San Francisco Bay Conservation and Development Commission
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TO: Commissioners and Alternates

FROM: Lawrence J. Goldzband, Executive Director (415/352-3653; larry.goldzband@bcdc.ca.gov)
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SUBJECT: **Staff Recommendation for Consistency Determination No. C2003.003.05 for the Department of the Army's Rebuilding and Modernization of Pier 2 at the Military Ocean Terminal Concord**
(For Commission consideration on March 19, 2015)

Recommendation Summary

The staff recommends conditional concurrence with the Department of the Army's consistency determination for demolishing, rebuilding, and modernizing Pier 2 at the Marine Ocean Terminal Concord (MOTCO). As conditioned, the Commission concurs with the Army that the following activities are consistent with the Commission's Coastal Zone Management Program: demolishing and reconstructing Pier 2's main platform, west trestle, and forklift trestle; strengthening Pier 2's east trestle and adding a ramp to meet the elevation of the new main platform; placing surcharge fill and riprap around the new trestle abutments; demolishing and constructing ancillary buildings; repairing and raising sections of a connecting road; upgrading utilities; repairing and replacing pier-side supporting facilities; installing waterside security bollards and lighting; installing a drainage system and treatment device for surface runoff; conducting maintenance dredging of approximately 750 cubic yards of material; restoring approximately 0.084 acres of intertidal wetlands; and removing any remaining underwater explosives from the 1944 Port Chicago Disaster. Special conditions have been included to ensure that impacts to water quality and fish and wildlife are minimized, that evidence of compliance with the Regional Water Quality Control Board's water quality requirements are provided to the Commission prior to commencing any dredging, and to ensure that the project is consistent with the Commission's laws and policies on climate change and safety of fills.

Staff Recommendation

The staff recommends that the Commission adopt the following resolution:

I. Consistency Concurrence

A. **Project Subject to this Consistency Concurrence**. Subject to the conditions stated below, the Commission concurs with the U.S Department of the Army that the following project is consistent with the Commission's federally approved coastal management program.

Location: In the Bay and within the 100 foot shoreline band, within a Port and Water Related Industry Priority Use Area, along the southern edge of Suisun Bay, near the City of Concord in Contra Costa County.

Description: **In the Bay:**

a. Prior to working on Pier 2, searching for and removing any explosive materials remaining from the 1944 Port Chicago Disaster;

b. Demolishing 159,000 square feet (sf) (3.65 acres) of pier structure, including the main Pier 2 platform, west trestle, forklift trestle, and pedestrian walkway, removing 4,514 creosote-treated timber piles (or cutting them two feet below the mudline in cases where removal is not successful), removing 254 concrete square piles, 1,300 cubic yards of concrete slab, 200 tons of reinforcing steel, 1,550 timber pile cap beams, 112,500 feet of stringers, 13,500 decking boards, 1,895 cubic yards of asphalt, and various other components including utility hangers, steel fasteners, sprinklers, risers, fender frames and floats, hose connections, circuit breakers, and electrical cables, with all removed material to be reused or disposed of at an authorized upland location outside the Commission's jurisdiction;

c. Constructing a single-level, 95,000 sf (2.18 acre) main pier platform that extends 48 feet further offshore and into deeper water than the existing pier, constructing a new 21,347-square-foot (0.49 acre) west trestle, constructing a new 6,868-square-foot (0.16 acre) forklift trestle, driving 876 24-inch pre-stressed concrete piles and 125 reused square concrete piles, installing 2,000 feet of new crane rails, and adding two 80-long-ton container cranes;

d. On the east trestle, removing existing rails and the top two inches of asphalt, installing high strength fibers at the beam soffits, adding diaphragm beams between the precast main beams, and replacing pile caps and precast deck slabs on the two spans adjoining the main pier to form an access ramp between the existing trestle and the elevation of the new pier platform;

e. Below the mean high water line at the west and forklift trestle abutments, placing approximately 211 cubic yards of rock revetment over approximately 3,200 square feet;

f. Installing four high-mast light poles for floodlights with shields and anti-perching devices approximately 50 feet behind the back of the pier;

g. Constructing a new 1,500-square-foot Operations Building/Break room on Pier 2's main platform;

h. Installing a drainage system and treatment device for surface runoff from the pier entering Suisun Bay;

i. Installing security lighting and waterside bollards;

j. Repairing and replacing pier-side support facilities, including mooring hardware, removable bull-rails, pipelines for potable water, sanitary sewer, and fire response, and lightning protection;

k. Restoring approximately 3,659 sf (0.084 acres) of high intertidal salt marsh wetlands after structures are removed by establishing target elevations, removing invasive perennial pepperweed and surface soils, and planting native high marsh species; and

l. Conducting maintenance dredging of approximately 750 cubic yards of sediment to a depth of minus 32 feet mean lower low water plus two feet of overdepth, using a bed-leveler device to redistribute the sediment on-site, but only after evidence has been provided to the Commission that the dredging and disposal of the dredged material is consistent with the Regional Water Quality Control Board's water quality requirements.

On Land:

a. Demolishing Building 160 (576 square feet, a former steam plant);

b. Expanding Lot T-10 by 39,500 square feet to create an approximately 240,000 square-foot (5.5 acre) staging area for handling containers;

c. Along an approximately 8,500-foot-long, 39,204-square-foot section of White Road located west and east of Pier 2, removing asphalt and base material to a width of 20 feet, repaving the road, and repainting roadway stripes;

d. Raising an approximately 1,000-foot-long section of White Road between the west trestle and forklift trestle approaches by approximately three feet by placing up to nine feet of surcharge fill, which will consolidate and drain, and realigning the roads servicing the pier to serve the new access point;

e. Above the mean high water line at the west and forklift trestle abutments, placing surcharge fill and approximately 415 cubic yards of rock revetment over approximately 6,200 square feet;

f. Performing upgrades to the utilities infrastructure, including replacing existing transformers, panel boards, and junction boxes, and burying an existing power line along White Road between the east trestle of Pier 2 and the west trestle of Pier 4; and

g. Constructing a 12-kilovolt electrical substation and installing two 1500-kilowatt diesel emergency generators.

B. **Date of Submitted Consistency Concurrence.** This authority is generally pursuant to and limited by the request for consistency concurrence dated October 15, 2014, including all accompanying and subsequently submitted exhibits and correspondence, and all conditions of this consistency determination.

C. **Consistency Concurrence Expiration Date.** Work authorized herein must commence prior to April 1, 2018, or this consistency determination will lapse and become null and void. Such work must also diligently pursued to completion, and be completed within three years of commencement, or by April 1, 2021, whichever is earlier, unless an extension of time is granted by amendment of the consistency determination.

D. **Summary of Work found to be Consistent**. The project found to be consistent with the Commission's federally authorized coastal management program involves demolishing and reconstructing Pier 2's main platform, west trestle, and forklift trestle, strengthening Pier 2's east trestle and adding a ramp to meet the elevation of the new main platform, placing surcharge fill and riprap around the new trestle abutments, demolishing and constructing ancillary buildings, repairing and raising sections of a connecting road, upgrading utilities, repairing and replacing pier-side supporting facilities, installing waterside security bollards and lighting, installing a drainage system and treatment device for surface runoff, conducting maintenance dredging of approximately 750 cubic yards of material, restoring 0.084 acres of inter-tidal wetlands, and removing any remaining underwater explosives from the 1944 Port Chicago Disaster. The project would remove 159,000 sf (3.65 acres) of pile-supported piers and associated structures that predate the Commission and place 123,215 sf (2.18 acres) of new pile-supported Bay fill, for an overall increase in Bay surface area of 35,785 sf (0.82 acres). The new pilings represent at least 307 cubic yards less volume and cover at least 876 sf less of the Bay floor than the current piles**.** In the Bay, approximately 211 cubic yards of rock revetment would be placed over 3,200 sf to protect the trestle's abutments.

