

# San Francisco Bay Conservation and Development Commission

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## Agenda Item #9

August 28, 2020

## Staff Recommendation

### Alameda Marina Shoreline Improvement Project

(For Commission consideration on September 3, 2020)

Permit Application Number:	2018.003.00
Applicants:	Alameda Marina, LLC, and City of Alameda
Project Description:	Redevelop a 44-acre site for mixed uses, including maritime and commercial buildings, residential development, waterfront parks, and reconfiguration of an existing marina.
Location:	In the Bay and within the 100-foot shoreline band, at 1815 Clement Avenue, in the City of Alameda, Alameda County.
Application Filed Complete:	August 14, 2020
Deadline for Commission Action:	November 12, 2020
Staff Contact:	Schuyler Olsson (415/352-3668; <a href="mailto:schuyler.olsson@bcdc.ca.gov">schuyler.olsson@bcdc.ca.gov</a> )
Staff Recommendation:	<b>APPROVAL WITH CONDITIONS</b>

### Basis for Recommendation

The staff recommends approval of the application as conditioned in the recommended resolution below. The project will consist of an approximately 44-acre, mixed-use development on the northern waterfront of the City of Alameda, along the Oakland Alameda Estuary. Among other requirements, the recommended resolution includes special conditions to:

- Establish 4.20 acres of new required public access areas, including a Wharf Promenade, three waterfront parks, and a floating dock for public access and water-oriented recreation;
- Build 4,050 linear feet of new Bay Trail along the shoreline and connecting to Clement Avenue;
- Establish seven view corridors from Clement Avenue to the waterfront;
- Provide interim public access areas and Bay Trail connections during project construction;
- Ensure the marina operates in a manner consistent with the San Francisco Bay Plan; and
- Implement measures to protect the natural resources and water quality of San Francisco Bay.



## Recommended Resolution and Findings

The staff recommends the Commission adopt the following resolution:

### I. Authorization

#### A. Authorized Project

Approximately 27 acres of the 44-acre project site, including both Bay and upland areas, are owned in fee by Alameda Marina, LLC. The remainder of the project site, including most portions of the site in the Bay and along the shoreline, is held in trust by the City of Alameda and leased to Alameda Marina, LLC. Alameda Marina, LLC, and the City of Alameda are co-permittees and jointly responsible for all aspects of the project. Subject to the conditions stated below, the permittees, Alameda Marina, LLC, and the City of Alameda are granted permission to do the following activities in the Bay and within the 100-foot shoreline band, at 1815 Clement Avenue, in the City of Alameda, Alameda County, each as described more thoroughly in Exhibits A through D to this permit.

1. **Shoreline Protection.** Reconstruct approximately 4,009 linear feet of shoreline embankments, seawalls, bulkheads, and revetment slopes.
  - a. In the Bay
    - (1) **Riprap.** Construct (including replacement), repair, and maintain an approximately 10,912-square-foot portion of approximately 15,659 square feet of riprap revetment, along a total of approximately 923 linear feet over four sections of the shoreline;
    - (2) **Seawall.** Construct, repair, and maintain approximately 1.5-foot-thick new seawall segments along a total of approximately 800 feet of shoreline, to be installed bayside of the existing deteriorated seawall. Repair, reinforce, and maintain approximately 190 feet of existing seawall; and
    - (3) **Walers and Lagging Removal.** Remove approximately 422 square feet of walers and lagging.
  - b. Within the 100-foot Shoreline Band:
    - (1) **Riprap.** Construct (including replace), repair, and maintain an approximately 10,912 square-foot portion of approximately 15,659 square feet of riprap revetment, along a total of approximately 923 linear feet over four sections of the shoreline; and
    - (2) **Seawall.** Construct, repair, and maintain approximately 480 feet of new seawall landside of existing deteriorated seawall.

