

San Francisco Bay Conservation and Development Commission

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July 26, 2019

Staff Recommendation **Alcatraz Ferry Embarkation Project** *Consistency Determination Request* **(For Commission consideration on August 1, 2019)**

Consistency Determination No.: C2017.005.01 (Material Amendment No. One)
Federal Project Sponsor: National Park Service
Request Filed Complete: July 16, 2019
Deadline for Commission Action: September 29, 2019

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Project Description: Redevelop and expand a terminal for ferry and excursion vessels.

Location: In the Bay and within the 100-foot shoreline band, at Piers 31, 31½, and 33, along The Embarcadero, in the City and County of San Francisco.

Staff Recommendation: **CONDITIONAL CONCURRENCE**

Recommendation Summary

The staff believes the project, as modified by the proposed conditions, is consistent with the Commission's law, policies, and coastal zone management program for San Francisco Bay for the following reasons:

Use

- Use of the project site as a terminal for ferry and excursion vessels is consistent with the detailed planning guidelines of the Commission's San Francisco Waterfront Special Area Plan. The Bay Plan does not establish a Priority Use Designation for the project site.

Bay Fill

- The project involves placing 2,942 square feet and 105 cubic yards of net Bay fill to replace and enlarge berthing facilities. This fill is for a water-oriented use.



- Conditions are included to avoid or minimize potential adverse impacts to the Bay, and to require removal of an equivalent amount of Bay fill at another location to mitigate for loss of Bay surface area.

Public Access

- The project provides approximately 0.8 acres of new dedicated public access areas, including a civic plaza area at the center of the Pier 31½ wharf deck. The project also provides public restrooms, bicycle and accessible parking, historical interpretive elements, and other public access improvements.
- Conditions are included to allow for special events that will result in only occasional closure to public access areas, and to require the preparation of a vendor management plan to ensure that concessionaires conduct operations in a way that will not disrupt the public access areas.
- A condition is included to ensure that a future segment of the Bayside History Walk be allowed within the Pier 31 shed building, should the adjacent portion of the shed be redeveloped in the future.

Flooding and Sea Level Rise

- The project is not anticipated to remain in place beyond mid-century. During its anticipated life, the project is not expected to experience flooding because the deck is sufficiently elevated above the Bay, and the in-water infrastructure floats and will rise with higher water levels.
- Should the project exceed its anticipated life, a condition is included to require the submittal and approval of a sea level rise adaptation plan with defined adaptation actions and an implementation schedule.

Recommended Resolution and Findings

Because the project is the subject of a material amendment to an existing Commission Letter of Agreement, the format of the recommendation is different from recommendations for new projects. This recommendation includes language of the existing Letter of Agreement and the changes specific to the subject material amendment. Any deleted existing language is ~~struck through~~; added or new language is underlined. Existing language neither struck through nor underlined remains unchanged with the adoption of Material Amendment No. One.

The staff recommends the Commission adopt the following resolution:

I. Agreement

- A. The San Francisco Bay Conservation and Development Commission (Commission) concurs with the determination of the National Park Service (NPS) that the following project, ~~in concept only~~, is consistent to the maximum extent practicable with the Commission's federally approved Coastal Zone Management Plan:

Location: Within the coastal zone as defined in the federal Coastal Zone Management Act (CZMA), at the Port of San Francisco Piers 31, 31½, and 33, at The Embarcadero, in the City and County of San Francisco, and at the federally-owned Fort Baker area within the Golden Gate National Recreation Area, adjacent to the City of Sausalito, Marin County.

Description: At Piers 31, 31½, and 33:

~~To renovate piers and an associated wharf facility in order to expand ferry service to NPS's Alcatraz Island, establish limited ferry service to Fort Baker, and facilitate other interpretive Bay cruises: (a) remove existing ferry service facilities; (b) repair the Pier 31 ½ marginal wharf; (c) install berthing facilities for three vessels, including gangways, floats, guide piles, and fender piles; (d) install passenger serving facilities at Pier 31½, including ferry and ticket queuing areas covered by free standing structures, interpretive exhibits, seating, and related infrastructure; (e) renovate the Piers 31 and 33 shed and bulkhead buildings to provide restrooms, operational storage, parking, food and beverage service, and retail space; and (f) conduct on-going, in-kind maintenance of these facilities.~~

In the Bay:

1. In-Water Infrastructure.

- a. Existing Infrastructure Removal. Remove in-water infrastructure for berthing facilities previously authorized under BCDC Permit No. M1985.013.03 (removal of approximately 2,087 square feet and 12 cubic yards of Bay fill).
- b. Berthing Facilities for Three Vessels. Construct, use, and maintain in-kind two parallel berthing facilities for excursion vessels, each of which would consist of an approximately 2,000-square-foot float (80-feet-long by 25-feet-wide), anchored by four 36-inch-diameter steel guide piles, and connected to the shoreline by an approximately 480-square-foot gangway and ramp (a total of approximately 5,016 square feet and 96 cubic yards of Bay fill).
- c. Breasting Piles at Pier 31. Install and maintain in-kind four 24-inch-diameter breasting piles adjacent to the Pier 31 seawall (a total of approximately 13 square feet and 21 cubic yards of Bay fill).

2. Pier 31½ Marginal Wharf.

- a. Existing Facilities Removal. Demolish facilities associated with existing excursion vessel terminal including a canopy structure, parking area, and queuing and ticketing facilities, including improvements previously authorized under BCDC Permit No. M1985.013.03.
- b. Ferry Primary Queue Area. Construct, use, and maintain in-kind an approximately 8,400-square-foot concrete canopy structure with queuing facilities and interpretive and informational elements.
- c. Ferry Secondary Queue Area. Construct, use, and maintain in-kind an approximately 4,200-square-foot concrete canopy structure with queuing facilities, café space, seating, interpretive panels, and bicycle parking on the marginal wharf.
- d. Civic Plaza. Construct, use, and maintain in-kind an approximately 34,721-square-foot public plaza area extending from The Embarcadero sidewalk to the edge of the pier deck with multi-level seating, benches, a monument entrance sign, pedestrian-scale light poles, interpretive elements, planters, and other site furnishings.
- e. On-Deck Improvements. Construct, use, and maintain in-kind a continuous water's edge guardrail, entry points to boat gangways and queuing areas, and other terminal-related facilities on the marginal wharf deck.

3. Pier 31 Bulkhead and Shed.

- a. Café. Construct, use, and maintain in-kind an approximately 1,481-square-foot café located within the Pier 31 bulkhead building and an approximately 300-square-foot outside dining area adjacent to The Embarcadero sidewalk (a portion of which is located within the Commission's 100-foot shoreline band jurisdiction), including a low-barrier café railing and umbrellas.
- b. Shed Interior Renovations. Construct, use, and maintain in-kind public restrooms, public bicycle parking, disabled visitor parking (3 spaces), staff parking (10 spaces), and site operations facilities within an approximately 7,664-square-foot portion of the Pier 31 shed building.

4. Pier 33 Bulkhead and Shed.

- a. Bulkhead Interior Renovations. Construct, use, and maintain in-kind exhibits, retail, and a ticket office within an approximately 3,450-square-foot portion of the Pier 33 bulkhead building.
- b. East Façade Restoration and Improvements. Construct, use, and maintain in-kind new ticket windows along the east façade of the Pier 33 bulkhead building and conduct historic restoration work on façade and windows.
- c. Shed Interior Renovations. Construct, use, and maintain in-kind public restrooms, storage, and site operations facilities within an approximately 6,170-square-foot portion of the Pier 33 shed building.

Within the 100-foot Shoreline Band:

1. Along The Embarcadero Promenade.

- a. Vehicle Loading Zone. Construct, use, and maintain in-kind an approximately 110-foot-long vehicle loading zone in the area between the Civic Plaza and Pier 33 driveway, including six flexible bollards (with diameters smaller than 2-feet-wide) separating the loading zone from the roadway and bike lane.
- b. Bicycle Parking. Install and maintain in-kind bicycle racks with spaces for approximately 28 bicycles.

2. Adjacent to Pier 31 Bulkhead Building.

- a. Café Seating. Construct, use, and maintain in-kind an approximately 300-square-foot outside dining area adjacent to The Embarcadero sidewalk (a portion of which is located within the Commission's Bay jurisdiction), including a low-barrier café railing and umbrellas.

At Fort Baker:

To establish ferry service and construct associated facilities:
(a) repair a concrete pier; (b) install berthing facilities for one vessel, including a gangway, float, guide piles, and fender piles;
(c) install a covered waiting area and interpretive exhibit located adjacent to the pier; (d) construct a pedestrian pathway connecting the pier to a nearby lodge and museum; and
(e) conduct on-going, in-kind maintenance of these facilities.

B. Phased Consistency Determination and Conceptual Project.

- 1. Original Consistency Determination (Phase 1—Conceptual Project).** The conceptual project that is determined to be consistent to the maximum extent practicable with the Commission’s federally authorized coastal management program is described in the NPS’s request dated September 15, 2017 for the “Alcatraz Ferry Embarkation Project — San Francisco Pier 31½ and Fort Baker Pier Upgrades,” and in materials submitted on May 23, 2017 describing the portion of the project located at Fort Baker, in Marin County, and on August 21, 2017 describing the portion of the project located at Piers 31, 31½, and 33 in the City and County of San Francisco.

This Letter of Agreement ~~is~~ was originally given based on the information submitted by or on behalf of the NPS in its letter dated September 15, 2017—received in the Commission’s office on September 18, 2017—including all exhibits and subsequent correspondence. The Commission’s concurrence is for a conceptual project identified in the information provided by the NPS, and is for a phased consistency determination. Before any construction commences on the project, the NPS shall submit one or more subsequent consistency determinations.

- 2. Amendment No. One (Phase 2—Embarkation Facilities at Piers 31, 31½, and 33).** This amended Letter of Agreement is given based on the information submitted by NPS in its letter dated May 8, 2019, requesting Material Amendment No. One to this consistency determination, including all accompanying and subsequently submitted correspondence and exhibits. The Commission’s concurrence is limited to those activities described at Piers 31, 31½, and 33, along The Embarcadero, in the City and County of San Francisco.

C. Consistency Concurrence Expiration Date.

- 1. Original Consistency Determination (Phase 1—Conceptual Project).** The original subject consistency determination is for the project at the concept level only. No work details were provided in the Phase 1 consistency determination and, for this reason, there is no commencement or expiration date for the project described herein.
- 2. Amendment No. One (Phase 2—Embarkation Facilities at Piers 31, 31½, and 33).** Work described in Amendment No. One must commence prior to August 1, 2022, or this Letter of Agreement will lapse and become null and void. Such work must also be diligently pursued to completion and must be completed within three years of commencement, or by August 1, 2025, whichever is earlier, unless an extension of time is granted by amendment of the consistency determination. Maintenance authorized herein may be conducted in perpetuity so long as the development authorized herein remains in place.

D. Related BCDC Permits.

1. **BCDC Permit No. M1985.013.03.** The project at issue in Amendment No. One effectively supersedes BCDC Permit No. M1985.013.03, issued to Hornblower Cruises for the ferry terminal facilities at Pier 31½.
2. **BCDC Permit No. 2018.007.00.** On August 1, 2019, the Commission issued Permit No. 2018.007.00 to Golden Gate National Park Conservancy and Port of San Francisco, the National Park Service's partners in the project, to authorize development and use of the facilities considered in Amendment No. One to this Letter of Agreement.

II. Special Conditions

If the NPS does not agree with the following conditions or fails to incorporate them into the project, it shall notify the Commission immediately of its refusal to agree or to incorporate the conditions into the project and the conditional concurrence shall be converted into an objection by the Commission. The NPS shall also immediately notify the Commission if the NPS determines to go forward with the project despite such an objection.

