th at pp. 844 [proposed supplemental fee agreement for EIR processing rejected as premature because developer had yet to file formal application for development entitlements]; 849 [indicating project was rejected *prior to* preparation and circulation of DEIR, and (obviously) prior to preparing FEIR with responses to comments]; 852 [indicating that unlike *Sunset Drive Corp.*, project was rejected "sometime after its initial study"].) While *Las Lomas Land* did state in *dicta* that it "concluded that if any agency *at any time* decides not to proceed with a project, CEQA is inapplicable from that time forward" (*id.* at p. 850, *emph. added*), that overbroad statement reaches for beyond its facts and is obviously wholly unnecessary to – and thus not part of – its actual holding.

- Here, by contrast, the City has been processing VMT/Orcem's adjudicatory project approval applications for about four years, and environmental review has progressed through very advanced CEQA review stages and far beyond a mere initial study – here, there has been preparation and circulation of a DEIR, public review and receipt of public comments, preparation of responses to comments, and preparation of a Draft Final EIR which is close (after its factual errors are corrected) to finalization and fitness for consideration for certification pursuant to standard CEQA procedures.
- In *Las Lomas Land*, the proposed legislative project at issue was rejected for purely *policy* reasons (*id.* at p. 844) – as a legislative body such as a city council is entitled to do with proposals requiring legislative changes – and *not* based on purported adverse *environmental* impacts shown by any environmental studies.
- Here, city's staff proposes denial of the VMT/Orcem project not for policy reasons (which would be improper in this context in any event), or because it cannot be approved consistent with the city's General Plan and Zoning, but instead based on purported significant and unavoidable environmental impacts set forth in a staff report and proposed resolution of denial which are ultimately based on the *uncertified Draft FEIR*. But that document, due to staff's deliberate and unlawful refusal to finalize and agendize it for decisionmaking body consideration and certification as required by CEQA, is *not even properly before the Commission for consideration*. By definition, it is not part of the record and cannot constitute "substantial evidence" sufficient to support any such environmental findings. (See **Attachment A** [second bullet point].) Ironically, at the same time staff denies its and city's legal duty to comply with the CEQA process at all and thus invokes an inapplicable exemption, it attempts to rely on an *incomplete, inaccurate and uncertified Draft FEIR* that has not been vetted and adopted as required by CEQA as a basis for proposing inaccurate environmental findings to try to justify project denial.
- In *Las Lomas Land*, the legislative project at issue was rejected by the lead agency's decisionmaking body – the City Council – based on its vote on competing motions that were initiated, introduced and made by the Council's own members, not staff. (*Las Lomas Land*, at p.844.)
- Here, by contrast, city staff has recommended and agendized a "hearing" on denial, and city staff has refused to complete the Draft FEIR and present it to the Commission. Staff has thus deliberately manipulated the process to ensure that there can be *no option* for the

Commission to hold a fair, lawful hearing or exercise its full discretion in considering and acting on the project unless it rejects staff's recommendation and directs staff to finalize and return to it with a complete, CEQA-compliant Final EIR.

- In *Los Lomas Land*, the city asserted the CEQA exemptions of Guideline § 15270 and Public Resources Code § 21080(b)(5) in litigation *after* the Council there had definitively rejected the legislative project for policy reasons and the developer sued.
- Here, by contrast, no decisionmaking body – whether the Planning Commission or the City Council – has ever rejected the project. Rather, city staff, which has no legal power or authority either to conduct CEQA review or to approve or deny the project (see **Attachment A** [third bullet point]), has unlawfully commandeered and usurped the authority of the lead agency's decisionmaking body in an unlawful efforts to *preempt* any project approval, and has improperly invoked the CEQA exemptions *prior to the decisionmaking body's action on the project's merits, and in anticipation of the lead agency's rejection of the project* – events which have not yet occurred.

For all of these reasons, *Las Lomas Land* is quite clearly not "on point," and it remains the city's and its staff's *ministerial* duty under the *Sunset Drive Corp.* decision to finalize an accurate, complete and CEQA-compliant EIR so that the City's decisionmaking body can lawfully act on the adjudicatory permit applications before it.¹

Very truly yours,

MILLER STARR REGALIA



Arthur F. Coon

AFC/klw

w/Attachment A

¹ While this letter's primary focus is explaining why the *Las Lomas Land* case is not "on point", staff's statements and actions have also contravened a number of other CEQA requirements and rules, examples of which are listed with supporting legal authorities in **Attachment A** hereto.

Attachment A – Staff/City Attorney CEQA Errors

- Staff stated the EIR must look at the “worst case” scenario in an apparent attempt to justify its inaccurate, unsupported and inflated factual impact conclusions. But the law provides: “an EIR is not required to engage in speculation in order to analyze a “worst case scenario”.” (*Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 373, citing *Towards Responsibility in Planning v. City Council* (1988) 200 Cal.App.3d 671.)
- Staff appears to believe the Planning Commission can base valid environmental impact findings on the Draft FEIR’s conclusions. But a number of case authorities support the contrary proposition – that an incomplete and uncertified EIR does *not* constitute substantial evidence that can support environmental findings. (*Sacramento Old City Assn. v. City Council* (1991) 229 Cal.App.3d 1011, 1032, fn. 13 [“a proposed draft [subsequent EIR] which has not been finalized and adopted cannot be considered part of the administrative record before us.”]; *LandValue 77, LLC v. Board of Trustees of California State University* (2011) 193 Cal.App.4th 675, 682 [“The statutes and CEQA Guidelines provide for the certification of an EIR when it is complete, and the concept of completeness is not compatible with partial certification. In short, an EIR is either complete or it is not.”]; *Cadiz Land Co. v. Rail Cycle* (2000) 83 Cal.App.4th 74, 96 [“Since we conclude that the EIR failed to provide critical information...and revision and recirculation of the EIR is thus necessary, determination as to whether there was substantial evidence in the EIR supporting the County’s determination that contamination was not a significant adverse impact is premature.”]; *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 82-83 [“If a final environmental impact report (EIR) does not ‘adequately apprise all interested parties of the true scope of the project for intelligent weighing of the environmental consequences of the project,’ informed decisionmaking cannot occur under CEQA and the final EIR is inadequate as a matter of law.”]; *Friends of the Santa Clara River v. Castaic Lake Water Agency* (2002) 95 Cal.App.4th 1373, 1384-1387 [holding certified EIR that tiered from and relied on prior program EIR that was subsequently decertified is fatally defective for that reason and must itself be decertified].)
- Staff’s contention that it has made only a “recommendation” and not an administratively appealable “decision” not to finalize and present the Draft FEIR to the Planning Commission for its consideration and possible certification is wrong; *staff’s* decision not to finish and present the EIR for certification is distinct from its recommendation that the Commission deny the project, is adverse to applicants, and is thus appealable. Staff’s usurpation of approval and environmental review authority from the Commission and Council violates CEQA. (See, *No Wetlands Landfill Expansion v. County of Marin* (2012) 204 Cal.App.4th 573, 583 [“lead agency...was responsible for preparing an EIR, and certifying that the final EIR was compliant with CEQA. [citations]; while CEQA Guidelines permit staff to perform certain CEQA-related tasks, reviewing and considering a final EIR and making findings are reserved exclusively for lead agency’s decisionmaking body]; *California Oak Foundation v. Regents of University of California* (2010) 188 Cal.App.4th 227, 290 [CEQA “Guidelines section 15025 prohibits “[t]he decisionmaking body of a public agency” from delegating to agency staff the authority to certify an EIR, to make certain requisite findings, and to give final approval to a project.”]; *Sacramento Old City Assn., supra*, 229 Cal.App.3d at 1028, fn. 10 [stating permit authorizing “applicant