2. **Marina.** Rehabilitate and renovate an existing 529-slip marina to create a new approximately 459-slip marina.
  - a. In the Bay:
    - (1) **Pier and Pile Removal.** Remove approximately 414 square feet of piles, 7,150 square feet of pier decks, 1,290 square feet of gangways, 2,380 square feet of headwalks, and 30,185 square feet of pier covers;
    - (2) **Docks.** (a) Reconfigure, use, repair, and maintain Pier 1; (b) shift, use, repair, and maintain the floating transient dock at the East Pier north of Harbor View Park, including gangways and associated water access amenities; (c) relocate, use, repair, and maintain a dock near the boat hoist; (d) install, use, repair, and maintain approximately 134 square feet of piles; and (e) construct, use, repair, and maintain approximately 3,330 square feet of headwalks and docks;
    - (3) **Gangways.** Install, use, repair, and maintain approximately five pile-supported gangways and support platforms, totaling approximately 1,970 square feet;
    - (4) **Live-aboards.** Use, repair, and maintain up to 10 percent of the boat berths for live-aboard boats (45 berths);
    - (5) **Boat Hoist.** Install, use, repair, and maintain an approximately 1,212-square-foot portion of a 3-ton boat hoist (approximately 36-by-34 feet in area), including approximately 41 square feet of piles; and
    - (6) **Utilities.** Replace, improve, repair, and maintain sewer, water, power, and waste collection infrastructure, and other utilities.
  - b. Within the 100-foot Shoreline Band:
    - (1) **Boat Hoist.** Install, use, repair, and maintain an approximately 252-square-foot portion of a 3-ton boat hoist (approximately 9-by-28 feet in area);
    - (2) **Marina Berth Access.** Use, repair, and maintain access gates to the marina berths;
    - (3) **Live-aboard Amenities.** Construct, use, repair, and maintain facilities to support live-aboard uses, including restrooms, showers, garbage disposal facilities, and parking;
    - (4) **Dry Boat Storage.** Construct, use, repair, and maintain a dry boat storage yard with up to 60-stalls (approximately 36,500 square feet in area); and
    - (5) **Utilities.** Replace, improve, repair, and maintain sewer, water, power, and waste collection infrastructure, and other utilities.

3. **Maritime and Commercial Development.** Construct and reconfigure approximately 180,972 square feet of commercial floor area, boatyard and dockyard space.
  - a. In the Bay:
    - (1) **Building 14 Wharf Retrofit.** Retrofit, use, repair, and maintain the approximately 7,135-square-foot Building 14 wharf.
  - b. Within the 100-foot Shoreline Band:
    - (1) **Buildings 25 and 26.** Renovate, or demolish and replace, and use, repair, and maintain, Buildings 25 and 26, two existing connected 2-story buildings, and expand their size from approximately 4,429 to approximately 5,085 square feet;
    - (2) **Building 19.** Renovate, use, repair, and maintain an approximately 11,630 square foot portion of the existing, single-story Building 19;
    - (3) **Building 20.** Demolish Building 20;
    - (4) **Building 13.** Use, repair, and maintain Building 13, an existing approximately 10-to-15-foot-tall, approximately 585-square-foot, one-story building;
    - (5) **Building 14.** Demolish Building 14;
    - (6) **Maritime Plaza.** Construct, repair, and maintain a plaza area west of Building 19; and
    - (7) **Utilities.** Construct, repair, and maintain new sewer, water, stormwater, and power infrastructure.
4. **Wharf Promenade**
  - a. In the Bay:
    - (1) **Wharf Retrofit.** Repair, use, and maintain three wharves for public access (the approximately 4,485-square-foot Building 5 wharf, the approximately 4,375-square-foot Building 13 wharf, and the approximately 14,460-square-foot promenade wharf), including replacing approximately 38 existing piles with new 16-inch square piles and adding two new 36-inch steel pipe piles, resulting in 105 square feet of new fill;
    - (2) **Wharf Removal.** Remove two small wharves located adjacent to the wharf promenade; and
    - (3) **Public Access Improvements.** Install, use, and maintain public access amenities on the wharves, including bicycle facilities, a multi-use recreational promenade, seating, public art, marina artifacts, pedestrian plazas, a history kiosk, and gathering areas for small groups.

b. Within the 100-foot Shoreline Band:

- (1) **Building 5.** Retrofit, use, and maintain Building 5, a two-story, approximately 3,712-square-foot building; and
- (2) **Wharf Removal.** Remove the upland portion of a small wharf located adjacent to the Wharf Promenade.

5. **Harbor View Park**

a. Within the 100-foot Shoreline Band:

- (1) **Park.** Construct, use, and maintain an approximately 1.22-acre open space park and associated public access amenities, including bicycle facilities, seating, BBQ/picnic areas, passive recreation space, shade trees, large and small group gathering areas, a public lawn, a multi-use plaza, and a public restroom.

6. **Waterlife Park and East Park**

a. In the Bay:

- (1) **Float Removal.** Remove approximately 1,875 square feet of floating docks from the graving dock;
- (2) **Floating Dock.** Install, repair, and maintain a public access floating dock, including gangways and small vessel storage and launch facilities, totaling approximately 8,665 square feet of floating fill, and operate a small vessel rental or instructional business; and
- (3) **Footbridge.** Construct, repair, and maintain an approximately 440-square-foot portion of a footbridge over the graving dock.

b. Within the 100-foot Shoreline Band:

- (1) **Park Facilities.** Construct, use, and maintain park facilities around the graving dock, including park benches;
- (2) **Planted Sloped Edge.** Construct, use, and maintain a planted sloped edge graded between the elevated finish grade and the existing edge of the graving dock; and
- (3) **Footbridge.** Construct, use, and maintain the landing portions of a footbridge over the graving dock.