Table 1. Pier 2 Fill Areas (square feet)

	Current structure	**Proposed structure**	**Change in Bay Coverage**
Main platform	122,222	95,000	-27,222
West trestle	22,336	21,347	-989
Forklift trestle	12,100	6,868	-5,232
Pedestrian walkway	2,342	0	-2,342
Total	**159,000**	**123,215**	**-35,785**

Though approximately 0.043 acres of intertidal wetlands would be removed to accommodate the new trestle approaches, approximately 0.084 acres of intertidal wetland habitat would be created by demolishing the current trestle approaches and creating suitable elevations for tidal marsh, resulting in an increase of 0.041 acres of intertidal wetlands. Additionally, because the new pier will cover 35,785 square feet (0.781 acres) less Bay surface area than the existing pier, this uncovered water area may now provide suitable conditions for the submerged aquatic vegeta-tion found throughout the project site to colonize this newly uncovered area.

Public access is provided as described in Special Condition II-C, herein.

II. Special Conditions

The authorization made herein shall be subject to the following special conditions, in addition to the standard conditions in Part IV:

A. **Plan Review**

1. **Specific Plans and Plan Review.** No work whatsoever within the Commission's jurisdiction or required by this consistency concurrence shall be commenced until final precise site, engineering, restoration, and grading plans and any other relevant criteria, specifications, and plan information for that portion of the work have been submitted to, reviewed, and approved in writing by or on behalf of the Commission. The specific drawings and information required will be determined by staff. To save time, preliminary drawings should be submitted and approved prior to final drawings.

    a. **Site Plans**. Site, restoration, engineering and grading plans shall include and clearly label the Bay shoreline (Mean High Water (NAVD88) where there is no marsh, or the inland edge of marsh vegetation in marshlands up to the five-foot contour line above Mean Sea Level), property lines, and grading. Additional dimension lines shall be provided as necessary to indicate where this minimum dimension occurs in relation to either the property line, the top of bank, or some other fixed point upon the site.

    b. **Engineering Plans**. Engineering plans shall include a complete set of construction drawings and specifications and design criteria. The design criteria shall be appropriate to the nature of the project, the use of any structures, soil and foundation conditions at the site, and potential earthquake-induced forces. Final plans shall be signed by the professionals of record and be accompanied by:

        (1) Evidence that the design complies with all applicable codes; and

        (2) Evidence that a thorough and independent review of the design details, calculations, and construction drawings has been made.

2. **Plan Approval.** Plans submitted shall be accompanied by a letter requesting plan approval, identifying the type of plans submitted, the portion of the project involved, and indicating whether the plans are final or preliminary. Approval or disapproval shall be based upon the following:

    a. completeness and accuracy of the plans in showing the features required above, particularly the shoreline (Mean High Water Line or the inland edge of marsh vegetation up to 5 feet above Mean Sea Level if tidal marsh is present), property lines, and the line 100-feet inland of the shoreline, and any other criteria required by this consistency determination;

b. consistency of the plans with the terms and conditions of this consistency determination;

c. assuring that any fill in the Bay does not exceed this consistency determination and will consist of appropriate shoreline protection materials as determined by or on behalf of the Commission; and

d. assuring that appropriate provisions have been incorporated for safety in case of seismic event.

Plan review shall be completed by or on behalf of the Commission within 45 days after receipt of the plans to be reviewed.

3. **Conformity with Final Approved Plans**. All work, improvements, and uses shall conform to the final approved plans. Prior to any use of the facilities authorized herein, the appropriate design professional(s) of record shall certify in writing that, through personal knowledge, the work covered by this consistency determination has been performed in accordance with the approved design criteria and in substantial conformance with the approved plans. No noticeable changes shall be made thereafter to any final plans without first obtaining written approval of the change(s) by or on behalf of the Commission.

4. **Discrepancies between Approved Plans and Special Conditions**. In case of any discrepancy between final approved plans and Special Conditions of this consistency determination, the Special Conditions shall prevail. The Army is responsible for assuring that all plans accurately and fully reflect the Special Conditions of this consistency determination.

B. **Riprap**

1. **Riprap Material.** Riprap material shall be either quarry rock or specially cast or carefully selected concrete pieces free of reinforcing steel and other extraneous material and conforming to quality requirements for specific gravity, absorption, and durability specified by the California Department of Transportation or the U. S. Army Corps of Engineers. The material shall be generally spheroid-shaped. The overall thickness of the slope protection shall be no more than three feet measured perpendicular to the slope. Use of dirt, small concrete rubble, concrete pieces with exposed rebar, large, odd shaped pieces, and flat sheets of concrete, and asphalt concrete as riprap is prohibited.

2. **Riprap Placement.** Riprap material shall be placed so that a permanent shoreline with a minimum amount of fill is established by means of an engineered slope not steeper than two (horizontal) to one (vertical). The slope shall be created by the placement of a filter layer protected by riprap material of sufficient size to withstand wind and wave generated forces at the site.

3. **Riprap Plans**

   a. **Design.** Professionals knowledgeable of the Commission's concerns, such as civil engineers experienced in coastal processes, should participate in the design of the shoreline protection improvements authorized herein.

   b. **Plan Review**. No work whatsoever shall be commenced on the shoreline protection improvements authorized herein until final riprap plans have been submitted to, reviewed, and approved in writing by or on behalf of the Commission. The plans shall consist of appropriate diagrams and cross-sections that: (1) show and clearly label the Mean High Water Line or the inland edge of marsh vegetation in marshlands, property lines, grading limits, and details showing the location, types, and dimensions of all materials to be used; (2) indicate the source of all materials to be used; and (3) indicate who designed the proposed shoreline protection improvements and their background in coastal engineering and familiarity with the Commission's concerns. Approval or disapproval of the plans shall be based upon: (1) completeness and accuracy of the plans in showing the features required above; (2) consistency of the plans with the terms and conditions of this consistency determination; (3) assuring that the proposed fill material does not exceed this consistency determination; (4) the appropriateness of the types of fill material and their proposed manner of placement; and (5) the preparation of the plans by professionals knowledgeable of the Commission's concerns, such as civil engineers experienced in coastal processes. All improvements constructed pursuant to this consistency determination shall conform to the final approved plans. No changes shall be made thereafter to any final plans or to the constructed shoreline protection improvements without first obtaining written approval of the change(s) by or on behalf of the Commission.

4. **Maintenance.** The shoreline protection improvements authorized herein shall be regularly maintained by, and at the expense of the Army, any assignee, lessee, sublessee, or other successor in interest to the project. Maintenance shall include, but not be limited to, collecting any riprap materials that become dislodged and repositioning them in appropriate locations within the riprap covered areas, replacing in-kind riprap material that is lost, repairing the required filter fabric as needed, and removing debris that collects on top of the riprap. Within 30 days after notification by the staff of the Commission, the Army or any successor or assignee shall correct any maintenance deficiency noted by the staff.