A. Original Consistency Determination (Phase 1—Conceptual Project).

- A1. Future Consistency Requests.** The project described herein is for Phase 1 in concept only. The NPS shall submit future request(s) for consistency concurrence to the Commission to allow for its thorough consideration of the full and complete project. A request for consistency concurrence shall be submitted by the NPS for future planning, siting, and design phase(s) subject to the NPS' discretion prior to project commencement and construction.
- B2. Additional Project Information.** For the Commission to be able to evaluate and concur that future consistency determinations on the subject conceptual project would be consistent with its Amended Management Program for San Francisco Bay, the NPS shall provide proposed (and ultimately final) project details regarding, but not limited to:
 - 1a.** Site design and programmatic details, including construction drawings, for all project elements within the two project areas;
 - 2b.** Public access improvements and program(s), including design features of public access areas and public access operation, management, and maintenance plans of the NPS and/or other project sponsors;
 - 3c.** Area and volume of the Bay affected by all proposed fill improvements, and mitigation and/or construction minimization measures to avoid and protect Bay resources; and
 - 4d.** A risk assessment identifying potential flooding risks, including based on best estimates of future sea level rise, and analysis of the project's ability to address impacts that will arise during the life of the project.

B. Amendment No. One (Phase 2—Embarkation Facilities at Piers 31, 31½, and 33).

1. Plan Review.

- a. **Construction Documents.** The development authorized herein shall be built generally in conformance with the following documents:
- i. “In-Water Plans” included as Appendix 4 to “November 2018 Alcatraz Ferry Embarkation Project Permit Application Supporting Information,” prepared by Anchor QEA.
 - ii. “Conceptual Upland Plans” included as Appendix 5 to “November 2018 Alcatraz Ferry Embarkation Project Permit Application Supporting Information,” prepared by CMG, EHDD and Macchiato and dated January 22, 2018.

All construction documents shall accurately and fully reflect the terms and conditions of this Letter of Agreement and any legal instruments submitted pursuant to this authorization. No substantial changes shall be made to these documents without prior review and written approval by or on behalf of the Commission through plan review or an amendment.

- b. **Construction Documents Review and Approval.** No work whatsoever shall commence pursuant to this Letter of Agreement until final construction documents regarding authorized activities are approved in writing by or on behalf of the Commission. All documents are reviewed within 60 days of receipt. To save time, preliminary documents may be submitted prior to the submittal of final documents. If final construction document review is not completed by or on behalf of the Commission within the 60-day period, the project described herein may be carried out in a manner consistent with the plans referred to in Special Condition II.B.1.a.

- i. **Document Details.** All construction documents shall be labeled with: the Mean High Water line or the upland extent of marsh vegetation no higher than +5 feet above Mean Sea Level and the tidal datum reference (NAVD88 or, if appropriate, Mean Lower Low Water (MLLW)); the corresponding 100-foot shoreline band; property lines; the location, types, and dimensions of materials, structures, and project phases authorized herein; grading limits; and the boundaries of public access areas and view corridor(s) required herein. Documents for shoreline protection projects must be dated and include the preparer’s certification of project safety and contact information. No substantial changes shall be made to these documents without prior review and written approval by or on behalf of the Commission through plan review or an amendment.

- ii. **Conformity with Final Approved Documents.** All authorized development and uses shall conform to the final documents. Prior to use of the facilities authorized herein, the appropriate professional(s) of record shall certify in writing that the work covered by the authorization has been implemented in accordance with the approved criteria and in substantial conformance with the approved documents. No substantial changes shall be made to these documents without prior review and written approval by or on behalf of the Commission through plan review or an amendment.
- iii. **Discrepancies between Approved Plans and Special Conditions.** In case of a discrepancy between final approved documents and the special conditions herein or legal instruments, the special condition shall prevail.
- iv. **Reconsideration of Plan Review.** Reconsideration of a plan review action taken pursuant to this special condition may occur within 30 days of a plan review action by submitting a written request for reconsideration to the Commission's Executive Director. Following the Executive Director's receipt of such a request, the Executive Director shall respond with a determination on whether the plan review action in question shall remain unchanged or an additional review and/or action shall be performed by or on behalf of the Commission, including, but not limited to, an amendment and/or consultation with the Commission Design Review Board.

2. Public Access

- a. **Area.** The approximately 34,721-square-foot area, along approximately 290 linear feet of shoreline as generally shown on Exhibit A as "Public Access" shall be made available exclusively to the public for unrestricted public access for walking, bicycling, sitting, viewing, picnicking, and related purposes. For use of the public access area for other than public access purposes, prior written approval by or on behalf of the Commission must be obtained, except to conduct special events as authorized in Special Condition II.B.2.g "Special Events" below.

Required public access for this project includes:

- New public access within the Commission's jurisdiction: 34,721 square feet (0.79 acres)
- b. **Improvements Within the Total Public Access Area.** Prior to construction and pursuant to Special Condition II.B.1, approval by or on behalf of the Commission is required for one or more construction phasing schedule(s) to install the improvements, as generally shown on attached Exhibits A and B, within specific timeframes and in substantial conformance to the description for those improvements found in Appendix 5 ("Conceptual

Upland Plans”) to the November 2018 “Alcatraz Ferry Embarkation Project permit Application Supporting Information” on file in the Commission’s office. Such improvements shall be consistent with the plans approved pursuant to Special Condition II.B.1.

- c. **Maintenance.** The areas and improvements within the total 34,721-square-foot area shall be permanently maintained. Such maintenance shall include, but is not limited to, repairs to all path surfaces; replacement of any trees or other plant materials that die or become unkempt; repairs or replacement as needed of any public access amenities such as signs, benches, drinking fountains, trash containers and lights; periodic cleanup of litter and other materials deposited within the access areas; removal of any encroachments into the access areas; and assurance that the public access signs remain in place and visible. Within 30 days after notification by staff, any maintenance deficiency noted in a staff inspection of the site shall be corrected.
- d. **Reasonable Rules and Restrictions.** Reasonable rules and restrictions for the use of the public access areas may be imposed to correct particular problems that may arise. Such limitations, rules, and restrictions shall have first been approved by or on behalf of the Commission upon a finding that the proposed rules would not significantly affect the public nature of the area, would not unduly interfere with reasonable public use of the public access areas, and would tend to correct a specific problem that has been identified and substantiated. Rules may include restricting hours of use and delineating appropriate behavior.
- e. **Public Amenities.** The improvements, including public restrooms in the Pier 31 and 33 shed buildings, weather protected seating, the Bayside History Walk/interpretive retail space, and bike parking and accessible parking, as generally shown on Exhibit A as “Public Amenity” shall be made available to the public, free of charge, during operating hours of the embarkation facility. Closure of these facilities during normal operating hours shall be allowed only during special events as described in Special Condition II.B.2.g (“Special Events”) below.
- f. **Signage and Interpretive Plan.** Prior to construction of the public access improvements required herein, submittal of a comprehensive sign and interpretive plan is required for review and approval by or on behalf of the Commission. The plan shall be designed to maximize public recognition, use, and enjoyment of the site’s public access improvements and highlight its history. The plan shall provide detail on the location, quantity, and design of wayfinding signage and interpretive signage and other elements, in general conformance with those signage and interpretive elements described in described in Appendix 5 (“Conceptual Upland Plans”) to the November 2018 “Alcatraz Ferry Embarkation

Project permit Application Supporting Information” on file in the Commission’s office. The plan shall also provide for installation of “Public Shore” signs at appropriate locations at the project site, including at minimum at the entrance of the site along The Embarcadero and at the guardrails at the edge of the marginal wharf. Finally, the plan shall provide for signs that indicate to the public that any public seating areas located adjacent to the café or commercial space are public seating open to all users.

- g. **Special Events.** Special events are authorized within public access areas and public amenity areas identified in Special Condition II.B.2.a and II.B.2.e above subject to the following limitations:
- h. **Whole Site.** Special events that would restrict public access to the entire site for up to 24 hours for each event may be conducted on no more than two nonconsecutive occasions during a calendar year, within the area generally depicted on Exhibit C and labeled “Whole Site.”
- i. **South Side of Marginal Wharf.** Special events that would limit public access to the south side of the marginal wharf may be conducted only after normal business hours on no more than 12 occasions during a calendar year, within the area generally depicted on Exhibit C and labeled “South Side of Marginal Wharf.” Barriers that do not interrupt views of the Bay may be positioned to control access to this area during such events. During such events, the Civic Plaza and other public access areas will remain open to the public.
- j. **Vendor Management.** At least 60 days prior to use of the site by any vendors, a management plan shall be submitted, pursuant to Special Condition II.B.1, to manage vendors, commercial enterprises, food service facilities, and queues so as to ensure that public access is not impeded or diminished. Such management shall give priority to: (a) the efficient and comfortable pedestrian circulation to, in, and through all public access areas; and (b) controlling litter generated by various uses of the plaza.
- k. **Future Bayside History Walk and Public Access Connection.** NPS shall reasonably coordinate to allow for construction of a future public access connection and segment of the Bayside History Walk within the Pier 31 shed, should a major redevelopment of the Pier 31 shed require such a connection to be made. At such time, NPS shall reasonably coordinate the design, construction, and maintenance with the permittees of the adjacent portion of Pier 31 to create a continuous and seamless transition between the Pier 31½ marginal wharf and either (a) the Pier 29 marginal wharf or apron, or (b) a public access area within the interior of

Pier 31. The exact manner in which the connection is made shall be reviewed, and if adequate, approved by or on behalf of the Commission pursuant to Special Condition II.B.1.

3. View Corridor

- a. **Visual Access.** The project shall maintain in perpetuity an approximately 70-foot-wide view corridor located within the area of the site bounded by The Embarcadero, the edges of the Civic Plaza area shown on Exhibit B, and the Bay, to allow visual access from the public street to the Bay. No structure shall intrude into the view corridor except those described herein, temporary installations (e.g., tents or art installations), or other improvements as authorized by or on behalf of the Commission through the plan review process found in Special Condition II.B.1 upon a finding that the open nature of the visual corridor can be maintained.

4. Flooding and Adaptation

- a. **Flood Reports.** If any portion of the project, including the required public access area, is subject to coastal flooding that results in its closure in whole or in part, a written report shall be submitted to the Commission within 30 days after the flooding with documentation of: the date and duration of the closure; the location of the affected site; the recorded water levels during the closure period; the source of flooding (e.g., coastal flooding or stormwater backup or overland flow); the resulting damage or cleanup; and illustrative photographs with site details. Coastal flooding is defined as Bay overtopping of the shoreline during tides, storms, or both.
- b. **Adaptation Planning Process.** A sea level rise adaptation planning process shall be initiated for the project, including the public access areas required by Special Condition II.B.2.a, that will ensure the provision of shoreline access into the future as long as any use authorized herein remains in place. Within 180 days of the first occurrence of coastal flooding that affects the project or results in closure of any portion of the public access, as described in the flood reports required by Special Condition II.B.4.a, or earlier at the discretion of NPS, a sea level rise adaptation plan that conforms to the requirements in Special Condition II.B.4.c, below, shall be submitted for Commission review and approval. The plan shall be reviewed by or on behalf of the Commission pursuant to Special Condition II.B.1. Depending on the actions required to implement the sea level rise adaptation plan, Commission review and approval may be required.