7. **Residential Development**

a. Within the 100-foot Shoreline Band:

- (1) **Multi-family Housing.** Construct, use, repair, and maintain approximately 11,800 square feet of multi-unit buildings and approximately 45,800 square feet of townhouses, approximately three to five stories in height (approximately 45 to 65 feet tall);

(2) **Landscaping.** Construct and maintain landscaping adjacent to residential housing units, consisting of side-yard planting ranging from 10 to 20 feet-wide between the buildings and public access areas around Waterlife park; and

(3) **Streets, Driveways, and Utilities.** Construct and maintain streets, driveways, and utilities associated with the residential development.

#### 8. **Public Parking**

a. Within the 100-foot Shoreline Band:

(1) **Parking.** Construct, use, and maintain approximately 72 public parking spots.

#### 9. **Bay Trail and Associated Improvements**

a. Within the 100-foot Shoreline Band:

(1) **Bay Trail.** Construct, use, and maintain an approximately 4,050 linear foot bicycle and pedestrian path along the shoreline and from Waterlife Park to Clement Ave;

(2) **Bay Trail Railing.** Construct, use, and maintain a safety railing in multiple Bay Trail segments, totaling approximately 3,700-linear feet of shoreline; and

(3) **Gates for Temporary Bay Trail closures.** Install, use, and maintain two electronically operated gates to allow for the temporary closure of the Bay Trail at the boat hoist platform site during hoist operations.

#### 10. **Stormwater Outfalls**

a. In the Bay:

(1) **Removal of Outfalls.** Remove five existing outfalls, totaling approximately 125 square feet of fill;

(2) **Retrofitted Outfalls.** Retrofit, use, and maintain five existing outfalls, including diversion vaults and tide valves;

(3) **New Outfall.** Install, use, and maintain one outfall located in between Pier 3 and Pier 2, totaling approximately 125 square feet of fill, and install, use, and maintain an approximately 880-square-foot riprap apron; and

(4) **Temporary Construction Activities.** Install, use, and maintain an approximately 35-square-foot sheet pile cofferdam during construction and remove it upon completion.

#### 11. **Site Preparation, Site Stabilization and Construction Staging**

a. Within the 100-foot Shoreline Band:

(1) **Grading.** Grade approximately 386,500 square feet to raise the site to a minimum elevation of +13.5 feet NAVD88;

- (2) **Deep Soil Mixing.** Construct and maintain geotechnical improvements within an approximately 9,100-square-foot area at the west slope of the property, between the western property line and the boat hoist, and within an approximately 13,600-square-foot area behind the Wharf Promenade, consisting of deep soil mixing and piles to strengthen the soil and structures; and
- (3) **Construction Staging.** During construction of the project only, stage equipment and construction materials (which include concrete piles, steel pipe piles and steel sheeting), as needed and pursuant to plan review and approval.

#### **B. Permit Application Date**

This authority is generally pursuant to and limited by the application dated August 3, 2018, including all accompanying and subsequently submitted correspondence and exhibits, subject to the modifications required by conditions herein.

#### **C. Deadlines for Commencing and Completing Authorized Work**

Work authorized herein must commence prior to April 1, 2021, or this permit will lapse and become null and void. All work authorized herein must be completed by April 1, 2031, unless an extension of time is granted by amendment of the permit.

#### **D. Project Summary**

The Alameda Marina Shoreline Improvement Project will redevelop an approximately 44-acre formerly industrial site along the City of Alameda's northern waterfront for a variety of uses including marina, maritime and commercial, boat storage, residential, parks and open space, and outdoor (including water-oriented) recreation.

The project will be built in four phases over approximately ten years, as illustrated in Exhibit D "Phasing Plan." At build-out, approximately 2,200 residents and employees will use the site daily, in addition to members of the public.

The project will result in a net increase of solid fill (6,236 square feet and 803 cubic yards) and floating fill (7,740 square feet), and a net decrease of cantilevered and pile-supported fill (28,878 square feet). The project involves removal of fill composed of riprap, seawalls, lagging, walers, floating docks, and various marina improvements.