C. **Public Access.** By December 31, 2019, the Army shall improve the existing Visitor Center in Martinez, where visitors board the National Park Service shuttle to access the Port Chicago Naval Magazine National Memorial, if funding is secured from Congress.

D. **Marsh Restoration**

1. **Marsh Restoration Plan**. Prior to the commencement of any work at any location pursuant to this authorization, the Army shall submit a marsh restoration plan, to be approved by or on behalf of the Commission, for the restoration and enhancement of approximately 0.084 acres of intertidal wetlands located where the existing forklift trestle and pedestrian walkway will be removed. The plan shall clearly indicate the target habitats, the range of elevations where these habitats are found in the immediate surrounding marshlands, and contain a topographic map of the site in one-foot contour intervals showing the proposed site modifications and grading. All elevations shall be relative to National Geodetic Vertical Datum (NGVD 29) or North American Vertical Datum (NAVD 88). The map shall include typical cross-sections showing the proposed elevations of the marsh plain, channels, and high spots, and shall show: (1) figures for the ratios of typical horizontal to vertical slopes for existing and proposed marsh surfaces, channels, and embankments, particularly for areas where either grading, excavation, or fill will take place; (2) expected plant species along the cross-sections according to their expected zone of growth; (3) the elevation of surrounding upland areas; and (4) estimated Mean Higher High Water, Mean High Water, Mean Lower Low Water, Mean Sea Level, the maximum predicted tide, and the 100-year tide (the Base Flood Elevation); and (5) the typical elevation ranges of four dominant marsh plant species found at MOTCO.

2. **Restored Marsh Monitoring**

a. **Fixed transects and photo-documentation points.** In each of the two restored marsh areas, the Army shall establish one permanent transect, extending from high marsh to the upper limit of low marsh habitat. Every other year of the five-year monitoring period (a total of three monitoring episodes), two 1-m^2 quadrats shall be sampled along each transect at fixed locations to determine percent cover of the five most dominant species, and of all non-native species. Monitoring of wetland vegetation shall be conducted at the end of the growing season, typically late summer. Additionally, at least five total photo-documentation points shall be established to show representative views of restored wetland areas.

b. **Monitoring report**. By December 1 of each year following the monitoring episode (a total of three monitoring reports over the five year period following marsh restoration), a monitoring report shall be submitted to the Commission. The report shall be approximately

2-3 pages in length and shall summarize results of monitoring required in Special Condition II-D-2-a and identify any corrective actions to be taken.

c. **Invasive species control**. In the restored marsh area, undesirable exotic plant species such as perennial pepperweed (*Lepidium latifolium*), invasive common reed (*Phragmites australis*), and upland annual grasses and weedy thistles shall be controlled such that they cover, in total, five percent or less of the restored area during the five year monitoring period. Should adverse conditions be identified during this time period, the Army shall take corrective action as specified by or on behalf of the Commission.

E. **Protecting Existing Marsh**

1. **Marsh and Upland Plant Protection During Construction.** The work authorized by this consistency determination shall be performed in a manner that will prevent, avoid, or minimize to the extent possible any significant adverse impact on any tidal marsh, other sensitive wetland resources, and existing native upland vegetation. If any unforeseen adverse impacts occur to any such areas as a result of the activities authorized herein, the Army shall restore the area to its previous condition, including returning the disturbed area to its original elevation and soil composition and, if the area does not revegetate to its former condition within one year, the Army shall seed all disturbed areas with appropriate vegetation consistent with plans approved by or on behalf of the Commission pursuant to Special Condition II-A. The Army shall employ mitigation measures to minimize impacts to wetland areas, such as: (1) minimizing all traffic in marsh/mudflat areas; (2) protecting and maintaining existing drainage channels and water circulation in impacted and adjoining areas; (3) maintaining marsh elevations and topography; and (4) carefully removing, storing, and replacing wetland vegetation that has been removed or “peeled back” from construction areas as soon as possible following construction.

2. **Erosion Control in Wetland Areas**. Soil exposed near water as part of the project shall be protected from erosion with erosion control blankets until it can be stabilized with vegetation matting or hydroseeding.

3. **No Creosote Wood.** No pilings or other wood structures that have been pressure treated with creosote shall be used in any area subject to tidal action within the Commission's jurisdiction as part of the project authorized herein.

F. **Protection of Special-Status Fish and Wildlife Species.** The Army shall take all precautions to avoid adverse impacts to special-status species including the federally-listed endangered California Ridgway’s Rail (*Rallus obsoletus obsoletus*, formerly known as the California clapper rail), soft bird’s beak (*Chloropyron molle* ssp. *molle*), salt marsh harvest mouse (*Reithrodontomys raviventris*), and

Sacramento River winter-run Chinook salmon (*Oncorhynchus tshawytscha*), the federally-listed threatened delta smelt (*Hypomesus transpacificus*), Central Valley steelhead (*O. mykiss*), Central Valley spring-run Chinook salmon (*O*. *tshawytscha*), and Southern distinct population segment of green sturgeon (*Acipenser medirostris*), the state-listed threatened California black rail (*Laterallus jamaicensis coturniculus*), and the state-listed rare Mason's lilaeopsis (*Lilaeopsis masonii*).

1. **Recommendations to Protect Special Status Fish Species and Essential Fish Habitat.** The Army shall implement the measures described in the NOAA National Marine Fisheries Service (NMFS) Endangered Species Act (ESA) Section 7(a)(2) Biological Opinion and Magnuson-Stevens Fishery Conservation Management Act Essential Fish Habitat Response for the project, dated November 19, 2014, to ensure that impacts to special-status species and essential fish habitat are minimized. These measures shall be implemented to avoid and minimize impacts to special-status species and essential fish habitat, and include:

    a. Cushion blocks made of wood or composite material shall be used in pile driving to reduce the impact of pile driving noise on fish;

    b. Vibratory hammers shall be used to the extent feasible when driving and removing concrete piles;

    c. A floating surface boom shall be installed around the work area, the upper part of which shall consist of absorbent material to capture floating hydrocarbons associated with creosote piles;

    d. If timber piles are broken as they are removed, the stub shall be removed utilizing a hydraulic shear and crane or other equipment in attempts to cleanly pull out the stub. If the stub cannot be removed, it will be cut two feet below the mudline; and

    e. Surveys of submerged aquatic vegetation (SAV) in the project area shall be conducted during the active growth phase of SAV (typically March through October) prior to construction and following project completion and a brief report describing and evaluating the results of these surveys to the Commission by November 1 of the year following the surveys. If active SAV restoration is required by NMFS, the Army shall provide plans related to SAV restoration to the Commission, to be reviewed by or on behalf of the Commission pursuant to Special Condition II-A. Any SAV monitoring plans shall be provided by November 1 of every reporting year.