- c. **Adaptation Plan Requirements.** According to the schedule in Special Condition II.B.4.b, above, a sea level rise adaptation plan that achieves the following objectives shall be submitted for Commission review and approval:
- i. Measures shall be developed that will address impacts to the project that arise as a result of flooding for the period during which the uses will remain in place. The public access area required in Special Condition II.B.2.a shall be protected from flooding through raising the elevation of the public access, installing a flood protection device (e.g., a barrier wall or guardrail) or by another method acceptable to the Commission. An alternative, equivalent public access area may be proposed that provides maximum feasible public access consistent with the project.
 - ii. A timeline shall be established to implement the required adaptation measures to ensure that the project addresses the impacts of flooding and storm activities and that the required public access remains viable and is not subject to regular flooding events.
 - iii. The adaptation plan shall incorporate sea level rise and storm projections based on the current best available science at the time it is developed and/or updated.
5. **Protection of Bay Resources.** Impacts to water quality, fish, other aquatic organisms, wildlife, and habitat at the site shall be reduced by implementing the following measures. Minor modifications to the below requirements may be approved by the Executive Director upon a finding that they are no less protective of Bay resources.
- a. **Water Quality Protection.**
 - i. **RWQCB Requirements.** Project construction and operations shall be conducted in compliance with the RWQCB General Waste Discharge Requirements for Construction and Maintenance of Overwater Structures issued for the project on July 15, 2019.
 - ii. **Debris Management.** Closed debris containment booms, floating debris screens, and/or absorbent booms will be positioned beneath and alongside work areas whenever possible. During construction, the barges performing the work will be moored in a position to capture and contain the debris generated during any sub-structure or in-water work. Care will be taken to minimize debris falling into the water. In the event that debris does reach the Bay, personnel in workboats will immediately retrieve the debris for proper handling and disposal. For small-scale over-water repairs and maintenance, tarps, tubs and/or vacuums will be used as appropriate to catch sawdust, debris, and drips. All construction material, wastes, debris,

- sediment rubbish trash, fencing, etc., will be removed from the site on a regular basis during work and at project completion. Debris will be transported to an authorized disposal area.
- iii. **Stormwater Management.** When ground disturbance is necessary, construction crews will reduce the footprint of disturbance to the minimum necessary to complete the project. Construction material that could wash or blow away will be covered every night and during any rainfall event. Construction materials will be stored in an area that does not freely drain to the Bay, is free from standing water and wet soil, and is protected from rain. If necessary, materials will be stored on skids or support timbers to keep them off the ground. Adequate erosion control supplies (sand bags, wattles, shovels, etc.) shall be kept on site during all construction activities to ensure materials are kept out of water bodies.
- iv. **Creosote Treated Wood.** No pilings or other wood structures that have been pressure treated with creosote shall be used in any area subject to tidal action in the Bay or any certain waterway, in any salt pond, or in any managed wetland within the Commission's jurisdiction as part of the project authorized herein.
- b. **Pile Driving and Removal.** Use of a barge mounted impact hammer is allowed to install all steel piles in the Bay to avoid potential impacts to fish species. Impact pile driving shall be limited to a work window between July 1 and November 30 of each year in order to avoid the migration seasons of Endangered Species Act (ESA) listed salmonid species in the San Francisco Bay. To further minimize impacts to the threatened Southern distinct population segment (DPS) of North American green sturgeon, use of bubble curtains is required between the pile and impact hammer to attenuate sound levels from the steel piles, per the methods described in the Biological Opinion (BO). Hydroacoustic monitoring shall be conducted for impact pile driving of the first pile of each type driven at each location, per the methods detailed in the Biological Opinion. If the hydroacoustic monitoring during pile driving indicates significantly higher sound pressure levels are being generated than have been calculated and analyzed in the BO, the contractor will incorporate the use of a wood or plastic cushion block atop the steel piles to further attenuate pile driving sound pressure levels generated. A National Marine Fisheries Service (NMFS)-approved biological monitor shall be present before and during pile driving, to halt pile driving if marine mammals are observed within 500 meters of the project site, and to maintain sound levels below 90dBA in air when seals or sea lions are present. A copy of the NMFS-approved sound attenuation and monitoring plan shall be submitted to the Commission staff within 15

days of its approval. If marine mammals are observed within 500 meters of the project site, pile driving shall cease and only resume once the mammals have completely exited the project site.

c. **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 Letter of Agreement and the final BCDC-approved plans, particularly as they pertain to any public access or open space required herein, or environmentally sensitive areas.

6. **Bay Fill Mitigation.** By December 20, 2019, a conceptual mitigation plan shall be submitted for review by or on behalf of the Commission, to remove approximately 2,462 square feet of debris or constructed improvements from the Bay. Fill removal must occur prior to completion of construction for the work described herein.

III. Findings and Declarations

This amended consistency concurrence is given on the basis of the findings and declarations that the conceptual project as described in the NPS's September 15, 2017 request is consistent to the maximum extent practicable with the McAteer-Petris Act, the San Francisco Bay Plan, the San Francisco Waterfront Special Area Plan, and the Commission's Amended Coastal Zone Management Program for the San Francisco Bay for the following reasons:

A. Original Consistency Determination (Phase 1—Conceptual Project).

A1. Phased Consistency Determination. Because the NPS ~~has~~ originally did not submitted plans of adequate detail for construction of any project element described herein and has requested a consistency determination for the project at a concept level, ~~this~~ the original consistency concurrence is ~~was~~ limited to finding that the described conceptual project is consistent to the maximum extent practicable with the Commission's Amended Management Program for San Francisco Bay. As thorough and complete plans are developed for the project, the NPS will submit one or more subsequent consistency determinations for the project demonstrating that implementation would continue to be consistent to the maximum extent practicable with the management program.

B2. General Consistency with the Commission's Amended Management Program. At Pier 31 ½ and Fort Baker, the project involves the replacement or installation of berthing facilities, the repair of a marginal wharf at Pier 31½, the removal and replacement of ferry service facilities at Pier 31½, the reuse of the Piers 31 and 33 bulkhead and shed buildings for ferry service, the development of public access amenities, and maintenance of these

improvements. ~~To date,~~ NPS has provided conceptual plans for the project only, until it requested Material Amendment No. One to this amended letter of approval (see below).

As described in concept, a minor amount of fill will be placed in the Bay to expand berthing facilities at Pier 31½ and create a berth for one vessel at Fort Baker. The Commission may allow fill in the Bay when it meets the requirements identified in Section 66605 of the McAtteer-Petris Act, which states in part, that: (a) the public benefits from fill must clearly exceed the public detriment from the loss of water areas, and the fill should be limited to water-oriented uses or minor fill for improving shoreline appearance and public access; (b) no alternative upland location is available; (c) the fill authorized should be the minimum necessary to achieve the purpose of the fill; (d) the fill should minimize harmful effects to the Bay including the water volume, circulation, fish and wildlife resources, and marsh fertility; and (e) the fill should be authorized when the applicant has valid title to the properties in question. The installation of berthing facilities for a ferry service is a water-oriented use for which no alternative upland location is available. When detailed plans are submitted for the Commission's future review, the precise fill quantities will be known and evaluated further, as required by the Special Conditions. However, the conceptual plans indicate a design that will result in the minimum necessary amount of fill to achieve the project's purpose. The conceptual project includes construction and operational measures to avoid or minimize the potential for adverse effects to aquatic resources. For example, prior to commencing construction, the NPS will consult with appropriate local, state, and federal agencies and secure all required permits and approvals. Further, the project contains mitigation measures that require work to comply with all required resource agency permit conditions, including any required work windows. Measures are included to avoid adverse effects to marine mammals and aquatic organisms, including monitoring for marine mammals, restrictions on activities that will generate excessive noise, and other measures to minimize impacts during construction. The construction of facilities is anticipated to be undertaken by the NPS' partners, including the Port of San Francisco, which controls the property at Piers 31, 31 ½, and 33, and will require a BCDC permit. The federal government controls the area in Horseshoe Bay where fill will be placed at Fort Baker Pier. Based on NPS's concept-level design, the fill associated with the project is consistent to the maximum extent practicable with the Commission's law and policies on Bay fill.

The conceptual project includes public access improvements at Piers 31, 31 ½, and 33, which are the subject of Material Amendment No. One (below), and at Fort Baker. The design includes a large public plaza, including sculptural seating elements, that provide a direct physical and visual connection from the Embarcadero and Herb Caen Way to the platform edge

at Pier 31½. This represents a significant improvement over current conditions where passenger queuing and canopy structures impede views of the Bay and limit access to the water's edge at the marginal wharf. The new passenger cover structures on the marginal wharf will be low-scale in order to preserve views, and their siting behind the bulkhead buildings maintains the visual dominance of the historic bulkheads along the waterfront. The design of these structures will minimize shading of the on-pier public access areas while designing for the weather by providing cover from the elements for passengers as they wait to embark on their ferry. Finally, the design provides enhanced interpretation of the historical and cultural attributes of the site, and provides public restrooms and other needed public amenities. At Fort Baker, the concept design includes a pedestrian pathway and a small covered waiting area on the shoreline that will both include interpretive signs and displays. Only a small portion of the repaired pier is to be used for ferry operations, leaving the remainder of the improved pier available for fishing and sightseeing. The conceptual design indicates that the project, including access elements, will be designed to accommodate and be resilient to future sea level rise. The public access facilities at both locations are planned but not yet fully designed and, as required by the Special Conditions, will be the subject of one or more future consistency determinations to be submitted to the Commission by the NPS in this phased consistency approach. The conceptual design for Piers 31, 31 ½, and 33 is therefore consistent to the maximum extent practicable with the Commission's laws and policies on public access, including the geographic-specific policies of the San Francisco Waterfront Special Area Plan, in that the design concept provides significant public access improvements, expands access to and along the waterfront including at the platform edge, and enhances visual access to the Bay from the Embarcadero.

For all of the above reasons, the project, subject to the Special Conditions stated herein, is determined to be consistent with the San Francisco Bay Plan, the San Francisco Waterfront Special Area Plan, the McAteer-Petris Act, the Commission's Regulations, and the Commission's Amended Management Program for the San Francisco Bay segment of the California Coastal Zone. This determination is limited to the concept project, which represents Phase 1 of a phased federal consistency review. The Commission will review one or more future phases when submitted by the NPS and prior to any construction associated with the project to determine if it concurs that the development project or other activity continues to be consistent to the maximum extent practicable with the management program on the basis of the additional detail and project information provided at that time.

E3. Environmental Review. Pursuant to the National Environmental Policy Act (NEPA), a Final Environmental Impact Statement (FEIS) was published in January 2017 describing the project and its potential impacts. A Record of Decision (ROD) was not issued at the time of the NPS's request for Commission concurrence with its determination.

E4. Commission Review and Comment. The Commission, pursuant to the Coastal Zone Management Act of 1972, as amended (16 USC Section 1451), and the implementing federal regulations in 15 CFR Part 930, is required to review federal projects within San Francisco Bay and agree or disagree with the federal agency's determination that the project is consistent with the Commission's Amended Coastal Zone Management Program for San Francisco Bay. The subject Letter of Agreement constitutes such review and comment.

E5. Listing. Pursuant to Regulation Section 10620, the original project described herein was included in the Commission's Administrative Listing for a public meeting held on October 19, 2017. Phase 1 of this phased consistency determination generally involves routine repairs, reconstruction, replacement, removal and maintenance that do not involve any substantial enlargement or change in use, as defined in the Commission's Regulations Sections 10601(a)(6) and 10601(b)(5) and, therefore, are characterized as "minor repairs or improvements" for which an administrative consistency concurrence can be made. Future phases of the project will be reviewed independently to determine if the work and activity considered constitutes "minor repairs or improvements."

B. Amendment No. One (Phase 2—Embarkation Facilities at Piers 31, 31½, and 33). Phase 2 involves the renovation and expansion of the embarkation facilities for ferry service to Alcatraz Island and for other Bay cruises, which have been located at Pier 31½ since 2006. These facilities are considered to be inadequate for the number of daily users of the site, confusing for visitors to navigate, and of a design that feels "temporary" in nature and that is inappropriate for a national park gateway. The project is therefore intended to provide capacity for increased ferry service and to better orient and guide visitors through the site. The project renovates the Pier 31½ marginal wharf, and the bulkhead and portions of the shed buildings at Piers 31 and 33. The renovations provide a combination of indoor and outdoor space to welcome, orient, and provide improved basic amenities for the public, including ticket queuing areas, a café and retail space, interpretive displays, and a civic plaza and other public access amenities. The project also replaces a dock and gangway with two parallel floating docks and gangways to support the berthing of up to three ferry boats at a time. The expanded berthing facilities support additional interpretive Bay cruises and, in the future, could provide for limited, weekend-only service to Fort Baker in

Marin County. Service to Fort Baker would require upgrades to docking and visitor facilities there, which would require consideration by the Commission at a future date.