himself, subject [only] to planning staff approval, to conduct the required [environmental] studies, [was violation of]...CEQA's requirement that all environmental analysis must ultimately derive from the decisionmaking body itself."(citation omitted)); *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 307 [same; draft EIR sent for public review must reflect independent judgment of lead agency, "EIR must be presented to the decisionmaking body of the agency" and "city council cannot delegate responsibility for considering the EIR to a planning board. By necessary inference, the board of supervisors cannot delegate the responsibility to the staff of the planning commission."]; see also *id.* [noting "scope and content of an EIR or negative declaration are minutely prescribed under CEQA and its implementing guidelines" and that "[b]y merely requiring administrative approval of the hydrological studies, the use permit provides no similar guarantee of an adequate inquiry into environmental effects."].)

- Staff appears to believe that substantial evidence exists in the administrative record outside of a lawfully prepared and certified FEIR which will support its proposed environmental impact findings. Again, it is wrong. The public testimony does not constitute substantial evidence. Rather, it is well established that "[a]rgument, speculation, unsubstantiated opinion or narrative, [or] evidence which is clearly inaccurate or erroneous" does not constitute substantial evidence (*Joshua Tree Downtown Business Alliance v. County of San Bernardino* (2016) 1 Cal.App.5th 677, 690, quoting *North Coast Rivers Alliance v. Kawamura* (2015) 243 Cal.App.4th 647, 673), nor do "[c]omplaints, fears, and suspicions about a project's potential environmental impacts[.]" (*Id.*, citation omitted.) Further, while members of the public may "provide opinion evidence where special expertise is not required[.]" the "[i]nterpretation of technical or scientific information requires an expert evaluation" and public testimony "on such issues does not qualify as substantial evidence." (*Id.* at 690-691, citation omitted.) "[I]n the absence of a specific factual foundation in the record, dire predictions by nonexperts regarding the consequences of a project do not constitute substantial evidence." (*Id.* at 91, quoting *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1417.)
- Staff's position that it must be *absolutely certain* a mitigation measure would be successful to find that a potentially significant impact would be mitigated to less than significant is also legally erroneous. The law as stated in the recent case of *Mission Bay Alliance v. Office of Community Investment and Infrastructure* (2016) 6 Cal.App.4th 160 – the Golden State Warriors arena case – is to the contrary. That case rejected plaintiffs' arguments that "reasonable certainty that [certain] regional transportation impacts will be mitigated" wasn't good enough. (See *id.* at 190-191.) The Court held "CEQA...does not require the identification of a guaranteed funding source for mitigation measures specified in the EIR" but only "substantial evidence to conclude that 'feasible mitigation measures will actually be implemented.'" (*Id.* quoting *Santa Clarita Organization for Planning the Environment v. County of Los Angeles* (2007) 157 Cal.App.4th 149, 163, and other authorities.)

Changes Made with Revised Operations Alternative (ROA) Leading to Reduced Environmental Impacts, February 2017

The *Revised Operations Alternative* for the VMT and Orcem Projects (“ROA”) was originally sponsored by the applicants in April 2015 for analysis in the City’s Draft EIR, and was substantially strengthened in June 2016 to eliminate or substantially reduce all significant environmental effects of the original project. The published Draft FEIR identifies the ROA as the “*Environmentally Superior Alternative*”, and the applicants have requested that the ROA be approved in lieu of the original project proposal. The ROA consists of the following specific changes in project design and operations for both Orcem and VMT, in order to minimize overall environmental impacts:

- (1) **VMT Air District Permit & NO_x Offsets:** VMT will be subjected to “operator” status, thereby obligating a permit from BAAQMD, requiring that all equipment be subject to BACT technology standards, further reducing air emissions, and making VMT (as well as Orcem) eligible for NO_x offsets from ships and stationary equipment.
- (2) **Elimination of Significant NO_x Emissions:** VMT and Orcem will offset any remaining significant emissions of NO_x, through purchase of credits in a BAAQMD-certified emission bank program.
- (3) **Revised Orcem Truck Loading & Weight Confirmation System:** The measure will improve the efficiency of Orcem tanker trucks leaving the site by 4%, thereby reducing the number of trucks and related air and noise emissions.
- (4) **Fleet & Equipment Management Plan:** Plan will obligate both VMT and Orcem to use newer technologies for use on trucks, front-loaders and other powered equipment to reduce criteria pollutant emissions, including NO_x, and will control vessels when moored at the Terminal.
- (5) **Reduced Train Lengths & Mitigation:** Maximum length of trains reduced from 100 to 50 cars, thereby reducing noise, vibration and air quality impacts, and cutting rail down times by half (8 to 4 min.); Peak-hours avoided, 24-hour notice provided, signals synchronized and emergency services re-routed.
- (6) **Barge Preference Implementation Strategy (BPIS):** Incentivized use of barges, to reduce noise, traffic and air emissions. VMT will actively market to and select users of barges, over users exclusively relying on trucks and rail, and will submit annual reports of barge traffic as a percentage of Terminal volumes, with the goal of achieving an overall 25% reduction in truck and rail volumes.
- (6) **Elimination of VMT Phase 2:** Reduces Bay fill by two-thirds and achieves full consistency with all applicable policies of the San Francisco Bay Plan.
- (7) **Elimination of Nighttime Train Activity:** Trains will not run, and loading/unloading activities will not occur outside of daytime hours, thereby eliminating remaining significant noise impacts.
- (8) **Elimination of Use of 5.25 Acres:** VMT application amended to eliminate the originally planned use of 5.25 acres at the south end of the site, thereby increasing separation to Sandy Beach.
- (9) **Avoidance of Petroleum Coke, Coal, Petroleum Products and Municipal Waste:** Eliminates concerns raised during public comments as to potential safety and/or air quality issues.
- (10) **Documentation of No Significant NO₂ Effects:** Supplemental analysis confirms previously reported Draft EIR conclusions of no significant NO₂ emissions; provides scientific basis for EJA showing no potential for any adverse effect on minority or low-income communities.