2. **Protections for State and Federal Special Status Species.** The Army shall implement the measures described in the USFWS Biological Opinion for the project dated February 4, 2015, to ensure that impacts to special-status species and their designated critical habitat are minimized. The Army shall also implement recommended mitigation measures to protect the state listed black rail. In addition to Special Conditions II-F-1-a

through II-F-1-d above, which will serve to reduce impacts to delta smelt, additional avoidance and minimization measures shall be implemented to protect other listed species, including:

a. A USFWS-approved biologist shall be present on site at all times during construction throughout the duration of the project, shall conduct working awareness trainings, and shall have the ability to stop work if any special status species are detected and until any special status species are no longer in danger;

b. Damaged piles, attached sediment, and debris shall be placed directly in a containment basin on a barge and disposed of at an approved upland disposal facility outside of the Commission's jurisdiction;

c. Prior to beginning work, the Army shall conduct a survey for soft bird's beak, Mason's lilaeopsis, and other state and federally-listed plant species in the project area. Listed plants shall be marked and fenced to avoid trampling or other disturbance;

d. Temporary exclusion fencing shall be installed between the work area and any remaining marsh vegetation adjacent to the project footprint. The fence shall be checked daily to ensure it is intact and has not entrapped any salt marsh harvest mice;

e. If marsh vegetation that is potentially suitable habitat for the salt marsh harvest mouse needs to be removed, work shall be conducted using non-mechanized hand tools;

f. Work within or adjacent to tidal marsh areas shall be avoided during the California Ridgway's rail breeding season (February 1 through August 31) and California black rail breeding season (March 1 through July 31) unless surveys document that these species are not present in the project area, or unless 700-foot buffer zones have been established around identified calling centers. Buffer zones may be 200 feet if there is a substantial barrier between the calling center and the activity area;

g. If surveys detect California Ridgway's rail or California black rail in the project area, activities within or adjacent to suitable habitat for the California Ridgway's rail or California black rail shall not occur within two hours before or after extreme high tides of 6.5 feet NGVD or above, as measured at the Golden Gate Bridge (and time corrected for the site) or when the marsh plain is inundated, because upland refugia cover is limited and activities could prevent the species from reaching available cover; and

h. Any dredging shall occur within the delta smelt work window, between August 1 and November 30.

G. **Dredging and Water Quality**

1. **Regional Water Quality Board Certification.** At least 60 working days prior to the commencement of work, the Department of the Army shall submit to the Executive Director the project's water quality certification or any other required approvals from the California Regional Water Quality Control Board, San Francisco Bay Region (RWQCB). The Executive Director shall review the water quality approval on behalf of the Commission to ensure that the project, as conditioned in the RWQCB's approval, remains consistent with the Commission's coastal zone management program. In the event that the Executive Director determines on behalf of the Commission that the project is not consistent in light of information contained in the above-referenced water quality approvals, s/he shall notify the Army in writing that an amendment to this consistency determination is necessary to address the issue and that this concurrence is no longer valid.

2. **Avoidance and Minimization Measures.** The following avoidance and minimization measures shall be implemented to protect water quality:

   a. The Army shall prepare and implement a RWQCB-approved Storm Water Pollution Prevention Plan that specifically states which best management practices will be used to prevent the non-point source pollution of surface water due to sediment, a Stormwater Management Plan to describe the procedures and practices used to reduce surface flow and subsequent discharge of pollutants to storm drainage systems, and a Water Quality Monitoring Plan;

   b. Fueling of construction-related equipment shall take place at least 100 feet from the Bay or within a bermed and lined refueling area. Spill prevention booms shall be employed when refueling any equipment that cannot be refueled on land; and

   c. Any process water created during the project shall not be discharged into Suisun Bay.

3. **Dredged Material Management Office (DMMO) Approval.** At least 30 working days prior to the commencement of dredging described in Authorization section I-A-l, the Department of the Army shall submit to the Executive Director a letter from the DMMO approving the proposed dredging and disposal. The Executive Director shall review the dredging approval on behalf of the Commission to ensure that the project, as conditioned by the DMMO, remains consistent with the Commission's coastal zone management program. In the event that the Executive Director determines on behalf of the Commission that the project is not consistent in light of information contained in the above-referenced DMMO approval, s/he shall notify the Army in writing that an amendment to this consistency determination is necessary to address the issue and that the concurrence is no longer valid.

H. **Engineering Criteria Review Board (ECRB) Recommendations and Questions and Compliance with Seismic Criteria.** Before the project reaches the 50 percent design stage, the Army shall fully satisfy the inquiries of the ECRB regarding seismic criteria, seismic considerations, and sea level rise. Until such time that the Commission has received and approved the Army's responses to the ECRB's request for additional information, the Army does not have the authorization necessary to proceed with the proposed project and should treat this conditional concurrence as an objection. The Army shall ensure that the Commission's ECRB-reviewed and -approved seismic criteria are applied throughout the design-build stage of the project that is the subject of this consistency determination. If these seismic criteria change, the Army shall inform the Commission, and may, based on review of the Commission's Staff Engineer, return to the ECRB for discussion and concurrence regarding new or revised criteria, and shall not proceed with the project authorized herein unless and until ECRB review and concurrence is complete.

I. **Seismic Instrumentation Plan.** Prior to the commencement of work authorized herein, the Army shall develop and submit a seismic instrumentation plan for review and final approval by BCDC's Staff Engineer. The plan shall include, at a minimum, the number, type, and location of sensors to be placed at the project site, information on the transmission and recording of signals from the sensors, and a plan that provides for the long-term maintenance of the seismic instrumentation and includes the party or parties responsible for maintaining the instrumentation and gathering and interpreting the data collected into the future.

J. **Certification of Contractor Review.** Prior to commencing any grading, demolition, or construction, the general contractor or contractors in charge of that portion of the work shall submit written certification that s/he has reviewed and understands the requirements of the consistency determination and the final approved plans, particularly as they pertain to any public access required herein, or environmentally sensitive areas.

III. Findings and Declarations

This conditional consistency concurrence is given on the basis of the Commission's findings and declarations that, as conditioned, the work authorized herein is consistent with the McAteer-Petris Act, the *San Francisco Bay Plan*, the *San Francisco Bay Area Seaport Plan*, the National Environmental Policy Act, and the Commission's amended coastal zone management program for San Francisco Bay for the following reasons:

A. **Fill.** Section 66605 of the McAteer-Petris Act states, in part, that: (1) "fill should be limited to water-oriented uses…, should be authorized only when no alternative upland location is available…, and should be the minimum amount necessary to achieve the purpose of the fill…."; (2) "the nature, location, and extent of any fill should be such that it will minimize harmful effects to the Bay area, such as the reduction or impairment of the volume, surface area or circulation of water, water quality, fertility of marshes or fish or wildlife resources, or other conditions impacting the environment…"; and (3) "fill [should] be constructed in accordance

with sound safety standards which will afford reasonable protection to persons and property against the hazards of unstable geologic or soil conditions or of flood or storm waters."

Pier 2 is located in the Bay and pre-dates the Commission. The proposed project will remove 159,000 sf of pile-supported structures from the Bay, and place 123,215 sf of pile-supported fill, for a 35,785 sf (0.82 acre) net increase in Bay surface area. Rock slope protection would be placed over approximately 3,200 sf of the Bay.