1. Use.

- a. **No Priority Use Area.** The San Francisco Bay Plan designates those areas that should be reserved for priority land uses on the Bay shoreline. Bay Plan Map No. 4 shows the project site, and does not designate the site for a priority use. The Bay Plan policies on Other Uses of the Bay and Shoreline state, in part, that “[s]hore areas not proposed to be reserved for a priority use should be used for any purpose (acceptable to the local government having jurisdiction) that uses the Bay as an asset and in no way affects the Bay adversely” (Policy No. 1). Therefore, the Commission finds the project is not in conflict with any priority use designation for the site.
- b. **Permitted Uses Under the San Francisco Waterfront SAP.** The San Francisco Waterfront SAP provides detailed planning guidelines for the shoreline at this location, including specific policies for permitted uses at the project site. The SAP distinguishes between permitted uses within the footprint of the existing pier structures and the open water area of the Bay.
 - i. **Permitted Uses Within Pier Footprints.** Within the footprint of the existing piers (Piers 31, 31½, and 33), various uses are allowed provided they are found to be consistent with the Public Trust Doctrine and the Port’s Legislative Trust Grant (the Burton Act) (SAP Geographic-Specific Policies for Northeast Waterfront, Piers Not Designated for Removal). The Commission relies in part on the policies of the McAteer-Petris Act, the Bay Plan, and the San Francisco Waterfront SAP to establish and determine if a project meets public trust needs. The Commission also assures that the terms of the Burton Act are satisfied, and that the project is in furtherance of statewide purposes (SAP Geographic-Specific Policies for Northeast Waterfront, Piers Not Designated for Removal). The Commission finds that the use is consistent with the Public Trust doctrine and the Burton Act because a ferry embarkation terminal is a trust use, and that insofar as it is a permitted use under the San Francisco Waterfront SAP, it is consistent with the public trust needs for the area and in furtherance of statewide purposes.
 - ii. **Permitted Uses Within Open Water Area.** The San Francisco Waterfront SAP establishes permitted uses within areas of open water along the Northeast Waterfront. Three locations along the waterfront are designated as “Open Water Basins,” within which

permitted uses are restricted with the intent of providing benefits such as open views of the Bay. In 2012, the SAP was amended to require the Port to identify, and BCDC to approve in a subsequent amendment, a location for a required fourth Open Water Basin. The amendment acknowledged that the removal of Pier 31 could result in the creation of a suitable Open Water Basin between Piers 29 and 33, and the SAP therefore identifies the project site as an "Open Water Basin Study Area" (SAP, Figure 2: "Open-Water Basins, Open Water Basin Study Area and Public Plazas"). In 2013 and 2014, the Port and BCDC assembled a working group and established a public process to identify a fourth Open Water Basin. The Port determined that Pier 31 was in sound structural condition and therefore not a good candidate for removal. Instead, the Port and BCDC planning process resulted in a recommendation to conduct improvements to the Ferry Plaza area behind the Ferry Building as an alternative public benefit in lieu of the creation of a fourth Open Water Basin. While to date the Port has not requested an amendment to remove the Open Water Basin Study Area designation from the project site, this SAP does not place a moratorium on development within this area in the interim. The SAP states: "If siting an open water basin between Piers 29 and 33 is found to be infeasible by a public process...the requirement to remove the Pier 23 shed, including at least 315 feet of the easternmost portion of the shed, will remain until the location, planning and funding of a replacement Open Water Basin is identified by the Port and approved by BCDC" (SAP Geographic-Specific Policies for Northeast Waterfront, Open Water Basins Policy No. 2). Therefore, the Open Water Basin policies, including the restrictions on permitted use within an Open Water Basin, do not apply to the open water areas at project site. The Port acknowledges that the requirement to remove the Pier 23 shed remains in place, and the Commission recognizes that approval of a project in this location does not conflict with the future siting of a fourth Open Water Basin in the Northeast Waterfront.

Therefore, despite its designation as an Open Water Basin Study Area in the SAP, the project is subject to the policies applying to "Open Water Areas" on the Northeast Waterfront. Within the Open Water Area of the Bay adjacent to the piers, permitted uses include water-related recreation, water transportation (e.g., ferries, water taxis, and excursion boats), Bay-oriented commercial recreation and Bay-oriented public assembly, and public access. The Commission finds that the project is for a water transportation use consistent with the use restrictions for the SAP-designated Open Water Area.

2. Bay Fill.

- a. **Fill Resulting from Project.** New Bay fill resulting from the project is limited to the in-water berthing facilities, as the rest of the project is confined to the area above the decks of Piers 31, 31½, and 33. No major structural repairs to the piers or their foundations is proposed as part of the project.

The project removes the existing boarding float and gangway that connect to the Pier 31½ marginal wharf and replaces them with two ferry berths, each of which consists of a gangway (480 square feet of cantilevered fill) and floating docks (2,000 square feet of floating fill) anchored and supported by four 36-inch-diameter steel pile pipes (28 square feet and 48 cubic yards of solid fill). The project also installs four 24-inch-diameter breasting piles on the western edge of Pier 31 (13 square feet and 21 cubic yards of solid fill). The new in-water infrastructure would result in coverage of 5,029 square feet of Bay surface area, and 117 cubic yards of Bay volume. With removal of the existing in-water infrastructure, the project results in net cumulative Bay fill of 2,942 square feet and 105 cubic yards.

- b. **Purpose of Fill and Public Benefits.** McAteer-Petris Act Section 66605(a) provides that further filling of the Bay be authorized only when the public benefits from fill clearly exceed public detriment from the loss of water areas.

NPS's request for concurrence indicates that the 2,942 square feet of net fill is necessary to accommodate increased demand for water transportation and generally to improve the visitor experience to the terminal. NPS states that the ferry embarkation facilities to Alcatraz, which have been located at Pier 31½ since 2006, are inadequate to accommodate projected visitor levels. The in-water infrastructure resulting from the project supports the berthing of up to three ferry boats at a time, whereas the existing facilities support only two vessels.

Overall visitor demand is expected to grow in line with a general growth in tourism in the City and County of San Francisco. NPS modeling shows that in 2018, 7,790 visitors could visit the embarkation site per day, or 1.9 million visitors per year. The number of visitors to Alcatraz Island is not anticipated to grow over current levels, as the number of visitors to the island is capped by NPS. However, in addition to the current ferry routes, the improved berthing facilities allow for increased interpretive cruises of the Bay, and a new weekend-only route between Pier 31½ and Fort Baker, the NPS-owned historic army base in Marin County, could be proposed in the future if improvements at Fort Baker are constructed.

The Commission finds that the project benefits outweigh the loss of 2,942 square feet of water area in that the project provides for a greatly enhanced visitor experience at one of the most popular destinations on the Bay shoreline and enhances opportunities for the public to experience San Francisco Bay.

- c. **Water-Oriented Use.** McAteer-Petris Act Section 66605(a) requires that further filling of the Bay be limited to water-oriented uses or minor fill for improving shoreline appearance or public access to the Bay. The San Francisco Waterfront SAP limits new fill to a smaller subset of uses, which include “[m]inor pile-supported or floating fill for water transportation uses, such as ship and boat berthing facilities, mooring dolphins, buoys, floats and similar support uses” and “[a]reas appropriate for additional ferry terminals” (SAP Geographic-Specific Policies for Northeast Waterfront, Open Water Areas, Policy 2). The Commission finds that the fill authorized by this project is minor fill for water transportation.
- d. **No Alternative Upland Location.** McAteer-Petris Act Section 66605(b) requires that fill should be authorized only when no alternative upland location is available for such purpose. The Commission finds that, by their nature, there is no upland alternative location for the berthing facilities, which must be located over water.
- e. **Minimum Amount of Fill.** McAteer-Petris Act Section 66605(c) requires that the water area authorized to be filled should be the minimum necessary to achieve the purpose of the fill. As discussed above, the purpose of the fill is largely to increase service at the embarkation site by providing for berthing of an additional vessel. NPS’ request for concurrence indicates that the fill is the minimum amount necessary to meet all design standards and the goals of the project. The Commission finds that the fill is the minimum necessary to achieve the project’s purpose.
- f. **Effects on Bay Resources.** McAteer-Petris Act Section 66605(d) states that 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. In addition to Section 66605(d) regarding impacts of fill on Bay resources, the Bay Plan contains related policies cited below. For the reasons discussed herein, the Commission finds that the nature, location, and extent of the fill required for the project minimizes harmful effects to the Bay and Bay resources.

- i. **Volume, Area, and Circulation of Bay Waters.** Bay Plan policies on Water Surface and Volume state, in part, that “[t]he surface area of the Bay and the total volume of water should be kept as large as possible” (Policy No. 1), and that “[a]ny proposed fills...should be thoroughly evaluated to determine their effects upon water circulation and then modified as necessary to improve circulation or at least to minimize any harmful effects” (Policy No. 2). Likewise, Bay Plan Smog and Weather Policy No. 1 states, “[t]o the greatest extent feasible, the remaining water volume and surface area of the Bay should be maintained.” Bay Plan Mitigation Policy No. 1 states, in part, that “[p]rojects should be designed to avoid adverse environmental impacts to Bay natural resources such as to surface water area, volume, or circulation and to plants, fish, other aquatic organisms and wildlife habitat.... Whenever adverse impacts cannot be avoided, they should be minimized to the greatest extent practicable. Finally, measures to compensate for unavoidable adverse impacts to the natural resources of the Bay should be required.” Bay Plan policies on Mitigation further state that “[i]ndividual compensatory mitigation projects should be sited and designed within a Bay-wide ecological context, as close to the impact site as practicable” and “to the extent practicable, be provided prior to, or concurrently with those parts of the project causing adverse impacts.”

As discussed above, the project results in a permanent reduction in Bay volume and surface area. NPS’s request for concurrence discusses that circulation of Bay waters is not anticipated to be adversely impacted due to the project’s solid fill being limited to a total of 12 piles that are not densely placed. The project also results in a net decrease of Bay surface area by 2,087 square feet and the resultant overwater shading to open-water habitat. Therefore, Special Condition II.B.6 is included to require the removal of an equivalent amount of remnant Bay fill or debris at another location within the Central San Francisco Bay, as close as possible to the project site. Special Condition II.B.6 requires that fill mitigation be implemented prior to use of any structure authorized herein. With the removal of fill in this amount, there will be a negligible change to the overall surface area of the Bay. As conditioned, the Commission finds the project is consistent with the above-mentioned Bay Plan policies.

- ii. **Fish and Wildlife.** Policy No. 1 of the Bay Plan policies on Subtidal Areas states: “Any proposed filling...in a subtidal area should be thoroughly evaluated to determine the local and Bay-wide effects of the project on: (a) the possible introduction or spread of invasive

species; (b) tidal hydrology and sediment movement; (c) fish, other aquatic organisms and wildlife; (d) aquatic plants; and (e) the Bay's bathymetry. Projects in subtidal areas should be designed to minimize and, if feasible, avoid any harmful effects.” Policy No. 2 of the Bay Plan policies on Fish, Other Aquatic Organisms, and Wildlife states, in part: “Specific habitats that are needed to conserve, increase, or prevent the extinction of any native species, species threatened or endangered...should be protected....” Policy No. 4 states that the Commission should “...[c]onsult with the California Department of Fish and Game and the U.S. Fish and Wildlife Service or [NMFS] whenever a proposed project may adversely affect an endangered or threatened...species,” “[n]ot authorize projects that would result in the ‘taking’ of any...[listed] species...unless the project applicant has obtained the appropriate ‘take’ authorization...” and “[g]ive appropriate consideration to the recommendations of the [state and federal resource agencies] in order to avoid possible adverse effects of a proposed project on fish, other aquatic organisms and wildlife habitat.”

The project site includes open-water habitat for both federal- and state-listed special-status species (i.e., Central California Coast steelhead, Central Valley steelhead, Central Valley spring-run Chinook salmon, Sacramento River winter-run Chinook salmon, green sturgeon, and Longfin smelt), marine mammals protected by the Marine Mammal Protection Act, and birds protected by the Migratory Bird Treaty Act (MBTA). In-water portions of the project site are also within designated essential fish habitat (EFH) for various federally managed fish species under the Coastal Pelagic and Pacific Coast Groundfish Fishery Management Plans (FMPs).