Comparison of with Original Project (DEIR) & Revised Operations Alternative (Corrected FEIR)

Environmental Issue	Original Project (DEIR)	Revised Operations Alternative (ROA)	Environmental Benefit of ROA
Aesthetics	LTS	LTS	Reduced impact with elimination of 5.25 acres at south end of site.
Air Quality	SU	LTS	Significant NOx impact eliminated with ROA changes.
Biological Resources	LTS	LTS	Impacts remain mitigated to LTS level.
Cultural Resources	SU	SU	Silos, Mill and Wharf remain affected in order for project to be feasible.
Geology & Soils	LTS	LTS	Impacts remain mitigated to LTS level.
Greenhouse Gasses	SU	SU	City Climate Action Plan does not address maritime uses; project provides vast CO ₂ reduction compared to use of cement.
Hazards & Hazardous Materials	LTS	LTS	Impacts remain mitigated to LTS level.
Hydrology & Water Quality	LTS	LTS	Impacts remain mitigated to LTS level.
Land Use & Planning	SU	LTS	Elimination of 5.25 acres at south end of site avoids SU effect.
Noise	SU	LTS	Impacts substantially reduced by ROA's elimination of nighttime trains, reduced train lengths, Fleet Management and Weight Confirmation.
Public Services & Recreation	LTS	LTS	Impacts remain mitigated to LTS level.
Transportation & Traffic	SU	SU / LTS	Reduced train lengths and other measures reduce signal delays from 8 to 4 minutes; Emergency service impacts no longer significant.
Utilities & Service Systems	LTS	LTS	Impacts remain mitigated to LTS level.
Environmental Justice	Significant	Not Significant	No remaining adverse effects with changes to eliminate nighttime trains and reduce noise through other listed measures.
Meets Project Objectives	Yes	Yes	ROA does not compromise feasibility of project, but does add considerable cost to capital improvements and operations.

All impacts based on application of documented feasible mitigation. Original project impacts based on findings of Draft EIR; ROA impacts based on changes in project and application of ROA changes based on corrected Final EIR.

LTS = Less-than-significant impact. **S** = Significant impact. **SU** = Significant and unavoidable impact.

Richard Loewke, AICP
Loewke Planning Associates
547 Wycombe Ct.
San Ramon, CA 94593

REVIEW OF AIR QUALITY IMPACT ANALYSIS IN VALLEJO DRAFT FEIR FOR ORCEM & VMT PROJECTS

Dear Mr. Loewke:

This letter has been prepared to address specific concerns raised with respect to the air quality impact conclusions reached in the Draft FEIR dated February 2017 and Vallejo City Staff Report dated 2/06/17 for the combined Orcem and VMT Project. The following discussion identifies certain City staff / DFEIR conclusions, along with the appropriate correction based on documentation presented in detailed reports prepared for the project by Ramboll-Environ:

Date March 3, 2017

1. **Offsets are Permissible for NOx emissions from Trucks in the CEQA**

Context. While the City is correct that the Bay Area Air Quality Management District (BAAQMD) cannot provide offsets for emissions from trucks from its Small Facility Bank, there are several alternative options for offsets for NOx and other criteria pollutants typically employed in the CEQA context. This is appropriately addressed in the new MM-3.201ROA:

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New MM-3.201ROA: *Operating under the Modified ROA, the Revised VMT Component shall voluntarily be subjected to a BAAQMD Permit, as verified through the permit process, and shall comply with applicable district standards and controls in order to qualify for offset of its vessel, rail and stationary equipment NOx emissions. At such time as monitoring of NOx emissions for the combined project pursuant to MM-3.2-1 (with BAAQMD permitting of VMT) demonstrates that annual emissions would otherwise exceed 10 tons per year, the project proponents shall provide additional NOx reductions either in the form of offsets, or in the form of a NOx reduction program where emission reductions are verified by a qualified environmental consultant, in order to assure that emissions permanently remain below the 10 ton/year threshold. Verification of compliance with this measure MM-3.2-1ROA shall be provided in accordance with the process outlined in MM-3.2-1.*

This type of mitigation measure is increasingly being used in EIRs throughout California as jurisdictions seek to make projects cleaner. One recent example is the Final EIR for the Golden State Warriors stadium (Event Center and Mixed-Use Development at Mission Bay Blocks 29-32), where the proponents were provided the option of funding reductions in emissions through a grant to the BAAQMD, or were permitted to create their own emissions reduction project. The specific mitigation measure can be found at page 13.13-68 of the following document:

http://sfmea.sfplanning.org/Vol%205_GSW%20MB%20Responses%20to%20Comments.pdf

2. **Focused Study Documentation of No Significant Localized NO2 Effects:** The project's potential to result in local NO2 concentrations in excess of National and State Ambient Air Quality Standards was addressed in a study required by the city. That study found that there were no localized concentrations of NO2 in excess of the standards from the Project.

The BAAQMD CEQA significance standards do not require an evaluation for the localized impacts for NO2 emissions because the entire state is in attainment for NO2, and non-attainment of local NO2 ambient air standards is not typically contemplated. However, the potential for localized NO2 concentrations were analyzed in an initial technical report by AWN dated 4/15/15. Ramboll Environ subsequently conducted a focused and updated review of the AWN study, and published our findings in a report dated 4/15/16.

Although localized concentrations of NO2 is not specifically considered a potential CEQA significant impact by the BAAQMD, the BAAQMD does have a total mass emissions rate standard (in the units of tons per year) for NOx, of which NO2 is a component. This emissions standard is put in place to ensure that project emissions of NOx are considered as NOx is a precursor to ozone, in combination with VOC and sunlight.

- a. NOx is comprised of NO2 and NO emissions; NO2 is a criteria pollutant for which there are federal standards, and for which the Bay Area is NOT in non-attainment. NO is not regulated as a criteria pollutant by the state or federal government.
- b. Only the NO2 component of NOx is recognized as being capable of causing harm to people (according to federal and state standards), and the AWN study, which we reviewed, concludes that the NOx emissions from the project would not adversely affect people locally.
- c. NOx has the potential to have regional impacts, and can contribute to ground-level ozone formation downwind. However, regional offsets of NOx can mitigate regional impacts.

The 14.54 tons of NOx emissions in excess of the significance threshold predicted to be possible under worst case full build out conditions may never occur, because as rail and barge activity is increased, NOx from trucks is reduced. The EIR evaluated the worst case where the maximum amount of transport was truck-related, where NOx emissions would be maximized.

The ROA specifically provides for the offset of this remaining excess NOx (should it occur) through a project-funded supplemental offset program to be implemented separate from the BAAQMD Small Facility Banking program. As noted above, this form of project-sponsored offset has been used in a number of other communities throughout California (including, for example, the certified Golden State Warriors EIR project in San Francisco as described above). With implementation of this supplemental measure MM-3.202ROA, the Revised Operation Alternative would not have a significant NOx impact.

CLOSING

I am glad to answer any questions that you may have on this information.