1. **Water-oriented Use, Alternative Upland Location, and Minimum Fill Necessary.** The proposed project would modernize and repair Pier 2 so that it can be safely used as a port to send and receive ammunition and other cargo, a water-oriented use identified in Section 66605(a) of the McAteer-Petris Act. The existing pier is both very old and was designed to handle both container and break bulk cargo. The rebuilt pier will be designed to more efficiently handle container cargo, the method used to ship most of the munitions handled at Pier 2. Because Pier 2 requires an open-water location, the proposed project has no upland alternative. The proposed Pier is 35,785 square feet smaller than the existing pier and will require fewer pilings, resulting in a net increase in Bay volume of at least 307 cubic yards and a reduction of the amount of Bay bottom occupied by the pilings of at least 876 square feet. The Army states that "the diameter, number, and spacing of [piles] were determined to provide adequate support for the minimum overwater structure required for MOTCO's mission in this environment. The number and sizes of piles could not be reduced without risking the operability and stability of the overwater structure. Therefore, the project design represents the minimum amount of fill necessary to achieve the project purpose." A small amount of fill will be placed around the new trestle abutments to protect these structures from erosion.

2. **Minimization of Harmful Effects to the Bay Area, such as the Reduction or Impairment of the Volume, Surface Area, or Circulation of Water, Water Quality, Fertility of Marshes, or Fish or Wildlife Resources.** In addition to the relevant provision in the McAteer-Petris Act (Section 66605(d)), the Bay Plan also addresses minimizing effects of fill projects on Bay resources.

   The Bay Plan Policy 1 on Fish, Other Aquatic Organisms and Wildlife states, in part, that "[t]o assure the benefits of fish, other aquatic organisms and wildlife for future generations, to the greatest extent feasible, the Bay's tidal marshes, tidal flats, and subtidal habitat should be conserved, restored and increased." Further, Policy No. 4 states, in part, that "[t]he Commission should: (a) consult with the California Department of Fish and Game and the U.S. Fish and Wildlife Service or the National Marine Fisheries Service whenever a proposed project may adversely affect an endangered or threatened plant, fish, other aquatic

organism or wildlife species…; (b) not authorize projects that would result in the 'taking' of any plant, fish, other aquatic organism or wildlife species listed as endangered or threatened pursuant to the state or federal endangered species acts …unless the project applicant has obtained the appropriate "take" authorization from the U.S. Fish and Wildlife Service, National Marine Fisheries Service or the California Department of Fish and Game…; and (c) give appropriate consideration to the recommendations of the [state and federal resource agencies]…to avoid possible adverse effects of a proposed project on fish, other aquatic organisms and wildlife habitat."

The Bay Plan Subtidal Areas Policy 1 states that "[s]ubtidal areas that are scarce in the Bay or have an abundance and diversity of fish, other aquatic organisms and wildlife (e.g., eelgrass beds, sandy deep water or underwater pinnacles) should be conserved. Filling, changes in use, and dredging projects in these areas should therefore be allowed only if: (a) there is no feasible alternative; and (b) the project provides substantial public benefits."

Bay Plan Tidal Marshes and Tidal Flats Policy 1 states that "[t]idal marshes and tidal flats should be conserved to the fullest possible extent. Filling, diking, and dredging projects that would substantially harm tidal marshes or tidal flats should be allowed only for purposes that provide substantial public benefits and only if there is no feasible alternative."

Habitat types in the project vicinity include deep Bay channel immediately adjacent to the bayward-most extension of the pier, shallow subtidal areas within the pier footprint and along the shoreline, intertidal mudflats, and brackish tidal marsh (Exhibit G). These habitats provide foraging, breeding, and resting habitat for a variety of fish and wildlife protected under federal and state endangered species laws, as well as home for special status plant species. Additionally, the shallow subtidal areas at MOTCO contain extensive submerged aquatic vegetation (SAV) beds, a habitat that is scarce in the Bay and which typically has an abundance of fish and invertebrates. Some SAV, such as the native pondweed (*Stuckenia* spp.) found at MOTCO, is designated as essential fish habitat (EFH) for federally-managed fish species.

On November 19, 2014, NMFS issued an Endangered Species Act (ESA) Section 7(a)(2) Biological Opinion and Magnuson-Stevens Fishery Conservation Management Act Essential Fish Habitat Response for the proposed project and pile-wrapping at Pier 3 (BCDC Consistency Determination No. C2003.003.04, a non-material amendment). In this letter, NMFS stated that it anticipates take (impact to) of threatened Southern distinct population segment (DPS) of North American green sturgeon (*Acipenser medirostris*), threatened Central Valley steelhead (*Onchorhynchus mykiss*), threatened Central California Coast steelhead

(*O. mykiss*), threatened Central Valley spring-run Chinook salmon (*O. tshawytscha*), and endangered Sacramento River winter-run Chinook salmon (*O. tshawytscha*) due to temporary habitat loss that would occur from elevated levels of underwater sound during pile driving, and degradation of water quality during construction and dredging. NMFS issued a conservation recommendation that the Army purchase credits at the Liberty Island Conservation Bank and Preserve in Yolo County for impacts to listed fish species and aquatic habitat. Over the long term, completion of the project is expected to benefit designated critical habitat, as the removal of 4,500 creosote-treated wood pilings would increase water and sediment quality, and removal of 28,211 square feet of overwater structure would reduce shading. The Army intends to purchase 3.7 acres of mitigation credits at Liberty Island.

NMFS also found that the proposed project would adversely affect EFH for various federally-managed fish species under the Pacific Salmon, Coastal Pelagic, and Pacific Groundfish Fishery Management Plans. Adverse effects would occur through increased water column turbidity, increased suspension of sediment-associated contaminants, benthic habitat disturbance to invertebrates and SAV, and elevated underwater sound levels during pile driving. As Conservation Recommendations, NMFS offered that the Army should conducted pre- and post-construction survey reports of SAV beds, and report on any compensatory mitigation for impacts to SAV, which currently occupies 22 acres in the vicinity of MOTCO. The Army will implement these recommendations through its SAV Mitigation Plan, and will mitigate project-related losses of pondweed SAV at a one to one ratio on-site by creating potential pondweed SAV habitat through the reduction in shading (approximately 0.781 acres) and by planting pondweed SAV in suitable areas.

On February 4, 2015, the USFWS issued a Biological Opinion for the proposed project and a related project to wrap piles at Pier 3 (BCDC Consistency Determination No. C2003.003.04, a non-material amendment), evaluating the project's effects on Delta smelt, soft bird's beak, California Ridgway's rail, and salt marsh harvest mouse. The USFWS stated that it anticipates take ("impact") to Delta smelt and its critical habitat due to increased noise, increased turbidity, and exposure to toxic contaminants during pile driving, removal, and cutting, and dredging. Individual soft bird's beak plants could be destroyed by trampling or cutting. The California Ridgway's rail foraging and dispersal could be temporarily disturbed by noise from pile driving and traffic, and predation may increase due to increased lighting. Salt marsh harvest mice may be injured or killed by being crushed by personnel or equipment in the project area. Their daily rhythms may be disrupted by increased artificial lighting, and the project would remove 0.219 acres of suitable upland habitat.

The USFWS BO concluded that by implementing general and species specific conservation measures, the anticipated level of incidental take would be unlikely to jeopardize the continued existence of Delta smelt, soft birds beak, California Ridgway's rail, or salt marsh harvest mouse.

Special Conditions II-F-1 and II-F-2 have been included to ensure that impacts to federally-listed species and their habitat are minimized during and after project construction.

