EXTERNAL CORRESPONDENCE

The City Clerk's Office received
the attached correspondence regarding
Agenda Item #6-A on the
3-3-15 City Council Agenda

SIERRA CLUB
FOUNDED 1892

San Francisco Bay Chapter
Serving Alameda, Contra Costa, Marin and San Francisco Counties

February 26, 2015

Subject: Proposed lease agreement and harbor seal protection
Alameda City Council Meeting, March 3, 2015, Agenda Item 6-A

Dear Mayor Trish Herrera Spencer and members of the city council:

The Sierra Club is deeply concerned that the lease agreement you are being asked to approve for the Water Emergency Transportation Authority (WETA) Central Bay Operations and Maintenance Facility at Alameda Point will force the harbor seals to abandon the Alameda Point harbor and channel, which is a relied upon resting and birthing area. The staff report says a Memorandum of Understanding is forthcoming from WETA that will provide for a new harbor seal haul out. However, neither the city's staff report nor the lease agreement in any way obligates WETA to do anything to mitigate the loss of harbor seal habitat. In fact, the city's staff report spells out reasons why no mitigation is necessary.

The Sierra Club recommends that you table the lease agreement until such time as the Memorandum of Understanding is drafted and ready for your consideration.

The Sierra Club both locally and nationally has taken an interest in the welfare of the harbor seals at Alameda Point. Michael Brune, Executive Director of the Sierra Club, sent the attached comment letter to the National Marine Fisheries Service (NMFS) on October 15, 2014. The letter pertains to the application for a harbor seal harassment permit by WETA for the Central Bay Operations and Maintenance Facility in Alameda.

As noted by Mr. Brune, "Shoreline development is one of the primary reasons for harbor seal abandonment of San Francisco Bay. When haul-out sites are disturbed by nearby development or regular human presence, the seals are prone to depart for safer surroundings." The Sierra Club recommended that the NMFS "impose additional mitigation measures on the project to compensate for the loss of harbor seal habitat—namely, the old recreational dock. Given the geography of the Alameda Point Channel and Inner Harbor, a new haul-out dock nearby, possibly an anchored floating dock, should be evaluated as a mitigation measure to help retain the colony of harbor seals that find respite along Alameda Point's shore. Maintaining a welcome habitat for the harbor seals will not only benefit the harbor seals themselves; their presence within easy eyesight

of shoreline visitors will offer a unique ongoing educational encounter with this reclusive marine mammal. The permit application is incomplete in that it does not identify loss of habitat as a consequence of the project. We request further assessment of the project's impact on the harbor seals."

On February 25, 2015, NMFS issued its permit. It includes responses to comments made by the Sierra Club, the Bay Conservation and Development Commission (BCDC), and 40 private citizens.

NMFS said, in part, "The floating dock proposed to be removed is a manmade structure that is bound to disappear as it deteriorates and falls apart. To build another new structure without maintenance will likely have the same issue in the near future. Therefore, NMFS considers it better conservation practice not to construct a new structure just to replace the current deteriorating artificial one."

Apparently NMFS's "conservation practice" is to let the Alameda Point harbor seals go somewhere else. NMFS stated that the harbor seals should go to the tip of Breakwater Island and Yerba Buena Island instead. Unlike Alameda Point, neither of these two sites is a known pupping site for harbor seals.

To the best of our knowledge, no biological study by any agency has ever been performed on marine mammals and the marine food chain they rely on in the Alameda Point Channel, Inner Harbor, and Seaplane Lagoon. Only surface observations of wildlife, a NMFS study of two fish species (Central California Coast steelhead and American green sturgeon), and maps of underwater eelgrass beds inform agency decisions. And, but for the quirks of history, the entire Alameda Point Channel would have been part of a national wildlife refuge, reflecting its ecological significance beyond just a marine highway. References to harbor seals in WETA environmental documents is based on selective anecdotes that do not include those of a local wildlife biologist whose recent observations of harbor seals during regular bird counts, including on Breakwater Island, tell a different story.

The city staff report is replete with misleading information.

1. City staff report states: "They [WETA] have gone through a variety federal and state environmental review processes with the U.S. Fish and Wildlife Service and the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NOAA-NMFS). None of the regulatory agencies have made findings or restrictions on the final WETA project."

Sierra Club response: The U.S. Fish and Wildlife Service was not asked to comment on the project's impact on marine mammals. It's outside their purview. But they did comment on and place restrictions on operation of ferry vessels as it may impact the least terns as they forage in the waterway. It was part of their 2013 opinion on the WETA project. The number of ferry trips through the breakwater gap is restricted to six total per day. And the ferry operators have to observe a speed limit in the harbor area, which is used for foraging by least terns during part of the year.

The National Marine Fisheries Service issued their permit and responded to public comments after the staff report was posted. The Bay Conservation and Development Commission (BCDC) has not made any findings or restrictions because WETA has not applied for their permit yet. BCDC has only reviewed the physical design and submitted comments to NMFS, recommending that a new harbor seal haul out be considered.

It is misleading to say there are no findings or restrictions on the WETA project.

2. City staff report states: "Both staff and WETA have consulted our respective biologists about addressing the Alameda Point Harbor Seals. The City's biologist concurred with NOAA-NMFS about the number of seals being low. In addition, the biologist remarked that the breakwater, very close in proximity to the dilapidated dock, provides miles of area for seals to haul out and is even closer to the deep water that the seals use for protection and migration."

Sierra Club response: The city's biologist is said to have concurred with a NMFS report that hadn't been issued yet. It was issued six days after the city staff report was issued. Furthermore, "the number of seals being low" is not in itself an argument that the Alameda Point harbor seals are of no significance to the overall marine ecosystem of San Francisco Bay. As for the habitat value of Breakwater Island, the harbor seals have made it clear by their own choices where they would prefer to haul out, and it is not on the rocky breakwater.