Sincerely,



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SS/13/6740NL02
2 March 2017

Richard Loewke, AICP
Loewke Planning Associates
547 Wycombe Ct.
San Ramon, CA 94593

Dear Mr. Loewke,

RE: NOISE AND VIBRATION IMPACTS IN DRAFT FEIR FOR ORCEM & VMT PROJECTS

This letter has been prepared to address specific concerns raised with respect to the noise and vibration impact conclusions reached in the Draft FEIR dated February 2017 and Vallejo City Staff Report dated 2/06/17 for the combined Orcem and VMT Project. The following discussion identifies mistaken City staff / DFEIR conclusions, along with the appropriate correction based on documentation presented in detailed reports prepared for the project by AWN Consulting:

1. Incorrect Conclusion that ROA Project has Remaining Significant Noise Impacts:

The staff report (pages 4, 38 and 40) directly contradicts the conclusions of the DFEIR and our technical analysis (listed below) by stating that following application of all available mitigation, the ROA project would have remaining significant noise emissions (Impacts 3.10-1 & 4) of +6 dB L_{dn} or more at locations NSL-5 and NSL-10. While an increase of 6 dB L_{dn} was confirmed for original project, the ROA incorporates mitigation specifically designed to reduce the remaining noise impacts to a Less-Than-Significant level. This is confirmed in Table ES-1 of the DFEIR and detailed in our Addendum Report entitled **Updated Rail Noise & Vibration Assessment** dated 5/11/16 (reference SS/13/6740NT03) and filed with the City last year. Our report documents that the ROA contains the following features which eliminate all remaining potentially significant project noise impacts:

- Length of unit trains serving the ROA Project reduced from 100 cars (DEIR) to 50 cars (in the ROA), thereby reducing the duration of exposure to rail noise events.

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Directors: F. Callaghan, C. Dilworth,
T. Donnelly, T. Hayes, D. Kelly, E. Porter

- Rail loading and unloading activities limited in the ROA Project to 7:00 am to 10:00 pm (thereby avoiding the 10dB weighted penalty applied to the original project for night-time operations).

The foregoing changes in the ROA result in reducing the noise increases at NSL-5 to 5 dB L_{dn} and at NSL-10 to 3 dB L_{dn} . Consequently, the ROA project will not have a significant noise impact.

2. Incorrect Conclusion that ROA Project would have Remaining Significant Vibration Impacts:

Both the staff report and DFEIR incorrectly state that the ROA Project would continue to have a significant and unavoidable ground-borne vibration impact (Impact 3.10-3) at location NSL-10 due to rail operations utilizing existing jointed track. As detailed in our **Updated Rail Noise & Vibration Assessment** dated 5/11/16, the ROA contains the above changes which serve to reduce ground-borne vibration to a Less-Than-Significant (LTS) level, *even without use of welded track*. Specifically, the report documents a ground-borne noise level of 24dB(A) at location NSL-10. This is some 19dB below the applicable significance threshold.

3. No Remaining Significant Noise or Vibration Impacts:

Based on the evidence submitted to the City in the form of detailed technical studies focusing on the foregoing topics (all part of the record), the ROA project will have no unmitigated significant Noise or Vibration impacts of any kind.

Yours sincerely,



DR STEPHEN SMYTH
Principal Acoustic Consultant



DAMIAN KELLY
Technical Director (Acoustics)

Truck Trip Calculation Errors Identified in Staff Report and Draft FEIR for Orcem & VMT Project
March 2, 2017 (Errors highlighted in **Yellow**; Corrected figures in **bold**)

Daily Truck Factor	Draft FEIR & Staff Report		Actual Result Under ROA Project	
	Calculation	Result	Calculation	Result
Original 2012 Project				
1. VMT Max. Daily Trucks Leaving Site	DFEIR Table 3.12-8 (<i>relies on Application, and conservatively assumes that 4 trucks bringing in materials would leave empty</i>)	87	Maximum 2,000 trucks per month, or loaded 83 trucks + 3 empty trucks leaving site (as stated in Application based on max. operational capacity with no barge or rail usage)	87
2. Orcem Max. Daily Trucks Leaving Site	189 + 19 (<i>DFEIR Table 3.12-9 relies on Application, but then erroneously double-counts 19 trucks</i>)	208	900,000 MT ÷ 22.68 MT per truck ÷ [17.5 trucking days per month X 12 months] (<i>As stated in Application based on max. output</i>)	189
3. Total Max. Daily Trucks Leaving Site	87 + 208	295	87 + 189	276
Modified Revised Operations Alternative (ROA) 2016				
4. VMT Max. Daily Trucks Leaving Site	(<i>No change from original project</i>)	87	(<i>No change from original project</i>)	87
5. Orcem Max. Daily Trucks Leaving Site	189 X 96% (<i>Staff Report Table 4 stated 4% efficiency with math error</i>)	171	900,000 MT ÷ 22.68 MT per truck ÷ [26 trucking days per month under ROA X 12 months] X 96% (to reflect 4% increase in loading efficiency)	122
6. Total Max. Daily Trucks Leaving Site	87 + 208	258	87 + 122	209
Lemon Street Between Sonoma Blvd. & Curtola Parkway Under ROA 2016				
7. VMT Max. Daily Trucks Leaving Site	87 x 56%	49	87 X 56%	49
8. Orcem Max. Daily Trucks Leaving Site	171 X 56%	96	122 x 56%	68
9. Total Max. Daily Trucks Leaving Site	258 X 56%	145	209 x 56%	117
Sonoma Blvd. South to I-80 Under ROA 2016				
10. VMT Max. Daily Trucks Leaving Site	87 X 39%	34	83 X 39%	34
11. Orcem Max. Daily Trucks Leaving Site	171 x 39%	67	122 x 39%	48
12. Total Max. Daily Trucks Leaving Site	258 x 39%	101	209 x 39%	82

NOTE: 1 US Ton = 1.10231 metric ton (MT); 1 Truck ordinarily carries 25 US tons, or 22.68 MT; Trucks under ROA carry 26 US tons or 23.59 MT.

Truck Trip Calculation Errors for Orcem & VMT Project Summary of Errors in Staff Analysis and Draft FEIR

- Double-Counting of Orcem Trucks:** Under the original 2012 Project, City staff and consultants erroneously double-counted 19 of the Orcem maximum daily trucks (and conservatively added 4 in-bound VMT trucks) by assuming that when loaded trucks come to the site, they would be leaving empty, representing additional trips with will not occur.
- Failure to Account for Trucking Efficiency:** Under the revised 2016 ROA Project Alternative, City staff failed to take into consideration a change to improve the efficiency of Orcem’s trucking operations from 17.5 to 26 trucking days per month.
- Double-Counting of Actual Trucks:** Under both the original Project and the ROA Project, City staff have double-counted the number of loaded trucks leaving the site to represent “*truck trip ends*”, both in and out. While it is true that trucks make two-way trips in all cases, the number of actual truck vehicles has been over-stated by a factor of 2.
- Trucks Analyzed Under “Worst Case” Conditions for VMT Terminal Operations:** Under all scenarios, the DFEIR analysis uses the “worst-case” scenario to assume that use of trucks is maximized, and the VMT Terminal would be operating at its peak level of capacity. It should be understood that the actual proposal is to use rail as the principal mode of transportation, with barges potentially accounting for a portion of the volume, and trucks only being relied on to cover any remaining volume (barge and rail are more efficient and cost-effective than trucks for Terminal operations).
- No Accounting for Use of Barges by VMT:** Under all scenarios for analysis of trucking operations, the DFEIR analysis uses the “worst-case” scenario to assume that use of trucks is maximized, without use of barges or other smaller vessels. While the use of barges is subject to market demand, as stated in the Application for the ROA, if the assumed average of 3.5 barges and other smaller vessels per month are actually utilized, they will account for up to an additional 25% reduction in truck volumes, resulting in the following revised total daily truck figures for the combined Orcem and VMT Project:

Combined Orcem + VMT Total Daily Trucks with VMT Barge Operation Under ROA Project

Total Daily Trucks Leaving Site	Trucks on Lemon Street North of Sonoma Blvd.	Trucks on Sonoma Blvd. South to I-80
187	105 (1 truck / 14 minutes)	74 (1 truck / 20 minutes)

Rail Movement Analysis Errors Identified in Staff Report and Draft FEIR for Orcem & VMT Project March 2, 2017

The following summary identifies the principal changes made to the Revised Operations Alternative (ROA) in June 2016 to minimize environmental impacts associated with rail movement and operations. This summary is intended to inform the Planning Commission of the facts with respect to ROA rail operations, and to identify the related critical errors identified in the Staff Report posted on 2/06/17 for the Planning Commission meeting of 2/27/17, as well as the Draft Final EIR dated February 2017.

1. **Trains Limited to 50 Cars Under ROA:** The maximum length of trains has been reduced from 100 cars (as analyzed in the DEIR) to 50 cars, thereby reducing noise, vibration and air quality impacts, and reducing delays at street crossings by half (from 8 to 4 min.). This delay remains “Significant” based on the DFEIR’s threshold of 1 minute, but is comparable to current delays at other local non-rail intersections, and the historic delays occurring when General Mills operated.
2. **Train Operations Limited to Day Time Hours:** Under the ROA, trains will only run between 7:00 am and 10:00 pm., and all rail car loading and unloading activities will be limited to these same daytime hours, thereby eliminating remaining significant noise impacts.
3. **Additional Impact Mitigation for Rail Operations Added with ROA:** The following key supplemental mitigation measures have been added with the ROA Project, but have not been accounted for in the DFEIR, and have not been disclosed in the staff report:
 - a) Train operations will be avoided during peak-hour periods.
 - b) A 24-hour advance notice will be provided to fire, police, EMS, and other emergency service providers to alert and allow them to use pre-designated alternate routes during the planned periods when trains will run.
 - c) Signals at intersections affected by rail operations will be synchronized with non-impacted intersections (on parallel routes) to efficiently handle the re-routing of traffic during the planned non-peak periods.
 - d) 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.

These measures were inappropriately dismissed in the staff report and DFEIR due to the assumption that the rail operator cannot be compelled to comply. However, the ROA Project applicants have assumed responsibility for implementation of these measures, which dramatically reduce impacts.

4. **Significant Impacts Eliminated:** The foregoing ROA measures serve in combination to:
 - a) ***Eliminate all remaining significant noise impacts.***
 - b) Reduce the effects on emergency services from significant to ***Less-Than-Significant.***
 - c) ***Substantially reduce*** (by 50%) the effect on traffic delays at rail crossings.
5. **No Accounting for Use of Barges by VMT:** The staff report and DFEIR analysis use the “worst-case” scenario to assume that no materials would be loaded onto or from barges – and yet the DFEIR discloses use of an average of 3.5 monthly smaller vessels. The ROA’s incentivized use of barges is designed to allow up to 25% of all materials to be moved by such smaller vessels, thereby reducing the number and frequency of both truck and rail movements. The ROA’s Barge Preference Implementation Strategy will shift up to 30,000 monthly tons of VMT’s goods to barges, thereby reducing the monthly total number of rail cars (further reducing traffic delays).

Richard T. Loewke, AICP

From: Richard T. Loewke, AICP <dick@loewke.com>
Sent: Thursday, June 09, 2016 1:41 PM
To: 'Buehmann, Erik@BCDC'; 'Plowman, Lisa A.';
'McCrea, Brad@BCDC'
Cc: 'Ms. Andrea Ouse (Andrea.Ouse@cityofvallejo.net)';
'Darcey Rosenblatt (drosenblatt@dudek.com)';
'Johnck, Ellen@EllenJohnckConsulting.com';
'Zeppetello, Marc@BCDC'; 'Clive Moutray'; 'Steve
Bryan'; 'mfettig@vallejomarinetterminal.com'; 'Blaise
Fettig'; 'Mike@loewke.com'
Subject: RE: VMT/Orcem Project

Erik and Brad,

Thank you for the timely follow up clarification of procedures and confirmation that BCDC may find the revised VMT (Phase 1 only) Project to be consistent with the remaining Bay Plan policies (potential consistency with the water-related industry policies was confirmed in your most recent letter).

The applicants have been in close communication with and have relied on BCDC staff guidance since prior to making a decision to pursue the project with the City of Vallejo.

We look forward to working with City staff to complete the EIR and use permit process, and to initiating the BCDC permitting process thereafter.

Dick Loewke

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From: Buehmann, Erik@BCDC [mailto:erik.buehmann@bcdca.gov]
Sent: Thursday, June 09, 2016 1:18 PM
To: Plowman, Lisa A. <maplowman@rrmdesign.com>; McCrea, Brad@BCDC <brad.mccrea@bcdca.gov>
Cc: Ms. Andrea Ouse (Andrea.Ouse@cityofvallejo.net) <Andrea.Ouse@cityofvallejo.net>; Darcey Rosenblatt (drosenblatt@dudek.com) <drosenblatt@dudek.com>; Richard T. Loewke, AICP <dick@loewke.com>; Johnck, Ellen@EllenJohnckConsulting.com <Ellen@EllenJohnckConsulting.com>; Zeppetello, Marc@BCDC

<marc.zeppetello@bcdc.ca.gov>

Subject: RE: VMT/Orcem Project

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.

Erik Buehmann
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From: Plowman, Lisa A. [maplowman@rrmdesign.com]
Sent: Tuesday, June 07, 2016 4:34 PM
To: Buehmann, Erik@BCDC; 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
Subject: RE: VMT/Orcem Project

Dear Erik and Brad,

Thank you for the email. I find that the email does not answer the question I posed in my June 1, 2016 email. As you know, BCDC's November 2, 2015 letter comments on the proposed fill mitigation and public access improvements that were proposed. The letter states the following:

- "The removal of approximately 10,338 square feet of fill from the Vallejo Marine terminal [and 80 creosote timber piles] and the removal of approximately 444 pilings from the location of the project will not constitute sufficient compensatory mitigation for the impacts to the Bay from the proposed fill. As currently proposed, the project is not consistent with BCDC policies on mitigation (emphasis added) and BCDC staff would have difficulty recommending approval for the project. The project should provide a comprehensive compensatory mitigation program that is consistent with the Commission's policies."
- "The proposal does not provide the maximum feasible public access consistent with the project to satisfy the requirements of the McAteer-Petris Act and the San Francisco Bay Plan and BCDC staff would likely not recommend approval of the application. Additional significant public access amenities must be included to ensure consistency with the Commission's law and policies (emphasis added)."