Though the Army is not required to consult under the California Endangered Species Act, the Bay Plan gives the Commission the authority to prevent taking of state-listed species. The Army has stated that the mitigation and minimization measures to be employed for federally-listed species would also protect state-listed species. Mason's lilaeopsis (*Lilaeopsis masonii*), a state-listed rare plant, has been found in the project area, and the state-listed threatened black rail (*Laterallus jamaicensis coturniculus*) was found at MOTCO in 2010 and in other years. Special Condition II-F-2 has been included to ensure that impacts to these species are avoided and minimized during project construction.

With respect to tidal marsh, the Army has stated that there would be direct loss of approximately 0.043 acres of tidal wetlands from construction of the new Pier 2, and temporary wetland impacts within a 100-foot buffer around the new pier. Because the new pier will be smaller than the existing structure, there is a potential for a net gain of 0.041 acres of new intertidal wetlands. Special Conditions II-D and II-E have been included to ensure that native tidal marsh vegetation is restored to this area and to prevent invasive perennial pepperweed and other invasive species from dominating the restored marsh.

The Bay Plan Water Quality Policy 1 states that "Bay water pollution should be prevented to the greatest extent feasible. The Bay's tidal marshes, tidal flats, and water surface area and volume should be conserved and, whenever possible, restored and increased to protect and improve water quality…."

The Army has stated that removal of creosote-treated piles from beneath the existing pier structure would eliminate a long-term source of polyaromatic hydrocarbon pollutants, and that the project would increase the volume and surface area of the Bay by reducing the area of the pier and the volume of supporting piles. There will be temporary impacts to water quality from pulling and driving piles, debris removal, dredging, and construction runoff in intertidal and subtidal areas. The Army proposes to have its contractor submit an Environmental Protection Plan for review and approval by the U.S. Army Corps of Engineers (USACE), and has stated that they will prepare a Stormwater Pollution Prevention Plan, Stormwater Management Plan, Water Quality Monitoring Plan, and Contaminant Prevention Plan, among other items.

In addition, the Bay Plan's Water Quality Policy 2 states, in part, that "[w]ater quality in all parts of the Bay should be maintained at a level that will support and promote the beneficial uses of the Bay as identified in the Regional Water Quality Control Board's [RWQCB] Basin Plan. The policies, recommendations, decisions, advice and authority of the State Water Resources Control Board and the Regional Water Quality Control Board, should be the basis for carrying out the Commission's water quality responsibilities."

The Army has stated that the Section 401 Water Quality Certification application for Pier 2 is tentatively scheduled to be submitted to the RWQCB in June 2015, and that the Army will implement all appropriate terms and conditions.

Special Condition II-G-1 has been included to ensure that the Commission reviews the RWQCB's authorization for consistency with its laws and policies. Special Condition II-G-2 has been included to ensure that water quality impacts during construction are minimized and that the Army prepares and submits a storm water pollution prevention program for Commission review, and complies with the state RWQCB's water quality certification when issued for the project.

3. **Fills in Accordance with Sound Safety Standards**. In addition to the relevant provision in the McAteer-Petris Act (Section 66605(e)), the Bay Plan also requires that any authorized fill must be constructed in accord with sound safety standards.

   The Bay Plan Safety of Fills Policies 1 and 2 state, in part, that "[t]he Commission has appointed an Engineering Criteria Review Board (ECRB)…competent to and adequately empowered to…review all except minor projects for the adequacy of their specific safety provisions, and make recommendations.…no fill or building should be constructed if hazards cannot be overcome adequately for the intended use in accordance with the criteria prescribed by the ECRB."

   The ECRB reviewed the design criteria for the project on February 26, 2015, at which time they Army explained that the new portions of Pier 2 will be designed for minor or no structural damage and temporary or no interruptions in operations due to the Level 1 seismic event (return period of 72 years), and for controlled inelastic structural behavior with repairable damage, and temporary loss of operations, restorable within months, due to the Level 2 seismic event with a return period of 475 years. The ECRB requested additional information from the Army regarding sea level rise and seismic criteria, and made recommendations regarding conducting additional seismic-related analyses. Special Condition II-H has been included to ensure that the Army responds to these recommendations and requests for additional information to the satisfaction of the ECRB prior to the start of construction on the project.

It also requires the Army to return to the ECRB for further discussion and concurrence regarding seismic criteria in the event the engineering criteria change for the design-build project phase.

The Bay Plan Safety of Fills Policy 3 states, in part, that "to provide vitally needed information on the effects of earthquakes on all kinds of soils, installation of strong-motion seismographs should be required on all future major land fills. In addition, the Commission encourages installation of strong-motion seismographs in other developments on problem soils, and in other areas recommended by the U.S. Geological Survey, for purposes of data comparison and evaluation."

The ECRB recommended that the Army develop a plan in conjunction with the Strong-Motion Instrumentation Program of the California Geological Survey to record earthquake induced shaking on Pier 2, and on the nearby shore as a reference. Special Condition II-I requires the Army to install such instrumentation, and to provide an instrumentation plan to the Commission staff and/or ECRB for plan review and approval prior to project commencement.

The Bay Plan Safety of Fills Policy 4 states, in part, that "[a]dequate measures should be provided to prevent damage from sea level rise and storm activity that may occur on fill or near the shoreline over the expected life of a project…. New projects on fill…should either be…built so the bottom floor level of structures will be above a 100-year flood elevation that takes sea level rise into account for the expected life of the project, be specifically designed to tolerate periodic flooding, or employ other effective means of addressing the impacts of future sea level rise and storm activity."

The Army provided sea level rise projections for 2068 (the anticipated life of the project) relative to Pier 2's main platform, west trestle, and east trestle. Using a projection of three feet of sea level rise by 2068, which is on the high end of projections currently recommended by the State of California, the soffit of the main platform would remain approximately four feet above the mean high water level. In the event of a 100-year flood event in 2068, the total water level could touch the main platform deck soffit, and could reach the top of the east trestle deck. During extreme wind wave events that coincide with the 100-year flood event, splash overtopping of the main pier platform could occur. The Army has stated that all fixtures on the pier deck will be designed to accommodate brief periods of flooding. By 2068, the stormwater treatment sumps on the main platform and the soffit of the east trestle, which is not being replaced or raised, would be subject to inundation during a 1-year flood event. The Army has stated that the storm drains could be retrofitted with a flap gate if inundation becomes an issue. The Army will calculate wave uplift and buoyancy effects on the structure during the final design

development, consistent with the recommendations of the ECRB. As noted above, Special Condition II-H has been included to ensure that the Army addresses the issues raised by the ECRB with respect safety of fills and sea level rise.

For these reasons, the Commission finds that there is no alternative upland location for the fill for Pier 2, that the amount of fill is the minimum necessary to achieve the purpose of the fill, and that, as conditioned, will minimize impacts on the Bay and its resources and will be constructed in accord with sound safety standards.

B. **Climate Change.** The Bay Plan's Climate Change Policy 2 states, in part, that "[w]hen planning shoreline areas or designing larger shoreline projects, a risk assessment should be prepared by a qualified engineer and should be based on the estimated 100-year flood elevation that takes into account the best estimates of future sea level rise.... A range of sea level rise projections for mid-century and end of century based on the best scientific data available should be used in the risk assessment. Inundation maps used for the risk assessment should be prepared under the direction of a qualified engineer. The risk assessment should identify all types of potential flooding, degrees of uncertainty, consequences of defense failure, and risks to existing habitat from proposed flood protection devices."