The argument that the breakwater is "closer to the deep water that the seals use for protection and migration" is spurious. Harbor seals do not need deep water for protection in San Francisco Bay. Their main predators, orcas, sharks, and polar bears, do not exist in the San Francisco Bay Estuary. They need separation from humans and other animals, which is one of the purposes of a haul out. And being a half-mile further from "deep water" (on the old dock) is not going to tax the swimming stamina of harbor seals when they decide to migrate.

3. City staff report states: "Harbor seal haul-out behavior has been studied by several researchers yielding a solid understanding of seal behavior. In many of these studies, tidal state is the most consistent factor influencing the daily timing of when seals haul out. Some of the studies revealed that the highest proportion of seals ashore occurs between 2 hours before and 2 hours after low tide. Lower tides often expose rocky reefs, sandy beaches and mudflats that are favorable haul-out sites for seals because of isolation from land predators and quick access to deep water. In areas where seals rest on habitats or man-made structures such as that at Alameda Point, tidal state is less influential."

Sierra Club response: The staff comment above beginning with the second sentence is, for the most part, a direct copy-and-paste text from "Haul-Out Behavior of Harbor Seals (Phoca vitulina) in Hood Canal, Washington," published on June 18, 2012, in the Journal PLOS One, by Josh M. London et al.

Our concern is not with the veracity of the scholarly study, but rather its applicability to Alameda Point, as well as staff's interpretations of its significance, and staff's conclusion that one study yields "a solid understanding of seal behavior" at Alameda Point. The staff report fails to note a key finding in the study. Quoting from the study, "With the exception of Quilcene Bay, seals usually haul out on the edge of tidal sloughs. At high tide, these slough-edge habitats provide seals with isolated, **level resting areas** while also allowing easy access to deep water during periods of high tide." (Emphasis added.) In other words, the rocky breakwater at Alameda Point, which is anything but flat, is not equally, if not more, suited to harbor seals for hauling out as implied by staff. The old dock and floating beams at the WETA project site bear more similarity to the flat surfaces cited in the tidal slough example.

The staff report minimizes the haul out exceptions in the study, such as the floating oyster and salmon net pens in Quilcene Bay, because they are "man-made" and perhaps of no consequences when there is a nearby breakwater with "miles of area for seals to haul out." On the contrary, "man-made" structures take on more significance, not less, in an ever increasing developed and altered natural environment. Not to put too fine of a point on it, but the Alameda Point breakwater itself is also a "man-made structure." But even though the rocks are natural, the steeply sloped breakwater is not, as the staff report implies, comparable to the "rocky reefs, sandy beaches and mudflats that are favorable haul-out sites for seals," or the tidal sloughs mentioned above.

Lastly, this study had less to do with corroborating that "tidal state is the most consistent factor influencing the daily timing of when seals haul out" as staff implies, and more about the influence of human disturbance and the presence of orca whales, their main predator in the study area, on haul-out behavior and adaptations.

A study of San Francisco Bay harbor seals titled, "Foraging distribution of pacific harbor seals in a highly impacted estuary," published in the February 2012 edition of the Journal of Mammology states, "As central-place foragers, harbor seals often return to the same SFB (San Francisco Bay) haul-out sites throughout the year." The study continues, "In estuarine areas such as SFB, seals often forage in shallow waters, 50 m deep, over soft or sandy seabed bottom sediments." The presence of harbor seals at Alameda Point has more to do with proximity to a food source in shallow water than "quick access to deep water."

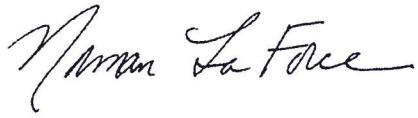
4. City staff report states: "Even though the seal haul out is not an environmental condition noted by any regulatory agency nor are there any regulatory requirements associated with their project...."

Sierra Club response: This is false. The San Francisco Bay Plan, the guiding document for the Bay Conservation and Development Commission (BCDC), contains plan maps for various areas around the Bay with associated policies. Plan Map 5 contains policy #4 for the Alameda Point Channel which says: "Harbor Seal Haul-Out —-Protect harbor seal haul-out and pupping site where harbor seals rest, give birth and nurse their young. Projects allowed only if protective of harbor seals and other sensitive wildlife." Furthermore, a harbor seal pup was weaned on and around the old dock in the spring of 2014, not out on the breakwater. Apparently there is a reason for where the seals choose to raise a pup. Their favorite pup-raising landscape is in a quiet protected cove, not a pile of rocks called a breakwater. BCDC has not "noted" anything because it has not been presented with a permit application.

5. Staff report continues by stating, "...WETA has voluntarily agreed to use commercially reasonable efforts, prior to the removal of the existing haul out, to locate, design, and construct an alternate seal haul out which will be outlined in a negotiated Memorandum of Understanding."

Sierra Club response: WETA has been aware of the harbor seal issue for more than a year, even though it should have been aware of the seals when their environmental report was prepared in 2010. WETA has spent this time drafting a complex 60-year lease agreement, but it has not found time to prepare a simple Memorandum of Understanding to memorialize their putative commitment to the harbor seals. The staff report implies that a new human-made haul out would be redundant and unnecessary. The lack of any document to memorialize WETA's commitment to fund a new haul out sends a signal that the memorandum will eventually be found to be unnecessary as well, leaving Alameda Point with no new harbor seal haul out and no recourse.

Sincerely yours,



Norman La Force
Chair, East Bay Public Lands Committee

Olga A. Bolotina
Chair, Northern Alameda County Group, Sierra Club SF Bay Chapter
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Attachment

cc:
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