The City understands that circumstances have changed and the applicants have now proposed to remove Phase 2, the development of a rock dike, from the project description. However, the applicants are still proposing to remove fill and piles in the Vallejo Marina as mitigation for Bay fill and to install of a kayak ramp in the Marina to meet public access

requirements. As we requested in our meeting on February 24, 2016 and in my June 1, 2016 email, the City would like to know if the fill mitigation and public access proposals represented in the Draft EIR, which are not proposed to change under the Phase 2 removal, allow BCDC to find that Phase 1 is potentially consistent with the Bay Plan. Please advise so the City can adequately represent BCDC's current assessment of the projects consistency with the Bay Plan in the Final EIR and Response to Comments.

Let me know if you have any questions.

Thank You,
Lisa



LISA PLOWMAN

Planning Manager

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From: Buehmann, Erik@BCDC [<mailto:erik.buehmann@bcdc.ca.gov>]

Sent: Tuesday, June 07, 2016 12:55 PM

To: Plowman, Lisa A. <maplowman@rrmdesign.com>; McCrea, Brad@BCDC <brad.mccrea@bcdc.ca.gov>

Cc: Ms. Andrea Ouse (Andrea.Ouse@cityofvallejo.net) <Andrea.Ouse@cityofvallejo.net>; Darcey Rosenblatt (drosenblatt@dudek.com) <drosenblatt@dudek.com>; Richard T. Loewke, AICP <dick@loewke.com>; Johnck, Ellen@EllenJohnckConsulting.com <Ellen@EllenJohnckConsulting.com>; Zeppetello, Marc@BCDC <marc.zepetello@bcdc.ca.gov>

Subject: Re: VMT/Orcem Project

Hello Lisa,

In BCDC staff's comment letter to the Draft EIR dated November 2, 2015, BCDC staff expressed concerns regarding the adequacy of proposed public access and fill mitigation for the Vallejo Marine Terminal Project. Those comments were provided in context of a proposed project that involved both Phase I and Phase II. We understand that the developer intends to remove Phase II of the VMT project as part of the proposed project. BCDC staff has not been advised as to whether any changes to public access and mitigation have been proposed as a result of changes in project or in response to comments on DEIR. However, BCDC staff will work with the City and applicant to review and refine currently proposed public access and fill mitigation as applicant develops and submits a BCDC permit application for the project.

Sincerely,

Erik Buehmann
Principal Permit Analyst
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From: "Plowman, Lisa A." <maplowman@rrmdesign.com>

Date: Wednesday, June 1, 2016 6:02 PM

To: Erik Buehmann <erik.buehmann@bcdc.ca.gov>, "McCrea, Brad@BCDC" <brad.mccrea@bcdc.ca.gov>
Cc: "Ms. Andrea Ouse (Andrea.Ouse@cityofvallejo.net)" <Andrea.Ouse@cityofvallejo.net>, "Darcey Rosenblatt (drosenblatt@dudek.com)" <drosenblatt@dudek.com>, "Richard T. Loewke, AICP" <dick@loewke.com>
Subject: VMT/Orcem Project

Hi Erik,

When the City and BCDC met back on February 25, 2016 we discussed the proposed uses in Phase 1 and Phase 2 of the VMT/Orcem project and the project's overall consistency with the Bay Plan. We also discussed the adequacy of the proposed Bay fill and coastal access mitigations which include the removal of pilings in the Marina and the construction of a kayak ramp. We understood the BCDC staff did not think the proposals were sufficient to mitigate the project's impacts resulting from Phase 1 and 2. But, the City asked BCDC staff to clarify if they believed that the proposed mitigation was sufficient to mitigate the impacts associated with Phase 1 solely. However, in reviewing BCDC's March 25th and April 29th letters they seem to focus on the project's consistency with the "water-related industry" priority use designation and appear to be silent on the consistency with the mitigation policies for Phase 1.

The City is now looking at how to amend the Land Use and Planning section of the EIR in response to BCDC's letters. It would be helpful if BCDC could clarify whether the proposed removal of pilings in the marina and the kayak ramp are sufficient mitigation to find Phase 1 is consistent or potentially consistent with the Bay Plan mitigation policies.

Please let me know your thoughts.

Thanks,
Lisa



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Community Benefits from ROA Project Not Addressed in City Staff Report or DFEIR

The following list of specific community benefits were filed with the City in November 2016, but have not been addressed in the staff report as posted on the City website on 2/06/17, or the February Draft FEIR. Following certification of the corrected Final EIR, these community benefits form the basis for findings to override the remaining ROA Project significant impacts in the areas of cultural resources, greenhouse gasses and traffic delays from rail crossings. This information bears directly on the ROA Project's relationship to, support of, and direct funding for programs to assist residents and businesses in the surrounding South Vallejo community, as well as the City of Vallejo as a whole. Key components of the Community Benefits Program are summarized below.

- (1) **Economic Benefits**, as outlined under Item #27 above.
- (2) **Establishment of Vallejo as a Center of International Trade and Commerce:** The VMT and Orcem Modified ROA project will re-purpose the old General Mills site, including an upgrade to its rail infrastructure and waterfront, to open an international shipping terminal. The site's deep water berth, direct connection to the California Northern railroad, and proximity to the interstate highway network provide the opportunity to increase the efficiency of northern California's commercial transportation system, and help establish Vallejo as a center of international trade and commerce.
- (3) **Employment Benefits of VMT Component:** Establishment of the VMT Terminal as a key site of multi-modal and intermodal transportation and logistics, will enhance Vallejo's role in the regional and international trade economy, and provide a means for locally manufactured products to be transported and distributed, increasing the viability of and the potential for attracting further manufacturing operations to Vallejo. The VMT Terminal component will provide management and skilled labor employment opportunities for local and regional residents in the construction phases, as well as the long-term operations of commercial and industrial uses on the project site. This component will generate approximately 20 construction jobs for the duration of the estimated 12-month initial construction phase. In addition, once the VMT component is operating at close to full capacity, it will create an additional 97 total permanent direct and indirect union jobs, and induced jobs, including 59 direct full-time jobs plus additional 20 indirect and 18 induced jobs.
- (4) **Employment Benefits of Orcem Component:** The Orcem component maximizes the potential for the manufacture of ground granulated blast furnace slag (GGBFS), a product that has historically been in short supply in California, helps California meet its AB 32 greenhouse gas regulations, and helps to meet the long-term needs of the construction industry for high performance environmentally favorable concrete and sustainable building materials. The Orcem component will reliably provide competitively priced and environmentally friendly cementitious products that are crucial in reducing the environmental impact of concrete production, as sought by the California Department of Transportation (Caltrans) in support of AB 32, and as also called for by designers of both public and private sector construction projects seeking Leadership in Energy and Environmental Design ("LEED") certification. It will do so by providing for an efficient scale

of production at a plant which will operate around the clock as a multi-modal receiving, storage, processing, and distribution facility. This facility will provide management and skilled labor employment opportunities for local and regional residents in the construction phases, as well as the long-term operations of Orcem facility. This component will create approximately 100 jobs for the duration of the estimated 15-month construction phase. In addition, once the Orcem Project is operating at close to full capacity, it will create an estimated 95 permanent full time direct and indirect union jobs, and induced jobs, including 40 total direct jobs, 31 indirect jobs and 24 induced jobs.