On October 3, 2017, the National Marine Fisheries Service (NMFS) issued an Endangered Species Act (ESA) Section 7(a)(2) Biological Opinion and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Response for the project. NMFS concluded that the project is not likely to jeopardize the continued existence of Southern DPS green sturgeon, nor is the project likely to result in the destruction or adverse modification of critical habitat for Southern DPS green sturgeon. However, NMFS anticipates possible take of green sturgeon in the form of injury or mortality during the use of an impact hammer for pile installation. An incidental take statement with non-discretionary terms and conditions was issued with the Biological Opinion, as required by Bay Plan policies where a project has the potential to result in a “take” of special-status species. NMFS also found that the proposed project is not likely to adversely affect threatened Central California

Coast steelhead, threatened Central Valley spring-run Chinook salmon, threatened California Central Valley steelhead, endangered Sacramento River winter-run Chinook salmon, or salmonid designated critical habitat in accordance with section 7 of ESA. In regard to essential fish habitat, NMFS found anticipated effects to be minor, temporary, and localized.

During construction, the noise levels and increased turbidity likely to result from pile driving has the potential to adversely affect fish species and marine mammals. Pile driving is anticipated to occur for a period of up to six days, and piles would be installed via impact hammer, with bubble curtains installed to attenuate underwater sound levels. As discussed above, NMFS anticipates the potential for take of green sturgeon in the form of injury or mortality during the use of an impact hammer for pile installation. Therefore, NMFS prepared a Biological Opinion (BO) and an incidental take statement with non-discretionary terms and conditions, resulting in several measures to minimize the potential effects of pile driving. These measures are likewise required by Special Condition II.B.5.b, as follows: Use of a barge mounted impact hammer is allowed to install all steel piles in the Bay to avoid potential impacts to fish species. Impact pile driving shall be limited to a work window between June 1 and November 30 of each year in order to avoid the migration seasons of ESA listed salmonid species in the San Francisco Bay. To further minimize impacts to the threatened Southern DPS of North American green sturgeon, use of bubble curtains shall be required between the pile and impact hammer to attenuate sound levels from the steel piles. Hydroacoustic monitoring shall be conducted for impact pile driving of the first pile of each type driven at each location, per the methods detailed in the Biological Opinion. If the hydroacoustic monitoring during pile driving indicates significantly higher sound pressure levels are being generated than have been calculated and analyzed in the BO, the contractor will incorporate the use of a wood or plastic cushion block atop the steel piles to further attenuate pile driving sound pressure levels generated. An NMFS-approved biological monitor shall be present before and during pile driving, to halt pile driving if marine mammals are observed within 500 meters of the project site, and to maintain sound levels below 90dBA in air when seals or sea lions are present. A copy of the NMFS-approved sound attenuation and monitoring plan shall be submitted to the

Commission staff within 15 days of its approval. If marine mammals are observed within 500 meters of the project site, pile driving shall cease and only resume once the mammals have completely exited the project site.

As conditioned, the Commission finds the project is consistent with the abovementioned Bay Plan policies.

- iii. **Water Quality.** The Bay Plan policies on Water Quality state, in part, 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 policies also state 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 San Francisco Bay Regional Water Quality Control Board’s (RWQCB) Basin Plan and should be protected from all harmful or potentially harmful pollutants.” The policies, recommendations, decisions, advice, and authority of the State Water Resources Control Board and the Regional Board should be the basis for carrying out the Commission’s water quality responsibilities. Finally, the Bay Plan policies on Water Quality state that “[n]ew projects should be sited, designed, constructed, and maintained to prevent or, if prevention is infeasible, to minimize the discharge of pollutants into the Bay by: (a) controlling pollutant sources at the project site; (b) using construction materials that contain nonpolluting materials; and (c) applying appropriate, accepted, and effective best management practices; especially where water dispersion is poor and near shellfish beds and other significant biotic resources.”

Construction of the in-water infrastructure associated with the project has the potential to result in short-term impacts to water quality, particularly in relation to the pile driving activities as discussed above. The project includes a number of avoidance and minimization measures to protect water quality. These include the following: (1) No debris, rubbish, creosote-treated wood, soil, silt, sand, cement, concrete or washings thereof, or other construction-related materials or waste oil or petroleum products will be allowed to enter into or be placed where it would be subject to erosion by rain, wind, or waves and enter the Bay; (2) No fresh concrete or concrete washings will enter the Bay; (3) Protective measures will be used to prevent accidental discharges to waters during fueling, cleaning, and maintenance; (4) Floating booms will be used to contain debris discharged into waters and any debris will be

removed as soon as possible, and no later than the end of each workday; (5) Machinery or construction materials not essential for the project improvements will not be allowed at any time in the intertidal zone; and (6) The project will have a spill contingency plan for hazardous waste spills into the Bay, including floating booms and absorbent materials to recover hazardous wastes, and a requirement that non-buoyant debris discharged into waters will be recovered (by divers) as soon as possible after discharge.

In addition, the project will comply with the Port of San Francisco's standard best management practice for debris and stormwater management during construction. To manage debris, these measures require actions to capture and contain debris, and regular monitoring to ensure that any construction material or debris is removed from the site during work and at project completion. To manage potential stormwater impacts, measures require minimization of ground disturbance activities, appropriate measures to store and cover materials to avoid transmission to the Bay, and use of adequate erosion control supplies such as sand bags, wattles, or shovels.

On July 15, 2019, the San Francisco Bay Regional Water Quality Control Board (Regional Water Board) issued a Notice of Applicability finding that the project qualifies for enrollment under the General Waste Discharge Requirements for Construction and Maintenance of Overwater Structures (Order R2-2018-0009). Special Condition II.B.5.a is included to ensure that project meets the conditions established by the Regional Water Board's General Certification and the Port's standard best management practices for debris and stormwater management. As conditioned, the Commission finds that the project is consistent with the Bay Plan policies on Water Quality.

- g. Sound Safety Standards.** McAteer-Petris Act Section 66605(e) states, "[t]hat public health, safety, and welfare require that fill be constructed in accordance with sound safety standards which will afford reasonable protection to persons and property against hazards of unstable geologic soil conditions or of flood or storm waters." Bay Plan Safety of Fills Policy No. 2 states, in part, that "[e]ven if the Bay Plan indicates that a fill may be permissible, no fill or building should be constructed if hazards cannot be overcome adequately for the intended use...." The Bay Plan Safety of Fills policies also include policies on sea level rise, which are discussed further under Findings Section III.B.4, below.

The in-water work includes two floating barges, 2,000 square feet each, and 12 24- to 36-inch-diameter guide and breasting piles, two 480-square-foot gangways, and a ramp connecting the float and the Pier 31½ wharf area. The project is intended as design-build, and the barge design will follow the guidelines of the U.S. Geological Survey (USGS) Division 35-Waterway and Marina Construction, Section 355123.10 for the design of steel pontoon docks. Therefore, the new barges will be designed to the same minimum standards of safety that would apply to comparably sized deck cargo barges operating in commercial service in the same geographic region. The path of travel (gangways and ramp structures) are governed by the California Building Code (CBC) and ADA Accessibility Guidelines (ADAAG). The design-build concessioner will provide the 100-percent final design for approval by the Port and BCDC. The Commission therefore finds that the project is consistent with the relevant Bay Plan and McAteer-Petris Act policies related to safety standards.

- h. **Permanent Shoreline.** McAteer-Petris Act Section 66605(e) states, “[t]hat fill should be authorized when the filling would, to the maximum extent feasible, establish a permanent shoreline.” The shoreline at the project site is defined by the edge of the existing wharf structure. Within the open water area of the Bay, uses are limited to the narrow set of uses allowed by the San Francisco Waterfront SAP.
- i. **Valid Title of Project Site.** McAteer-Petris Act Section 66605(e) states, “[t]hat fill should be authorized when the applicant has such valid title to the properties in question that he or she may fill them in the manner and for the uses to be approved.” The fill would occur in waters under the jurisdiction of the Port, which owns the project site and is a partner in the project with NPS, as well as a co-permittee to BCDC Permit No. 2018.007.00. The title to Port property, including the project site, is held by the City and County of San Francisco and administered through its Port Commission. Under the Burton Act, the Port has the power to use, manage, operate, and regulate Port lands consistent with public trust restrictions.

3. **Public Access.**

- a. **Maximum Feasible Public Access.** Section 66602 of the McAteer-Petris Act states that “...maximum feasible public access, consistent with a proposed project, should be provided.” Bay Plan policies on Public Access state, in part, that “[a] proposed fill project should increase public access to the Bay to the maximum extent feasible” (Policy No. 1), that “maximum feasible access to and along the waterfront and on any permitted fills should be provided in and through every new development in the Bay or on the shoreline” (Policy No. 2), and that “the access should be permanently guaranteed” (Policy No. 6). The San

Francisco Waterfront SAP policies on Public Access within the Northeast Waterfront state that “[p]ublic access should be provided free of charge to the public, and should provide direct connections to the Bay, both physical and visual” (SAP Geographic-Specific Policies for Northeast Waterfront, Public Access Policy No. 1), and on finger piers, “[t]he longevity of public access improvements required...should be commensurate with the longevity of the development improvements for which they are required” (SAP Geographic-Specific Policies for Northeast Waterfront, Public Access Policy No. 6.a.i.).

The project provides approximately 34,721 square feet of unrestricted public access, consisting of a large civic plaza and circulation areas around the Pier 31½ marginal wharf deck, new seating, interpretive and informational displays, bike parking, and other improvements. The project provides additional improvements along The Embarcadero in the form of bicycle parking and a pedestrian loading area. Special Condition II.B.2.e requires provision of these improvements as public access.

In addition to the unrestricted public access areas, the project provides public amenities that are open to the public free-of-charge during normal operating hours, including public restrooms, a weather-protected seating area, café-style seating, historical interpretive elements and exhibits within the retail space in the Pier 33 bulkhead building. These public amenities are required to be open free of charge to the public, except during nighttime hours, by Special Condition II.B.2.e.

The Commission finds that the public access area, and as discussed in more detail in the sections below, and the improvements within it, provide maximum feasible public access consistent with the project. The public access is a significant improvement upon the facilities currently provided to the public, and enhances the ability of the public to experience the shoreline at this location, offers a more welcoming experience, and provides beneficial and needed amenities including public seating, interpretive displays, weather-protected areas, and increased bike and accessible parking. The majority of the project site is open and free of charge to all members of the public, including those who do not purchase a ticket, with restrictions only on the in-water infrastructure, queuing areas for ticket-holders, and operational space for the terminal, most of which is located within the pier sheds. The public access improvements will be built in phases, and during each phase a connection to the waterfront will be provided for members of the public to the maximum extent feasible while maintaining public safety and visitor experience.

b. Public Access Improvements, Furnishing, and Amenities. Bay Plan Public Access policies state that “[public access] improvements should be designed and built to encourage diverse Bay-related activities and movement to and along the shoreline” (Policy No. 7). The San Francisco Waterfront SAP provides guidance on the appropriate considerations for the design, siting, type, and character of these improvements: “Site furnishings should include lighting, seating, trash and recycling containers, and public access and interpretive signage. Other site furnishings could include planters, sculpture and other public art, telescopes, drinking fountains, public restrooms, swimming ladders, fish cleaning facilities, rod holders, and other furnishings, when appropriate and necessary to meet public needs” (SAP Geographic-Specific Policies for Northeast Waterfront, Public Access Policy No. 13.c). “Paving materials should be of a quality and compatible with the adjacent building materials and overall project character. Materials could include durable planking, stamped and/or tinted concrete, brick, cut stone or concrete pavers or other quality materials, and asphalt” (SAP Geographic-Specific Policies for Northeast Waterfront, Public Access Policy No. 13.a).

The stated goal of the improvements is to “support the long-term vision of the northeast waterfront by improving an existing water-oriented and commercial recreational use on the Bay, creating a new publicly-accessible plaza with more seating and improved Bay views from the Embarcadero, promoting water access to the Bay, and providing additional amenities to the public including new public restrooms, seating, a café, and bicycle parking.” Site furnishings and program elements include: interpretive panels, multi-level seating areas at either end of the Civic Plaza, loose site furniture (e.g., café style seating), fixed benches, metal planters with attached seating, light poles and other lighting elements, bike racks, pavement with interpretive elements, and other interpretive signs and elements. Site furnishings primarily feature simple and clear design and materials such as timber wood, metal, and concrete to unite the elements across the site and to be compatible with the historic character of the site. Special Condition II.B.2.b is included to ensure that the public access improvements at the project site are developed consistent with those described in NPS’ concurrence request.