The Bay Plan's Climate Change Policy 3 states "[t]o protect public safety and ecosystem services, within areas that a risk assessment determines are vulnerable to future shoreline flooding that threatens public safety, all projects—other than repairs of existing facilities, small projects that do not increase risks to public safety, interim projects and infill projects within existing urbanized areas—should be designed to be resilient to a mid-century sea level rise projection. If it is likely the project will remain in place longer than mid-century, an adaptive management plan should be developed to address the long-term impacts that will arise based on a risk assessment using the best available science-based projection for sea level rise at the end of the century."

As noted above in Section III-A-3, the Army has assessed how flooding and sea level rise through the life of the project would affect the proposed pier. Regarding sea level rise to the end of century, the Army has stated that freeboard at deck level ranges from 3.6 feet with the lowest sea level rise projection to being under 6 inches of water at the highest sea level rise projection (both projections based on a 100-year flood event at 2100). If the high estimate of sea level rise occurs, the deck would be inundated for a matter of hours, after which time the deck would drain. As noted above, all fixtures on the pier deck will be designed to accommodate brief periods of flooding. The Army has stated that it has an active management program for all infrastructure, and prepares regular submittals on infrastructure needing maintenance and capital improvements. The Army will monitor Pier 2 throughout its operation, and has stated that should sea level rise, structural deterioration, or functional obsolescence require its modification or replacement, the Army will work within its authority to secure funds to repair, replace, or demolish the structure.

As noted above, Special Condition II-H has been included to ensure that the Army addresses the issues raised by the ECRB with respect to safety of fills and sea level rise.

The landside portions of MOTCO adjacent to Pier 2 currently experience periodic flooding, and though the Army proposes to raise subsided portions of the road leading to Pier 2 and place revetments around the new trestle abutments, flood protection is not part of the proposed project and will likely be addressed in a future project. Thus, risks to existing habitat from proposed flood protection devices were not identified.

Finally, Policy 7 identifies specific types of projects that are deemed to have regional benefits, advance regional goals, and that should be encouraged, if their regional benefits and their advancement of regional goals outweigh the risk from flooding. These include a "transportation facility, public utility, or other critical infrastructure that is necessary for existing development…."

The Army has stated that maintaining the Department of Defense West Coast pier-side ammunition handling capability and associated ability to conduct and support contingency operations in the Pacific theater is a regional benefit and outweighs the risk from flooding.

The Commission finds that, with implementation of the Special Conditions contained herein, including the project is consistent with its laws and policies regarding Climate Change.

C. **Shoreline Protection.** The Bay Plan Protection of the Shoreline Policy 1 states, in part, that "…maintenance or reconstruction of existing projects and uses should be authorized if…the project is necessary to provide flood or erosion protection for existing development, use or infrastructure...the project is properly engineered to provide erosion control and flood protection for the expected life of the project based on a 100-year flood event that takes future sea level rise into account…and the protection is integrated with current of planned adjacent shoreline protection measures…." Policy 2, states in part, that "[r]iprap revetments…should be constructed of properly size [material] and [should be placed] according to accepted engineering practice…."

New riprap would be placed at the abutments to the new west trestle and forklift trestle. The proposed revetments would provide erosion protection for new abut-ments at the landside entry to the trestles. It is the Army's intent is to maintain the current level of protection with as little shoreline modification as possible. The Army has stated that designing for 100-year flood protection and sea level rise would necessitate expanding the area of armored shoreline both seaward and along the shoreline, and would do little to protect the vast majority of MOTCO from sea level rise as bay waters would inundate MOTCO from around the small area proposed to be protected. As noted above, sea level rise adaptations for the landside portions of

MOTCO are not part of the proposed project. The Army has stated that it would require its contractor to meet the requirements of Policy 2 regarding revetment material composition and placement.

Special Condition II-B has been included to ensure that the proposed riprap would be consistent with Bay Plan policies for riprap along the shoreline.

D. **Public Access.** Section 66602 of the McAteer-Petris Act states, in part, that "existing public access to the shoreline and waters of the San Francisco Bay is inadequate… [and that] maximum feasible public access, consistent with a proposed project, should be provided…." The *Bay Plan* Policies on Public Access further state that "maximum feasible public access should be provided in and through every new development in the Bay or on the shoreline…except in cases where public access would be clearly inconsistent with the project because of public safety considerations…. In these cases, in lieu access at another location, preferably near the project, should be provided."

Due to safety and security issues associated with military installations and munitions shipping, public access to MOTCO is currently limited to the Port Chicago Naval Magazine National Memorial (Memorial) and to occasional restricted access for biological, historical, and cultural resource reviews. The Army coordinates National Park Service and visitor access to the Memorial, which involves 50 to 60 trips per year with an average groups size of six visitors, as well as an annual commemorative event. The proposed project is not expected to increase the number of visitors to the Memorial, or to increase the need to bring more employees to the installation.

During the approximately six weeks that the Army will clear the project area of underwater explosives, the Army will work with the National Park Service to ensure that the Memorial is closed when visitors could be at risk, and to avoid scheduling the most disruptive activities during times when the Memorial is being used for interpretive, ceremonial, or other commemorative events. The Army would restrict access to vessels in Suisun Bay within the potentially dangerous areas which could be up to two miles, but does not anticipate impacts to recreational boats on the weekends.

Though providing in-lieu public access was discussed, the Army does not currently have authorized funding for public access improvements. In Fiscal Year 2017, the Army has committed to seek funding from Congress to improve the existing Visitor Center in Martinez where visitors board the National Park Service shuttle to access the Memorial. Special Condition II-C has been included to ensure that the Army provides these public access improvements should it receive authorization and funding to do so.

The Commission finds that the project, as conditioned, is consistent with its law and policies on public access.

E. **Dredging.** The Bay Plan's Dredging Policy 2 states, in part, that "Dredging should be authorized when the Commission can find: (a) the applicant has demonstrated that the dredging is needed to serve a water-oriented use or other important public

purpose, such as navigational safety; (b) the materials to be dredged meet the water quality requirements of the San Francisco Bay Regional Water Quality Control Board; (c) important fisheries and Bay natural resources would be protected through seasonal restrictions established by the California Department of Fish and Game, the U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service, or through other appropriate measures; (d) the siting and design of the project will result in the minimum dredging volume necessary for the project…." Policy 3 further explains that dredged material should not be disposed of in the Bay unless, among other requirements, "the quality of the material disposed of is consistent with the advice of the San Francisco Bay Regional Water Quality Control Board and the interagency Dredged Material Management Office (DMMO)."

The proposed project would involve dredging approximately 750 cubic yards of material to a depth of approximately minus 32 feet Mean Lower Low Water using a bed-leveler. The Army has not submitted an application to the DMMO, but has stated that the DMMO permit application would be submitted following post-construction bathymetric surveys. Preliminary sampling from May 2014 in and adjacent to the proposed dredging footprint indicates that discharge into Suisun Bay from dredging would not likely cause adverse impact to water quality or aquatic organisms. Due to the small amount of material present and due to the potential presence of explosives remaining from the Port Chicago Disaster, the Army plans to redistribute sediment on-site using a bed-leveler.

Special Condition II-G-3 has been included to ensure that the proposed dredging and on-site disposal is reviewed by the DMMO and approved by the participating agencies, including the RWQCB and BCDC, prior to any dredging at the site, as required by the Bay Plan's dredging policies.