In addition to the initial construction jobs and permanent operations staff, the Orcem Plant will support local employment growth in ancillary and related industries in Vallejo and throughout the region, including truck, rail and marine transportation, and construction. It is estimated that between 60 and 90 additional full-time logistical jobs will be created through the transport of incoming raw materials, primarily by sea, and the distribution of products, primarily by rail and truck. Further, the combined local Orcem and logistical employee purchases for housing, goods, and services will have a positive and sustainable secondary effect on stimulating the local economy. Finally, by providing a local source for an environmentally responsible building product, the Orcem Plant will also support successful public and private building projects locally and throughout California and neighboring states.

- (5) **Green Business Related Job Investment:** The Orcem component of the Modified ROA will invest nearly \$50 million in private funds on this green business, thereby creating jobs, increasing local tax revenues, and boosting the economy. As noted above, the City of Vallejo is expected to receive a substantial tax and fee revenues from the combined project, helping pay for local services, including police and fire. In addition, the project will generate a combined total of 192 good-paying permanent jobs within six years of operation, generating an estimated \$13.15 million in annual wages paid to these permanent workers. In addition, the project will generate tens of thousands of hours in union construction-related work. The combined project is estimated to contribute \$21.72 million to the local economy during the first six years of operation.
- (6) **Vallejo General Plan Implementation Benefits:** The City of Vallejo has adopted a General Plan that contains a number of goals and policies designed to guide the City's growth in the future. The Orcem and VMT Modified ROA project, will uniquely serve to implement the following major goals and policies of the City's adopted General Plan:
 - Provide for establishment of 192 total permanent direct, indirect and induced good-paying jobs, thereby serving to implement Industrial Development Goal 2: "To have a higher percentage of residents working in the Vallejo area."
 - Utilize the existing natural separation and buffering between the existing project site and surrounding less intensive uses, while minimizing operational impacts of the combined project, thereby serving to implement Industrial Development Goal 3: "To insure compatibility between industrial land uses and uses of a lesser intensity."
 - Creatively and efficiently utilize the abandoned site formerly utilized as a grain mill for a modern deep water terminal and mill for the production of GGBFS, in accordance with

Industrial Development Goal 4:” To maximize the potential of industrially zoned lands for the fostering of new and innovative industrial development.”

- Revise the operational character and controls in the Modified ROA in order to minimize noise and avoid all potentially significant noise impacts of the combined uses, thereby achieving consistency with the Noise Goal: “To provide for a more pleasing acoustic environment for the city by controlling noise levels in a manner that is acceptable to the residents, reasonable for commercial and industrial land uses, and practical to enforce.”
 - Revise the operational character and controls in the Modified ROA in order to minimize air borne emissions and avoid all potentially significant air quality impacts of the combined uses, thereby achieving consistency with Air Quality Goal 2: “To reduce the air quality impact associated with future development in Vallejo.”
 - Design and implement a major employment use which provides 192 total permanent good-wage local jobs, while avoiding substantial demands on Vallejo’s potable water resources and ensuring compliance with all applicable Clean Water Act and local water discharge standards, thereby ensuring consistency with the Water Resources Goal: “To protect the city's water resources against pollution and wasteful use so that it will be available for the city's future needs.”
 - Design and implement a major employment use which provides 192 total permanent good-wage local jobs, while avoiding any significant impacts to fish and wildlife habitats, thereby ensuring consistency with Fish and Wildlife Resources Goal: To protect valuable fish and wildlife habitats.
 - The VMT and Orcem Modified ROA project will re-purpose the old General Mills site, including an upgrade to its rail infrastructure and waterfront, to open an international shipping terminal and establish a plant for production of GGBFS, strengthening the local employment base and visible identify of the industrial waterfront, thereby implementing Urban Design Goal 1: “To establish a strong city identity.”
- (7) ***San Francisco Bay Plan Implementation Benefits:*** Consistent with the adopted Vallejo General Plan specific to the South Vallejo Industrial Area, the Modified ROA will uniquely help to implement the regional economic and land use policies embodied in the San Francisco Bay Plan, as administered by BCDC, providing sustainable economic and environmental benefits to the region as a whole. Specifically, this project will:
- Accommodate a priority water-related industrial use, thereby serving to implement the Bay Plan major conclusion that: “*Shoreline areas suitable for priority uses—ports, water-related industry, airports, wildlife refuges, and water-related recreation—exist only in limited amount, and should be reserved for these purposes.*”
 - Reestablish a deep-water terminal used to facilitate operation of a water-related industrial land use, thereby advancing the following major proposal of the Bay Plan: “*Waterfront land now used by industries that require access to deep water shipping should be continued in this use, and sufficient additional waterfront acreage should be reserved for future water-related industry*”.

- Protect and promote use of the subject property for a deep draft shipping terminal, in accordance with the following major finding of the Bay Plan: *“The navigable, deep water sites around the Bay are a unique and limited resource and should be protected for uses requiring deep draft ship terminals, such as water-related industries and ports.”*
 - Efficiently plan for and accommodate use of the subject site for a water-related industrial use, in support of the following Bay Plan major finding: *“Expansion of water-related industry can be accommodated at existing water-related industries. Because waterfrontage with access to navigable, deep water is scarce in the Bay Area, existing and future water-related industrial sites must be efficiently planned and managed.”*
 - Preserve use of the former General Mills site in accordance with the following major finding of the Bay Plan: *“Sites designated for both water-related industry and port uses in the Bay Plan should be reserved for those industries and port uses that require navigable, deep water for receiving materials or shipping products by water in order to gain a significant transportation cost advantage.”*
 - Efficiently reuse and modernize a centrally located, existing deepwater terminal site identified in the San Francisco Bay Plan as a *“Priority Use”* site, thereby: (1) Avoiding *“substantial Bay filling and loss of large natural resource areas”* otherwise resulting from use of an alternative site (consistent with Bay Plan Major Conclusion #3); Developing this portion of the Bay and shoreline to their *“highest potential”*, as called for in the Bay Plan, by accommodating terminal and water-related industrial uses reserved for this purpose in the Bay Plan; and (3) Achieving cooperation between the San Francisco Bay Conservation and Development Commission (BCDC) and local government to cooperatively plan for reuse of this currently *“underutilized water-related industrial priority use area”* by approval and implementation of the Modified ROA (consistent with Bay Plan Water-Related Industry Policy #6).
- (8) **Vallejo Economic Development Strategic Plan Implementation Benefits:** The City of Vallejo has adopted an Economic Development Strategic Plan (dated September 11, 2012) that identifies challenges to the local economy, and establishes economic development goals, objectives and implementation steps designed to strengthen the local economy. The Orcem and VMT Modified ROA project, will uniquely serve to help implement the following major goals and policies of the City’s Economic Development Strategic Plan:
- Stimulate the retention and expansion of existing businesses through the direct import and export of bulk and break-bulk goods utilized or manufactured locally, and through the production of GGBFS as a high-quality and environmentally superior material used in the construction of new buildings, bridges and infrastructure (Goal #1).
 - Contribute to the diversification and strengthen of the manufacturing-related industrial sector by attracting new business investment, and by directly adding new businesses in Vallejo with substantial new employment as quantified under Community Benefits #3 and #4 above (Goal #2).
 - Contribute to a highly-skilled local workforce through the training of local workers under

the programs articulated in Community Benefit #10 below, and through the direct, indirect and induced creation of new jobs as quantified under Community Benefits #3 and #4 above (Goal#5).