The project incorporates seating appropriate for the anticipated high traffic of visitors to the site, or approximately 473 seats (or 714 linear feet of seating) to accommodate 53 percent of the anticipated maximum 1,000-person visitor capacity of the site. This includes a mix of benches, loose furniture, and two prominent seating features located at either end of the Civic Plaza. The seating features are multilevel and allow for informal amphitheater seating, overlook areas, and high back benches that are designed with a maximum height of 36 inches to allow for

uninterrupted views of the Bay and plaza. The project also incorporates metal planters with attached seating, which will be located primarily in the transition areas between the Civic Plaza and the canopies on either end of the marginal wharf. The planters will include plants from the historic Alcatraz gardens and native coastal ecologies of the Golden Gate National Recreation Area (GGNRA) that are low maintenance and suitable for high traffic locations. The planter boxes will be accompanied by interpretive panels integrated into the planter furnishing to educate visitors.

Some additional loose and café style seating is to be located adjacent to the Pier 31 bulkhead building. Café style seating will spill onto the public access area, where it will be open to both paying café patrons and non-patrons alike. The SAP allows for such “[t]emporary commercial seating and dining areas” provided it “would not interfere with the primary public access use of the area,” “would serve to enliven the pier and enhance the public’s opportunities to enjoy the waterfront,” “some limited amount of this seating is made available to the public at no cost,” “[a] minimum of 35 feet of passable walkway is maintained on Large Piers” and “improvements for such use are temporary and can be easily removed”(SAP Geographic-Specific Policies for Northeast Waterfront, Public Access Policy No. 10.f.). To ensure these conditions are met, Special Condition II.B.2.h is included to require submittal of a vendor management plan for review and approval by or on behalf of the Commission. Approval of the plan is required prior to use of any portion of the public access areas by vendors in order to ensure that public access is not impeded or diminished by their operations. Special Condition II.B.2.f also requires that public seating areas adjacent to café or commercial space be signed as public seating open to all users.

c. Site Access for Pedestrians, Bicyclists, and Vehicles. Bay Plan

Transportation Policy No. 5 states that “[Ferry] terminals should be located near higher density, mixed-use development served by public transit. Terminal parking facilities should be set back from the shoreline to allow for public access and enjoyment of the Bay.” The SAP provides that, “[v]ehicle circulation in public access areas should be limited to service and maintenance vehicles necessary to serve the facility and should be concentrated during late night and early morning hours” (SAP Geographic-Specific Policies for Northeast Waterfront, Public Access Policy No. 13.f.). “Parking on piers will be planned to minimize adverse impacts on public access through such measures as avoiding queuing that extends over Herb Caen Way or other public access areas; limiting vehicle access on pier aprons to maintenance, service and emergency vehicles; and using special paving, signing and other design treatments at crosswalks and other pedestrian-vehicle interfaces to identify the joint

use and ensure a pedestrian-friendly environment” (SAP Geographic-Specific Policies for Northeast Waterfront, Transportation and Parking Policy No. 4).

The project site is along The Embarcadero and served by public transportation. The project removes on-wharf parking that previously existed at the project site and moves all vehicular parking within the Pier 31 shed building. To facilitate passenger drop-off and pick-up, the project includes a 110-foot vehicle loading zone between the new public plaza and the Pier 33 driveway that would accommodate a queue of five vehicles, with collapsible bollards. The zone would manage visitor drop-off and pick-up activities, and improve safety for passengers, drivers, and cyclists in the area. The loading zone would be used in conjunction with ten tandem parking stalls for staff and three ADA-designated parking stalls within the interior of the Pier 31 shed building available to visitors on a first-come, first-served basis.

The project provides for additional bicycle parking along the Embarcadero, and within the project site both on the marginal wharf and within the Pier 31 shed building. In total, 28 Class 2 bicycle parking spaces will be added to the Embarcadero Sidewalk, 24 Class 2 bicycle parking spaces will be provided at various locations on the marginal wharf and open to the air, and 34 Class 2 bicycle parking spaces will be provided within the Pier 31 building.

- d. **Public Safety and Comfort.** In terms of public safety and comfort, the SAP requires that projects provide appropriate lighting and “[a]ddress microclimatic conditions by providing, to the maximum practicable extent, places that are sheltered from the wind and receive maximum sun exposure” (Geographic-Specific Policies for Northeast Waterfront, Public Access Policy No. 13.f). “Public access should be located at ground or platform level, but minor variations in elevation intended to enhance design of open space may be permitted. Public access should also be open to the sky, although some covering may be allowed if it serves the public areas and does not support structures” (SAP General Policy No. 6.a).

The project will incorporate a variety of lighting concepts to provide adequate lighting, while minimizing light at the water’s edge where bright light has the potential for adverse impacts to Bay habitat and nighttime viewing of the Bay. An enclosed seating area is provided during operating hours under the disembarkation canopy, providing wind and sun protection within a portion of the site, while the majority of the site is open to the sky as consistent with the planning principles for the waterfront found in the SAP.

- e. **Movement to and Along the Shoreline.** Bay Plan and San Francisco Waterfront SAP policies encourage the design of public access areas that encourage movement to and along the water's edge in most circumstances: "Public access improvements...should be designed and built to encourage diverse Bay-related activities and movement to and along the shoreline" (Bay Plan Public Access No. 7). "Access to and along the waterfront should be provided by walkways, trails, or other appropriate means and connect to the nearest public thoroughfare where convenient parking or public transportation may be available" (Bay Plan Public Access No. 9).

The project improves the pedestrian realm at the Pier 31½ site by reducing the number of pedestrian conflict points with automobiles, and by creating a more spacious and welcoming pedestrian experience with enhanced exhibits and seating. A central Civic Plaza is designed as a "welcome mat inviting visitors and the city into the site and providing generous circulation for the high volume of visitors." The project also improves upon the conditions of the existing site by removing parking from the wharf deck and moving it inside the Pier 31 shed. NPS' concurrence request states: "Under existing conditions, visitors on foot enter Pier 31½ from The Embarcadero between the bulkhead buildings. Under project conditions, the site will remain accessible from The Embarcadero. Additional pedestrian access would be provided through the interior of the Pier 33 bulkhead buildings. The current project driveway, measuring approximately 32 feet, would be closed to vehicles, except for emergency vehicles and after-hours fuel trucks; these exceptions would be permitted through the installation of collapsible bollards along the current driveway. As noted, the existing drop off zone would remain north on The Embarcadero, and the project includes construction of an additional loading zone and additional ADA-designated parking spaces."

On the San Francisco Northeast Waterfront, the SAP requires that "[p]articular attention should be given to the provision of perimeter public access along the platform edge" (SAP General Policy No. 6.a). "Queues for excursion boats and ferries should be managed so that continuous shoreline public access is maintained and no permanent or semi-permanent structures prevent access to the shoreline" (SAP Geographic-Specific Policies for Northeast Waterfront, Public Access Policy No. 13.k). The design of the Pier 31½ marginal wharf area allows for efficient queuing of passengers beneath the canopies, allowing for the public to access the shoreline via the Civic Plaza at the center of the site. The site design also preserves the public access along the waterfront guardrail area and keeps ferry queues from spilling into these areas. To ensure that ferry operations and queuing procedures are conducted so as

to minimize disruption to the public access areas, Special Condition II.B.2.h is included to require submittal of a vendor management plan for review and approval by or on behalf of the Commission. Approval of the plan is required prior to use of any portion of the public access areas by the ferry operator in order to ensure that public access is not impeded or diminished by their operations.

To encourage movement to and along the shoreline, informational and wayfinding signage is to be provided as part of a project. The Bay Plan specifies that, “[p]ublic access improvements...should be identified with appropriate signs” (Public Access Policy No. 7). The SAP requires that projects “[p]rovide signage, including public access area identification, directional signage for pedestrian movement, Bay Trail signs and interpretive signage that informs the public of the history, both human and natural, of the Bay and San Francisco Waterfront” (SAP Geographic-Specific Policies for Northeast Waterfront, Public Access Policy No. 13.i). The SAP “[a]llow[s] only attractively designed identification, directional, regulatory or informational signs, and signs for on-site businesses on adjacent buildings” (SAP Geographic-Specific Policies for Northeast Waterfront, Waterfront Design Policy No. 1.j.).

The project includes signage to provide visitors with “conspicuous, clear and immediate wayfinding information.” The signage includes a monument sign at the entrance to the Civic Plaza at a scale that matches the surrounding buildings and is visible for both pedestrian and vehicular traffic, and wayfinding signs at the interior corners of the bulkhead building to quickly direct visitors to the primary destinations of interest. Identity signage throughout the site would show the location of public restrooms, bicycle parking, and other site features. Special Condition II.B.2.f is included to require submittal of a signage plan that demonstrates that effective wayfinding signage will be installed sufficient to meet these objectives, and that the public nature of the site is made clear by the inclusion of “Public Shore” signs at the site’s entrance and along the water’s edge of the marginal wharf.

- f. **Barrier-Free Access.** Bay Plan Public Access No. 7 requires that “[p]ublic access improvements...should permit barrier free access for persons with disabilities to the maximum feasible extent.”

All proposed public access will be accessible, as defined by the Americans with Disabilities Act (ADA). The improvements include upland improvements, paths of travel, and queuing areas. This includes the installation of three ADA-designated parking stalls, and an FAS-compliant loading zone that will provide access for tour buses and persons with

disabilities. Special Condition II.B.1 requires plan review to ensure that the project conforms to the accessibility improvements defined for the project.

- g. Views and Visual Character.** Bay Plan policies on Appearance, Design and Scenic Views state, in part, “[a]ll bayfront development should be designed to enhance the pleasure of the user or viewer of the Bay. Maximum efforts should be made to provide, enhance, or preserve views of the Bay and shoreline, especially from public areas”-(Policy No. 2); that “[s]tructures and facilities that do not take advantage of or visually complement the Bay should be located and designed so as not to impact visually on the Bay and shoreline” (Policy No. 4); that “[s]horeline developments should be built in clusters, leaving open area around them to permit more frequent views of the Bay” (Policy No. 8); and that “[v]iews of the Bay from vista points and from roads should be maintained by appropriate arrangements and heights of all developments and landscaping between the view areas and the water” (Policy No. 14). The SAP likewise requires that, “[b]uilding height and bulk should generally be low scale in order to preserve views to the Bay, minimize shading of on-pier public access areas and reflect the historic character of the waterfront” (SAP Geographic-Specific Policies for Northeast Waterfront, Waterfront Design Policy No. 1.d).

The project design includes a number of measures to preserve and enhance Bay views and transparency through the site. The proposed project will open up views of the Bay from The Embarcadero through removal of the existing canopy and the construction of a new public plaza between Piers 31 and 33. NPS’ request for concurrence states that “the views would connect the public to the working waterfront and highlight maritime features including berthing excursion vessels, Bay vessel traffic, and other maritime uses in the Bay.” Another major element in the design that preserves views is the siting and design of the two concrete canopies that provide weather protection for visitors queuing for tickets, as well as for an enclosed seating area. The canopies are placed on either end of the marginal wharf behind the footprint of the bulkhead buildings and would generally not be visible from The Embarcadero. Lastly, to open up views and improve the overall appearance of the site, the parking area will be moved inside the shed buildings and off the deck of the marginal wharf to provide for unimpeded visual access to the Bay.

To further protect views on the Northeast Waterfront, the San Francisco Waterfront SAP requires “view corridors” where “[i]mportant Bay views along The Embarcadero and level inland streets should be preserved and improved” with minor encroachments, such as from maritime facilities or elements of a distinct maritime character” (SAP General Policy No. 7).

“Diverse views of the Bay, the City and waterfront and maritime activities along the water’s edge should be provided at frequent intervals along The Embarcadero...” (SAP Geographic-Specific Policies for Northeast Waterfront, Bay Views Policy No. 1) with the preservation of the “existing Bay view corridor between the Pier 31 and Pier 33 Bulkhead Buildings” (SAP Geographic-Specific Policies for Northeast Waterfront, Bay Views Policy No. 3).