F. **Bay Plan Map Policies and the San Francisco Bay Area Seaport Plan.** According to Bay Plan Map 3, MOTCO is located in a port and water related industry priority use area. The site-specific policy states that "when no longer owned or controlled by the federal government, give first consideration to port or water-related industrial use. Port and industrial use should be restricted so that they do not adversely affect marshes.... If not needed for port or water-related industry use, consider waterfront park use."

The San Francisco Bay Area Seaport Plan Policy for the Concord Naval Weapons Reserve (CNWR, now MOTCO) states that "the CNWR should be reserved as a port priority use area to be considered for bulk cargo marine terminal development if and when the Navy ceases its munitions operations."

Because the site is still owned and managed by the federal government, and the project is designed to continue use of the shoreline for shipping munitions, the Commission finds that the project is consistent with the Bay Plan Map Policies and the Seaport Plan.

G. **Environmental Review.** Pursuant to the National Environmental Policy Act (NEPA), the Army issued a Final Environmental Impact Statement on March 6, 2015, which found that all impacts from the project are anticipated to be less than significant. The Army plans to issue the signed record of decision in April 2015.

H. **Review Boards**

1. **Engineering Criteria Review Board.** The Commission's Engineering Criteria Review Board reviewed the proposed project on February 26, 2015.

2. **Design Review Board.** The Commission's Design Review Board did not review the proposed project.

I. **Public Trust.** The Commission finds that the fill authorized herein is consistent with public trust needs for the area because it improves the welfare of the Bay Area and will not adversely affect public access to and enjoyment of the Bay.

J. **Coastal Zone Management Act.** The Commission further finds, declares, and certifies that the activity or activities authorized herein are consistent with the Commission's Amended Management Program for San Francisco Bay, as approved by the Department of Commerce under the Federal Coastal Zone Management Act of 1972, as amended.

IV. Standard Conditions

A. **Permit Execution**. This permit shall not take effect unless the permittee executes the original of this permit and returns it to the Commission within ten days after the date of the issuance of the permit. No work shall be done until the acknowledgment is duly executed and returned to the Commission.

B. **Notice of Completion**. The attached Notice of Completion and Declaration of Compliance form shall be returned to the Commission within 30 days following completion of the work.

C. **Permit Assignment**. The rights, duties, and obligations contained in this permit are assignable. When the permittee transfers any interest in any property either on which the activity is authorized to occur or which is necessary to achieve full compliance of one or more conditions to this permit, the permittee/transferor and the transferee shall execute and submit to the Commission a permit assignment form acceptable to the Executive Director. An assignment shall not be effective until the assignees execute and the Executive Director receives an acknowledgment that the assignees have read and understand the amended permit and agree to be bound by the terms and conditions of the permit, and the assignee is accepted by the Executive Director as being reasonably capable of complying with the terms and conditions of the amended permit.

D. **Permit Runs With the Land**. Unless otherwise provided in this permit, the terms and conditions of this permit shall bind all future owners and future possessors of any legal interest in the land and shall run with the land.

E. **Other Government Approvals**. All required permissions from governmental bodies must be obtained before the commencement of work; these bodies include, but are not limited to, the U. S. Army Corps of Engineers, the State Lands Commission, the RWQCB, and the city or county in which the work is to be performed, whenever any of these may be required. This permit does not relieve the permittee of any obligations imposed by State or Federal law, either statutory or otherwise.

F. **Built Project Must Be Consistent with Application**. Work must be performed in the precise manner and at the precise locations indicated in your application, as such may have been modified by the terms of the permit and any plans approved in writing by or on behalf of the Commission.

G. **Life of Authorization**. Unless otherwise provided in this permit, all the terms and conditions of this permit shall remain effective for so long as the amended permit remains in effect or for so long as any use or construction authorized by this amended permit exists, whichever is longer.

H. **Commission Jurisdiction**. Any area subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission under the McAteer-Petris Act at the time the permit is granted or thereafter shall remain subject to that jurisdiction notwithstanding the placement of any fill or the implementation of any substantial change in use authorized by this permit. Any area not subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission that becomes, as a result of any work or project authorized in this amended permit, subject to tidal action shall become subject to the Commission's Bay jurisdiction.

I. **Changes to the Commission's Jurisdiction as a Result of Natural Processes**. This permit reflects the location of the shoreline of San Francisco Bay when the permit was issued. Over time, erosion, avulsion, accretion, subsidence, relative sea level change, and other factors may change the location of the shoreline, which may, in turn, change the extent of the Commission's regulatory jurisdiction. Therefore, the issuance of this d permit does not guarantee that the Commission's jurisdiction will not change in the future.

J. **Violation of Permit May Lead to Permit Revocation**. Except as otherwise noted, violation of any of the terms of this permit shall be grounds for revocation. The Commission may revoke any amended permit for such violation after a public hearing held on reasonable notice to the permittee or its assignee if the amended permit has been effectively assigned. If the permit is revoked, the Commission may determine, if it deems appropriate, that all or part of any fill or structure placed pursuant to this permit shall be removed by the permittee or their assignee if the amended permit has been assigned.

K. **Should Permit Conditions Be Found to be Illegal or Unenforceable**. Unless the Commission directs otherwise, this permit shall become null and void if any term, standard condition, or special condition of this amended permit shall be found illegal or unenforceable through the application of statute, administrative ruling, or court determination. If this permit becomes null and void, any fill or structures placed in reliance on this permit shall be subject to removal by the amended permittee or its

assignee if the amended permit has been assigned to the extent that the Commission determines that such removal is appropriate. Any uses authorized shall be terminated to the extent that the Commission determines that such uses should be terminated.

L. **Permission to Conduct Site Visit**. The permittee shall grant permission to any member of the Commission's staff to conduct a site visit at the subject property during and after construction to verify that the project is being and has been constructed in compliance with the authorization and conditions contained herein. Site visits may occur during business hours without prior notice and after business hours with 24-hour notice.

M. **Abandonment**. If, at any time, the Commission determines that the improvements in the Bay authorized herein have been abandoned for a period of two years or more, or have deteriorated to the point that public health, safety or welfare is adversely affected, the Commission may require that the improvements be removed by the permittee, its assignees or successors in interest, or by the owner of the improvements, within 60 days or such other reasonable time as the Commission may direct.

N. **Best Management Practices**

1. **Debris Removal.** All construction debris shall be removed to an authorized location outside the jurisdiction of the Commission. In the event that any such material is placed in any area within the Commission's jurisdiction, except as described in the restoration plans, the permittee, its assigns, or successors in interest, or the owner of the improvements, shall remove such material, at their expense, within ten days after they have been notified by the Executive Director of such placement.

2. **Construction Operations.** All construction operations shall be performed to prevent construction materials from falling, washing or blowing into the Bay. In the event that such material escapes or is placed in an area subject to tidal action of the Bay, the permittee shall immediately retrieve and remove such material at its expense.

O. **In-Kind Repairs and Maintenance.** Any in-kind repair and maintenance work authorized herein shall not result in an enlargement of the authorized structural footprint and shall only involve construction materials approved for use in San Francisco Bay. Work shall occur during periods designated to avoid impacts to fish and wildlife. The permittee shall contact Commission staff to confirm restricted periods for construction.