- Helping to make Vallejo the Bay Area's premier site for manufacturing, by: (1) Facilitating growth in international trade and export sales through operation of the VMT Terminal and Orcem Mill, thereby creating new jobs and increasing City sales tax and other municipal revenues; and (2) Attracting substantial new investment from two new businesses (VMT and Orcem) that are both linked to regional manufacturing, and will both provide new high-wage jobs (Goal #7).
- (9) ***Moving Solano Forward Implementation Benefits:*** The County of Solano contracted to prepare Moving Solano Forward (MSF), with financial support from the U.S. Department of Defense Office of Economic Adjustment, as a focused study intended to provide strategies to *"further diversify the economic base of Solano County and allow residents and businesses to thrive and prosper."* The City of Vallejo is acknowledged in the September 2014 Final Report as a Partner in the completion of MSF. MSF states that the county is emerging from *"significant impacts incurred during the Great Recession"*, including a population growth that has been *"slower than in neighboring regions"* over the past decade, and job losses that have been *"more acute"*. MSF outlines a strategy to strengthen economic diversity within the County through a series of initiatives. The Orcem and VMT Modified ROA project, will uniquely serve to help support and implement the Vision and Objectives of MSF as follows:
- Improve the diversity and robustness of the county's economy by creating new industrial sector jobs and supporting expansion of other existing industries in Vallejo and the surrounding county, consistent with the Vision Statement for MSF.
 - Consistent with the Real Estate Analysis in MSF Memorandum #1, the Modified ROA Project provides for the estimated investment of approximately \$14.8 million in capital by the year 2022 in a project which involves reuse of an existing industrial site located on the Vallejo Waterfront with deep-water access for international trade, along with rail, truck and smaller vessel access to local and regional destinations for both goods and finished products.
 - Consistent with goal of promoting diversification within the *"Advanced Materials"* industrial sector targeted for Solano County under MSF (Memorandum #4), the Orcem component of the Modified ROA will provide up to 900,000 metric tons annually of GGBFS as its principal finished product. GGBFS helps to meet the needs of the construction industry for high performance, environmentally favorable concrete and sustainable building materials. Also known as *"green cement"*, GGBFS is produced from the recycled first stage material used in the production of steel, with an order of magnitude less CO₂e (carbon dioxide equivalent) and other polluting air emissions than the traditional portland cement consumed in California annually.
 - Consistent with MSF Goal 2, Strategies 2.1 and 2.2, the Modified ROA project provides a substantial investment in new business development, as well as retention and expansion of existing businesses, including important contributions to a highly-skilled

local workforce through the training of local workers under the programs articulated in Community Benefit #10 below, and through the direct, indirect and induced creation of new jobs as quantified under Community Benefits #3 and #4 above.

- (10) **Community Grant Program:** The Modified ROA project will establish a new \$1 million Community Grant Program to support the Vallejo community in a wide variety of important and much needed areas. The primary focus of the funds will be to support the South Vallejo community, which is in closest proximity to the project site. The funds will be spent to support local non-profits that provide services in the areas of education, youth, job training, and environmental sustainability. The Orcem/VMT Community Grant Program will spend \$160,000 per year for six years, subject to approval of the Modified ROA project by the Vallejo City Council. Orcem/VMT will establish a process for the selection of grant recipients, based on criteria developed with community input.

In advance of the decision to approve the Modified ROA, VMT and Orcem have already committed \$30,000 for the 2016/17 school year to fund an after-school program at the Harbor Park Apartments at 969 Porter Street in South Vallejo to be operated by the Leaven Group. The Leaven Group, based in Fairfield, California, has a proven track record of working in partnership with members of the local community; including businesses, police and fire departments, local government, school administrators and teachers, church groups and concerned neighbors to bring their after-school mentoring and tutoring program to the area as a revitalization tool for the neighborhood.

Additionally, VMT and Orcem have initiated the development of a workforce training and placement program that will initially serve residents in the city's South Vallejo neighborhood. The training and placement process will identify, recruit and ultimately train a minimum fifty (50) individuals per year who have historically been underserved in the development of advanced employment skills that lead directly to full-time living wage employment in the fields of transportation and the union building trades.

As it currently stands there are agencies that provide basic employment skills development, but often times they lack the ability to focus their curriculum on particular skills that employers would need to see in order to make substantial employment offers. And conversely those employers really have no way to reach in to a community and directly recruit those that are underserved. VMT and Orcem intend to fill that historic casework service gap.

VMT and Orcem have already reached out to a number of local training and employment development agencies to understand the currently available services and employment opportunities including Michael's Transportation Service (MTS), Sol-Trans, the California State Employment Development Department's (EDD) Workforce Development Project, the Napa-Solano County Building Trades Council and Carpenters Union Local 180; and VMT/Orcem is continuing to broaden the net with meetings planned with the Solano County's Community Correctional Partnership (CCP), the Vallejo Unified School District's Vocational Training Program, Fighting Back Partnership.

The VMT and Orcem program will put particular focus on participants who possess a basic level of lifestyle functioning who have been, or currently are in the criminal justice system.

VMT and Orcem will work with Vallejo's network of treatment organizations in order to initially recruit potential employees. Treatment facilities such as the House of Acts and Genesis House possess the ability and facilities to identify individuals among their client pool perhaps through their Sober Living Environments (SLE's.) Additionally, others in the community who may not be involved in residential treatment services can also be evaluated by those agencies on an out-patient basis, and any potential deficiencies can effectively be determined and addressed.

In summary, the VMT and Orcem training and placement program will be designed to identify, recruit and ultimately train a minimum of fifty (50) individuals per year, with the composition of training opportunities being based on employment opportunities and individual preference (up to forty (40) individuals per year to acquire a commercial driver's license (CDL) and forty (40) individuals per year to complete the Carpenters Union Pre-Apprentice training program). Currently, Michael's Transportation is placing 100% of their CDL graduates. In the case of the Carpenters Union Pre-Apprentice training program, the Carpenters Union will guarantee a minimum of ten (10) graduates to receive membership as Apprentice Carpenters in the union each year. Once the program is established the possibility to expand the offering to other construction trades (for example electricians, plumbers and HVAC technicians) is envisioned.

All told, a minimum of fifty (50) individuals who have historically been underserved in the development of advanced employment skills and job placement will be provided the opportunity to secure full-time living wage employment in the fields of transportation and the union building trades.