To ensure that views of the Bay achieved by the project design are protected in line with the policies of the SAP, Special Condition II.B.3 is included to require a “view corridor” in the area between the Pier 31 and 33 bulkhead buildings. There are minimal visual disruptions within the marginal wharf area as a result of the project’s design, and these are limited to seating, lighting, and signage elements designed with maintaining visual transparency in mind. The view corridor would prohibit the installation of any major visual obstructions within the plaza, with the exception of temporary structures. Other structures or installations could be authorized in the future by or on behalf of the Commission through plan reviewed allowed by Special Condition II.B.1 upon finding that such a structure or installation would not adversely impact views to the Bay. While the terminus of the view from The Embarcadero will often be not of open water, but rather of moored ferry boats, such an encroachment on the Bay view is consistent with the maritime character of the site and is allowed within protected view corridors by the SAP.

The SAP also provides more detailed design guidance related to preserving and enhancing scenic views to the Bay, requiring “[p]ublic overlooks and viewing areas with convenient pedestrian access...on piers” (SAP Geographic-Specific Policies for Northeast Waterfront, Bay Views Policy No. 2). Public access areas in the Northeast Waterfront are to “...focus on its proximity to the Bay and on the views and unique experiences that nearness to the Bay affords” (SAP Geographic-Specific Policies for Northeast Waterfront, Public Access Policy No. 3). Public access should make use of “[h]and rails that maximize visual access to the Bay, particularly for children and persons in wheelchairs, should have a top rail that is comfortable to lean on, and should be constructed of durable, low-maintenance materials, consistent with the PortWalk design standards. Where possible, use “bull rails” in lieu of handrails to provide safe, unimpeded views of the Bay from pier perimeters” (SAP Geographic-Specific Policies for Northeast Waterfront, Public Access Policy No. 13.b-). Likewise, “[v]iews of the water should be maximized by designing handrails, fences, marina gates, canopies and other shoreline accessory structures with maximum practicable transparency” (SAP Geographic-Specific Policies for Northeast Waterfront, Bay Views Policy

No. 7). In addition, the design of the project should “[a]void placing mechanical equipment, pipes, or ducts on roof surfaces and shiny or highly polished materials on roof surfaces and facades” (SAP Geographic-Specific Policies for Northeast Waterfront, Waterfront Design Policy No. 1.e), and avoid the “use of reflective glass” (Policy No. 1.f).

The guardrails at the water’s edge on the Pier 31½ marginal wharf are designed to maximize visual transparency and allow views of the water. They also have a rail that encourages leaning, and includes interpretive signs that draw visitors to the water’s edge. The design of the paving, lighting, planting, canopies, and interpretive panels across the site have been made to both maximize views as well as take advantage of the Bay as an asset within the unique and historical location of the surrounding waterfront, and are consistent with the SAP’s waterfront design policies.

- h. **Historic Preservation and Interpretation.** The SAP requires that historic structures within the Port’s Embarcadero Historic District, of which this project site is a part, “[s]hould be showcased as an important amenity in the design of public access areas” (SAP Geographic-Specific Policies for Northeast Waterfront, Historic Preservation No. 3).

The project preserves and protects the original historic fabric of the pier structures in its renovation of the site. NPS’ request for concurrence states: “The overall treatment philosophy is rehabilitation, informed by *The Secretary of the Interior’s Standards for Rehabilitation of Historic Buildings*. The project seeks to preserve and protect the original historic fabric of the pier structures, and where possible, rehabilitate and restore original fabric. The marginal wharf in between the pier structures would be rehabilitated in a manner that is sensitive to its historic open, utilitarian character as a site for berthing large vessels and loading/unloading cargo.” The proposed rehabilitation at the marginal wharf is sensitive to the historic open and utilitarian character of the wharf for berthing large vessels and for loading and unloading cargo. The only removal element of the project is the removal of a non-historic canopy structure, which is replaced by two new canopies that do not obstruct the views of the Bay and thus provide a substantial public access improvement.

The SAP also requires projects on historic piers to “...incorporate unique and special amenities that draw the public to them, including cultural expression, (e.g., public art, event programming or unique views)” (SAP Geographic-Specific Policies for Northeast Waterfront, Public Access Policy No. 10.a). The project includes a great amount of historic interpretation, which deals with themes related to Alcatraz Island (including the former prison and the occupation of the island by Native American protestors in the 1970s), as well as to the maritime history of

the San Francisco Waterfront. NPS's concurrence request describes the conceptual approach to historic interpretation that will occur at the site which may incorporate 12 unique interpretive exhibit techniques, including: 1) windscreen glass panels with either Alcatraz or GGNRA-specific imagery; 2) benches with interpretive tidbits etched into wood surfaces; 3) railing wayside panels featuring Port stories at the wharf edge; 4) cast tactile elements with dimensional relief for accessibility purposes; 5) restroom graphic panels with stories of water treatment at Alcatraz; 6) a dimensional bronze tactile map of Alcatraz; 7) information about other GGNRA destinations and transit options; 8) audiovisual devices including LED displays highlighting current use and other interpretive messages; 9) interpretive paving integrating the story of break bulk shipping into the central paving area; 10) Bayside History Walk elements featuring the beltline railway and integrated into the paving and window treatment; 11) castings on the underside of the concrete canopies that contain interpretive messages; and 12) lenticular panels that juxtapose two unique views. Special Condition II.B.2.f is included to require submittal of a signage plan for review and approval by or on behalf of the Commission that includes a historic interpretation component consistent with the package described in NPS' concurrence request.

Included in the SAP's historic interpretation policies on the Northeast Waterfront is the requirement for development of the "Bayside History Walk," a network of exhibits constructed through projects along the waterfront that "[p]rovide interpretive amenities with each improved segment...including historic photographs, explanatory text and maritime artifacts so that the History Walk functions as a self-guided tour of the waterfront." SAP requirements for the design of the History Walk include that the "[w]alk should be a minimum of ten feet in width along the water's edge and 12 feet or more in width in the interior of a pier shed or bulkhead building. Narrower entryways may be appropriate through existing bulkhead buildings, gates or other existing entry points. In some cases, interior segments of the Bayside History Walk may include or connect to interior public open spaces or lobbies, including atria; and... Portions of the Bayside History Walk may be covered by structures" (SAP Geographic-Specific Policies for Northeast Waterfront, Public Access Policy No. 4).

The project includes a new segment of the Bayside History Walk within the Pier 33 bulkhead building, which will be repurposed as an "interpretive retail" space and welcome center for visitors to the site. GGNPC also operates interpretive retail spaces at the Land's End Visitor Center, Golden Gate Bridge Welcome Center, and Crissy Field Warming Hut. The interior of the bulkhead building will be renovated, and returned

to its more historic condition. The renovations will allow for visitors to see straight through the bulkhead per the original alignment of the rail corridor that was once there. The renovations will also remove the majority of the non-historic second level, restoring a majority of the bulkhead space. Special Condition II.B.2.f requires submittal of plans for review by or on behalf of the Commission that demonstrate that interpretational elements are being incorporated into the bulkhead building consistent with the SAP's guidelines for the Bayside History Walk. Elements described in the request for concurrence include graphic panels, oversize window decals, artifacts, three-dimensional elements, videos, publications and guides that highlight historical and contemporary Port imagery. Special Condition II.B.2.i is included to ensure that the Bayside History Walk segment within the bulkhead building be open and free to the public during operating hours.

No designated segment of the Bayside History Walk is provided within the renovated portions of the Pier 31 bulkhead or shed building as part of the project. The project covers only a portion of Pier 31, the remainder of which is unaffected by the project. However, in the future, should Pier 31 be significantly redeveloped, the possibility will exist to provide an interior public access space through Pier 31 and connecting to the Pier 31½ marginal wharf structure. In combination with the planned construction of public access areas and walkways on the apron and marginal wharf at Pier 29, required pursuant to BCDC Permit No. 2012.002, a connection through the Pier 31 shed could provide for a continuous pedestrian walk along the water and/or through the interior of pier sheds for the length of the waterfront from Pier 27 to Pier 33. Such a continuous network of public access pathways and spaces on the interior side of the piers would provide a significant and unique experience not currently available at this portion of the San Francisco waterfront, but similar to what exists further south on the waterfront in the area between Rincon Park and Pier 9. Therefore, Special Condition II.B.2.i is included to require NPS to allow for a future connection to be constructed through the Pier 31 shed building and reasonably coordinate with the sponsors for any significant renovation in the adjacent portion of Pier 31 to allow for creation of a connection that could serve as a future segment of the Bayside History Walk. A possible location where such a connection might be provided within the shed building and that location is shown for illustrative purposes on Exhibit A.

- i. **Limited Restrictions on Use of Public Access Areas and Amenities.** The San Francisco Waterfront SAP provides that “[p]ublic access should generally be accessible at any time; however, reasonable restrictions on public access may be approved to promote public safety and security” (SAP Geographic-Specific Policies for Northeast Waterfront, Public Access

Policy No. 2). As discussed above, approximately 34,721 square feet of unrestricted public access is provided as part of the project, with additional public amenities provided during normal business hours but closed at night (e.g., public restrooms, enclosed seating area, Bayside History Walk) due to security and operational demands.

In addition, limited partial and full closure of the public access areas for special events is envisioned and permitted as described in Special Condition II.B.2.g. Special events would be allowed to occur up to 12 times a calendar year within the portion of the site east of the Civic Plaza, as shown on Exhibit C. Additionally, the full public access area could be closed for special events for a period up to 24 hours on two nonconsecutive occasions within a calendar year. One such 24-hour event might include the activities associated with the commemoration of the American Indian occupation of Alcatraz, held every November. For this event, tickets are distributed to the public through park partners and community organizations. Closure of the public access required for these events would be limited to a period not to exceed 24 hours and would be confined to a relatively small area on the shoreline. When such closure is required, public access to the shoreline is still available at locations nearby on the shoreline along the Embarcadero and in close proximity to the project site.

Finally, Special Condition II.B.2.d is included to allow for the establishment of limited rules and restrictions on the public access areas, in response to a verified need, and subject to approval by or on behalf of the Commission.

- i. **Maintenance.** Bay Plan Public Access No. 7 requires that “[p]ublic access improvements... should include an ongoing maintenance program.” The SAP further requires that “[p]ublic access improvements provided for projects within the Northeastern Waterfront should be designed to be low maintenance and should be maintained by the responsible party” (SAP Geographic-Specific Policies for Northeast Waterfront, Public Access Policy No. 13.j).

The project design incorporates low-maintenance and durable materials where possible within the public access areas. Further, an ongoing maintenance program has been developed for the project. Under the project, the Park Service and GGNPC are entering into a long-term agreement with the Port that will provide for the development, operation, and maintenance of the improved ferry embarkation site at Pier 31½. This development will be accomplished through two Port leases: one with the Park Service ferry concessioner and one with GGNPC. Following Project implementation, the landside portions of the site including new public access improvements (e.g., walkways, benches,

and landscaping) and the overwater ferry berths would be maintained by the Park Service ferry concessioner. The proposed publicly accessible café and retail spaces would be maintained by the GGNPC or its respective lease holder. Special Condition II.B.2.c is included to ensure that public access areas are adequately maintained so that they remain open, safe and available to the public into the future.

4. Sea Level Rise and Flooding.

- a. **Flood Risk Analysis.** Bay Plan Safety of Fills Policy No. 4 states, in part, “[n]ew projects on fill or near the shoreline should either be set back from the edge of the shore so that the project will not be subject to dynamic wave energy, be built so the bottom floor level of structures will be above a 100-year flood elevation...” According to the Federal Emergency Management Agency (FEMA), the current Base Flood Elevation (BFE) for the project site is +9 feet NAVD88, or 3 feet below the elevation of the wharf deck. BFE is the elevation to which flood waters are anticipated to rise during a 100-year flood event, which has a 1 percent chance of occurrence in any given year. Therefore, the site is not currently at risk of flooding even during a fairly extreme tide or storm event.

Bay Plan Safety of Fills Policy No. 4 also states that new fill and shoreline projects should be built taking “future sea level rise into account for the expected life of the project, [and that projects should] be specifically designed to tolerate periodic flooding, or employ other effective means of addressing the impacts of future sea level rise and storm activity.” Bay Plan Climate Change Policy No. 2 states: “When 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 and current flood protection and planned flood protection that will be funded and constructed when needed to provide protection for the proposed project or shoreline area. 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.”

In analyzing a project’s risk of flooding as a result of sea level rise, the Commission currently relies on the sea level rise estimates provided in the 2018 California Sea Level Rise Guidance from the Ocean Protection Council and Natural Resources Agency (“2018 State Guidance”), which

represents the best available science. The Guidance recommends use of probabilistic projections to understand and address potential sea level rise impacts, which associate a likelihood of occurrence with sea level increases and rates tied to a range of emission scenarios. The analysis here relies on the State’s projections for projects where a “medium to high” level of risk aversion is called for. The 2018 State Guidance states that the medium to high risk aversion projections are appropriate to provide “[a] precautionary protection that can be used for less adaptive, more vulnerable projects or populations that will experience medium to high consequences as a result of underestimating sea-level rise....” The medium to high risk aversion scenario is appropriate in analyzing this project in part because the wharf upon which much of the public plaza is located is not easily adapted. Additionally, the shoreline public access provided on the Pier 31½ deck has a relatively limited ability to be relocated to an upland location in the future as it is bound by The Embarcadero.

Given the level of risk tolerance for this project and on the basis of the projections in the guidance, the analysis plans for 1.9 feet of sea level rise at 2050. The anticipated lifetime for the project is 30 years, and the lease for the project with the Port likewise terminates in 2050. The water levels during a 100-year (1 percent likelihood) storm would be +10.9 feet NAVD88. As discussed below, with the wharf deck at +12 feet NAVD88, the project is not anticipated to experience flooding, even during a 100-year storm event, during its projected 30-year life.

In the event the terminal remained in use past 2050, the guidance assumes that if global greenhouse gas emissions are curbed consistent with the United Nations Framework Convention on Climate Change (UNFCCC) 2015 Paris Agreement—a “low-emissions” scenario—5.7 feet of sea level rise are anticipated to occur by 2100. If global emissions are not aggressively reduced and a “business-as-usual” scenario occurs—a “high-emissions” scenario—6.9 feet of sea level rise are anticipated to occur by 2100.

Employing the medium-to-high risk scenarios at the project site, where the Mean Higher High Water (MHHW) level is +6 feet NAVD88 and the water levels during the 100-year (1% likelihood) storm event is +9 feet NAVD88, the following water levels would be planned for:

- At 2050, with an anticipated rise in sea level of 1.9 feet, the MHHW level would be +7.9 feet NAVD88. The water levels during a 100-year (1% likelihood) storm would be +10.9 feet NAVD88.

- At 2100, assuming a low-emissions scenario, with an anticipated sea level of approximately 5.7 feet, the MHHW level would be +11.9 feet NAVD88. The water levels during a 100-year (1% likelihood) storm would be +15.9 feet NAVD88.
- At 2100, assuming a high-emissions scenario, with an anticipated rise of sea level of approximately 6.9 feet, the MHHW level would be +13.1 feet NAVD88. The water levels during a 100-year (1% likelihood) storm would be +16.5 feet NAVD88.

b. Resilience to Mid-Century Sea Level Rise. Bay Plan Climate Change Policy No. Three states, in part, that “[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.” Bay Plan Public Access Policies 5 and 6 state that “[p]ublic access should be sited, designed, managed, and maintained to avoid significant adverse impacts from sea level rise and shoreline flooding” and that “[a]ny public access provided as a condition of development should either be required to remain viable in the event of future sea level rise, or equivalent access consistent with the project should be provided nearby.”

The project is sited primarily on piers located at sufficient elevation above water that it would not experience flooding during a 100-year storm event today, nor is it anticipated that it would be subject to flooding during a 100-year flood at mid-century. The elevation of the wharf structure at +12 feet NAVD88 is approximately level with the projected water level at 2050 during a 100-year storm event with anticipated sea level rise. Thus, the public access is anticipated to be resilient to mid-century sea level rise based on the best available scientific data. In addition, the project will be constructed with a cast-in-place concrete curb along the bay front facing edge of the marginal wharf that would avoid flooding with water levels up to an elevation of +13 feet NAVD88 to protect against flooding and storm surge. This measure would protect the site from anticipated water levels during a 100-year storm event under a high-emissions scenario through 2070, well past the project’s 30-year lease term. The in-water dock system is floating, and can rise with increasing water levels.

c. Adaptive Capacity and Adaptation Measures. Bay Plan Climate Change Policy No. 3 states, in part, “[i]f 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.” The project is not anticipated to remain in place longer than mid-century. However, in the event that the project remains in place beyond its anticipated life, or should flooding impacts related to sea-level rise be worse than anticipated by the current state guidance, the project does have the capacity to implement measures to adapt to a degree.

The project will be constructed with a cast-in-place concrete curb along the bay front facing edge of the marginal wharf that would avoid flooding with water levels up to an elevation of +13 feet NAVD88 to protect against flooding and storm surge. This measure would protect the site from anticipated water levels during a 100-year storm event under a high-emissions scenario through 2070, well past the project’s 30-year lease term.

Should water levels exceed this elevation, at such a time as flooding becomes more regular and there are impacts to the public’s ability to access the waterfront, operations are anticipated to be suspended during flooding. Longer-term efforts are under way to provide protection against both extreme flooding and seismic events along the entire Embarcadero, including the project site, through the Port’s Embarcadero Seawall project. Should measures such as rebuilding the pier, raising the elevation of the wharf deck, or even relocating the facility be proposed, the design of the access ramp and gangway is such that landside connection points could be disconnected and reinstalled at a higher elevation. Therefore, it is anticipated that, prior to the time at which flooding requires major adaptive measures to avoid regular flooding of the project site, either the use of the site as the ferry terminal will cease or the Commission will receive an application for long-term measures to address flood risk at this site.

In the event that the project remains in place and no adaptive measures are proposed or implemented, at some future date measures will be required to ensure that adaptive measures are conducted at the project site to avoid significant flood impacts from sea level rise. Therefore, Special Condition II.B.4 is included to require documentation of any major tidal flooding events at the project site. Special Condition II.B.4 requires that a sea level rise adaptation plan be submitted for review and approval within 180 days of the first occurrence of coastal flooding that results in closure of any portion of the project. This is intended to provide for the timely development of adaptation actions for the site as soon as sea level rise begins to impact the project during tides, storms, or both. The adaptation plan would establish an implementation timeline to

ensure the project's adaptability to sea level rise. As conditioned, the Commission finds that the project is consistent with the Commission's law and Bay Plan policies related to sea level rise and flooding.

5. **Design Review Board.** The Design Review Board (DRB) reviewed the project in coordination with the Port's Waterfront Design Advisory Committee (WDAC) at its meetings on August 2, 2017 and January 22, 2018.

At the August 7, 2017 meeting the Board favorably reviewed the project and suggested the project proponents refine elements of the design related to the canopies, lighting, bollards, signage, open space usability and circulation, interpretive amenities (particularly for children), plantings, plaza orientation, sense of arrival, and connection to the surrounding areas. In response, prior to the second review, several changes were made to the proposed design including: details to the canopy, revisions to seating and bicycle parking, additional planting, plaza material changes, a lighting plan, revisions to the railings, a new signage and wayfinding strategy, and additional interpretation opportunities.

At the second meeting on January 22, 2018, the Board expressed its approval of the changes to the design, in particular, how it provided for views, the design of the canopy and plaza, and the transparency, lightness and elegance of the buildings that tie well to the surrounding landscape.

6. **Public Trust.** The project is to provide public access and to construct a ferry and excursion boat terminal, a water-oriented use, which will serve a regional and statewide need. Therefore, the Commission finds the project is consistent with the public trust and the terms of the Burton Act.

7. **Environmental Review.**

a. **CEQA.** The City and County of San Francisco, the lead agency for the project, prepared, circulated, and, on December 6, 2017, certified a Final Mitigated Negative Declaration (MND) pursuant to the California Environmental Quality Act (CEQA). The Final MND was amended by the San Francisco Planning Department and on February 15, 2018, the certification was upheld. The MND determined that the project was consistent with the Secretary of the Interior's Standards and therefore a less-than-significant impact under CEQA.

b. **NEPA.** Pursuant to the National Environmental Policy Act (NEPA), a Final Environmental Impact Statement (FEIS) was published in January 2017. Golden Gate National Recreation Area completed the Record of Decision (ROD) for the Alcatraz Ferry Embarkation Plan/Environmental Impact Statement on January 11, 2018.

IV. Standard Conditions

- A. **Concurrence.** This Letter of Agreement shall not take effect unless the United States Department of the Interior, executes the original of this Letter of Agreement and returns it to the Commission within ten days after the date of the issuance of the Letter of Agreement. No work shall be done until the acknowledgment is duly executed and returned to the Commission.
- B. **Assignment of Interest.** The rights, duties, and obligations contained in this Letter of Agreement are assignable. When the United States Department of the Interior 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 Letter of Agreement, the United States Department of the Interior /transferors and the transferees shall execute and submit to the Commission an assignment form acceptable to the Executive Director. An assignment shall not be effective until: (1) the assignees execute the Letter of Agreement; (2) the Executive Director receives an acknowledgment that the assignees have read and understand the Letter of Agreement; (3) agree to be bound by the terms and conditions of the Letter of Agreement; and (4) the assignees are accepted by the Executive Director as being reasonably capable of complying with the terms and conditions of the Letter of Agreement.
- C. **Letter of Agreement Runs with the Land.** Unless otherwise provided in this Letter of Agreement, the terms and conditions of this concurrence shall bind all future owners and future possessors of any legal interest in the land and shall run with the land.
- D. **Other Government Approvals.** All required permissions from governmental bodies must be obtained before the commencement of work; “these bodies may include, but may not be limited to, the U. S. Army Corps of Engineers, the State Lands Commission, the Regional Water Quality Control Board, and the city or county in which the work is to be performed, whenever any of these may be required. This Letter of Agreement does not relieve the United States Department of the Interior of any obligations imposed by State or Federal law, either statutory or otherwise.
- E. **Built Project must be Consistent with Consistency Determination.** Work must be performed in the precise manner and at the precise locations indicated in your consistency determination as such may have been modified by the terms of the Letter of Agreement and any plans approved in writing by or on behalf of the Commission.
- F. **Life of Authorization.** Unless otherwise provided in this Letter of Agreement, all its terms and conditions shall remain effective for so long as it remains in effect or for so long as any authorized use or constructed feature exists, whichever is longer.

- G. **San Francisco Bay Coastal Zone.** Any area located at the time the Letter of Agreement is granted or thereafter in the Coastal Zone of the San Francisco Bay Conservation and Development Commission (BCDC) under the Coastal Zone Management Act (CZMA) and thus presumptively subject to the jurisdiction of the BCDC under the CZMA shall continue to be located within the Coastal Zone of the BCDC notwithstanding the placement of any fill or the implementation of any substantial change in use authorized by this Letter of Agreement. Any area not located within the Coastal Zone of the BCDC that becomes, as a result of any work or project authorized in this Letter of Agreement, subject to tidal action shall be considered to be located within the BCDC's Coastal Zone and thus presumptively subject to the Commission's CZMA jurisdiction.
- H. **Changes to the Commission's Coastal Zone Under the CZMA as a Result of Natural Processes.** This Letter of Agreement reflects the location of the shoreline of San Francisco Bay when the Letter of Agreement 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 and location of the Commission's Coastal Zone for purposes of the CZMA. Therefore, the issuance of this Letter of Agreement does not guarantee that the extent and location of the BCDC's Coastal Zone will not change in the future.
- I. **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 United States Department of the Interior, or its assignees or successors in interest, or by the owner of the improvements, within 60 days or such other reasonable time as the Commission, or the Executive Director on behalf of the Commission may direct.