The project will develop approximately 4.20 acres (182,994 square feet) of new shoreline public access areas along the approximately 4,009 feet of shoreline. This includes 0.77 acres (33,475 square feet) in the Bay, 3.16 acres (137,489 square feet) within the 100-foot shoreline band, and 0.28 acres (12,030 square feet) outside the Commission's permitting jurisdiction.

## E. Related Permits

On June 10, 2020, BCDC issued Regionwide Permit No. NOI2020.022.00 to demolish buildings on the project site within the Commission's 100-foot shoreline band jurisdiction. Additionally, BCDC Permit No. 1988.025.01, issued to Alameda Marina Development, LLC, on April 21, 2016, requires a 4,085-square-foot public access area on the project site, which will be redeveloped and superseded by this permit as described in Special Condition II.B.5 below.

## II. Special Conditions

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

### A. Specific Plans and Plan Review

#### 1. Construction Documents

The development authorized herein shall be built generally in conformance with the following documents submitted as part of the application:

- a. The 17-page public access and open space exhibit titled "Alameda Marina – BCDC Resubmittal," prepared by KTG Architecture + Planning, dated August 11, 2020;
- b. The 18-page plan set entitled "Alameda Marina Development Project" (Revision B, Wharf Piles - 75% Design), prepared by Simpson Gumpertz and Heger, dated May 31, 2019 and revised on August 03, 2020 (for the wharf retrofits);
- c. The 19-page plan set entitled "Alameda Marina Development Project" (Revision B, 75% Design), prepared by Simpson Gumpertz and Heger, dated May 31, 2019 and revised on May 28, 2020 (for the outfalls and eastern seawall portions);
- d. The 28-page plan set entitled "Alameda Marina Development Project," (Revision A – 35% Design), prepared by Simpson Gumpertz and Heger, dated May 31, 2019 (for Seawall 1);
- e. The 1-page document titled "Proposed Site Plan – BCDC Staff Meeting," dated February 19, 2019;
- f. The 1-page document titled "BCDC Parking Exhibit," dated June 25, 2020;
- g. The 1-page document titled "Dock Reconfiguration Exhibit," dated February 2019; and
- h. Exhibits A through D of this permit.

The permittees are responsible for ensuring that the construction documents accurately and fully reflect the terms and conditions of this permit 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 a permit amendment.



## 2. Documents Review and Approval

No work whatsoever shall commence pursuant to this permit 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 permittees may carry out the project authorized herein in a manner substantially consistent with the plans referred to in Special Condition II.A.1 of this permit.

### a. *Document Details*

Construction documents shall be labeled, as appropriate, with: the Mean High Water line or the upland extent of marsh vegetation no higher than five feet above Mean Sea Level and the tidal datum reference (NAVD 88 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. Construction documents for shoreline protection or bay fill 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 a permit amendment.

### b. *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 a permit amendment.

### c. *Discrepancies between Approved Plans and Special Conditions*

In case of a discrepancy between final approved documents and the special conditions of this permit or legal instruments, the special condition shall prevail.

### d. *Reconsideration of Plan Review*

The permittees may request reconsideration of a plan review action taken pursuant to this special condition 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 to the permittees within 30 days 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 to the permit and/or consultation with the Commission Design Review Board or Engineering Criteria Review Board.

## **B. Public Access**

### **1. Total Area**

An approximately 4.20-acre (182,994-square-foot) area along the approximately 4,009 linear feet of shoreline, as generally shown on Exhibit A, shall be made available exclusively to the public for unrestricted public access for walking, bicycling, sitting, viewing, fishing, picnicking, and related purposes. If the permittees wish to use the public access area for other than public access purposes, they must obtain prior written approval by or on behalf of the Commission.

The overall proposal for public access for this project includes:

- New public access within the Bay jurisdiction:  
0.77 acres (33,475 square feet)
- New public access within the 100-foot shoreline band:  
3.16 acres (137,489 square feet)
- New public access outside of the 100-foot shoreline band:  
0.28 acres (12,030 square feet)

### **2. Permanent Guarantee**

Prior to the commencement of any grading or construction activity of any residential unit or commercial space in the Commission's jurisdiction associated with a particular phase of work (as illustrated in Exhibit D, "Phasing Plan,"), the permittees shall, by instrument or instruments acceptable to counsel for the Commission, dedicate to a public agency or otherwise permanently guarantee such rights for the "Wharf Promenade," "Harbor View Park", "Waterlife Park (land side) and East Park", and San Francisco Bay Trail (main shoreline segment), totaling approximately 3.83 acres, as generally shown on Exhibit A. Such instrument shall be in a form that meets recordation requirements of the County of Alameda and shall include a legal description of the property being restricted and a map that clearly shows the shoreline (Mean High Water Line or five feet above Mean Sea Level if marsh is present), the property being restricted for public access, the legal description of the property and of the area being restricted for public access, and other appropriate landmarks and topographic features of the site, such as the location and elevation of the top of bank of any levees, any significant elevation changes, and the location of the nearest public street and adjacent public access areas. Approval or disapproval of the instrument shall occur within 30 days after submittal for approval and shall be based on the following:

- a. Sufficiency of the instrument to create legally enforceable rights and duties to provide the public access area required by this authorization;
- b. Inclusion of an exhibit to the instrument that clearly shows the area to be reserved with a legally sufficient description of the boundaries of such area; and
- c. Sufficiency of the instrument to create legal rights in favor of the public for public access that will run with the land and be binding on any subsequent purchasers, licensees, and users.

### 3. **Recordation of the Instrument**

Within 30 days after approval of the instrument, the permittees shall record the instrument on all parcels affected by this instrument and shall provide evidence of recording to the Commission. No changes shall be made to the instrument after approval without express written consent by or on behalf of the Commission.

### 4. **Improvements Within the Total Public Access Area**

Prior to the use of any facilities authorized within each phase of work (as illustrated in Exhibit D, "Phasing Plan"), the permittees shall install and open to the public the public access improvements associated with that phase of work. Such improvements shall be consistent with the plans approved pursuant to Special Condition II.A of this authorization and comply with the requirements as generally illustrated in Exhibits A through D to this permit. The exact location and design of the improvements will be determined during detailed design of the spaces and the plan review process. Improvements shall generally include the following:

#### a. *Wharf Promenade*

- (1) **Park.** An approximately 1.18-acre (51,240 square feet) multi-use recreational Wharf Promenade area, including a 16-foot-wide Bay Trail segment, bicycle parking for a minimum of 24 bicycles, approximately 12 benches, approximately 450 linear feet of bench seating, a multiuse recreational promenade, public art, marina artifacts, two pedestrian plazas totaling approximately 2,300 square feet, a history kiosk, and an appropriate number of waste receptacles and Bay Trail, public shore, and interpretive signs.

#### b. *Harbor View Park*

- (1) **Park.** An approximately 1.22-acre (53,030 square feet) open space park area, including a 16-foot wide Bay Trail segment, bicycle parking for a minimum of ten bicycles, a minimum of 11 park benches and 12 picnic tables, an appropriate number of barbeques, approximately 16,000 square feet of passive recreation space, an approximately 1,600 square-foot multi-use plaza, and an appropriate number of waste receptacles and Bay Trail, public shore, and interpretive signs;

- (2) **Public Restroom.** A public restroom building adjacent to the parking lot; and
  - (3) **Public Shore Parking.** A minimum of ten public shore parking spaces, including two ADA-accessible spaces (at least one of which shall be a van accessible space) and adequate public shore parking signage. The location of the public shore parking spaces shall maximize opportunities for in-car Bay viewing.
- c. *Waterlife Park and East Park*
- (1) **Upland park area.** An approximately 0.96-acre (42,000 square feet) upland park area adjacent to the former graving dock, including a 16-foot-wide Bay Trail segment, bicycle parking for a minimum of two bicycles, a minimum of 15 benches, an approximately 8,200-square-foot open lawn at the northeast corner of the graving dock, and an appropriate number of waste receptacles and Bay Trail, public shore, and interpretive signs;
  - (2) **Pedestrian Footbridge.** An approximately 78-linear-foot, minimum 8-foot-wide pedestrian footbridge crossing the former graving dock to provide circulation around the waterfront, located at the north end of Waterlife Park; and
  - (3) **Floating dock.** An approximately 8,665-square-foot ADA-accessible floating dock, including access gangways and launching facilities for small vessels including kayaks, stand-up paddleboards, and row boats.
- d. *Bay Trail and associated improvements (Multiple Phases)*
- (1) **Bay Trail.** An approximately 4,050-linear-foot bicycle and pedestrian path, including an approximately 3,800-linear-foot section running generally east-west along the shoreline of the entire site, and an approximately 250-linear-foot section running north-south from Waterlife Park to Clement Avenue. The path shall be approximately 16 feet wide in all sections, excepting an approximately 55-linear-foot section in front of the boat hoist, which shall be approximately 14.5 feet wide, and the 250-linear foot section between Waterlife Park and Clement Avenue, which shall be approximately 12 feet wide. The path shall include an appropriate number of waste receptacles and Bay Trail, public shore, and interpretive signs, and an open visual connection between the Bay Trail and Grand Street that provides adequate views of the Bay Trail to approaching traffic and invites users into the site.
  - (2) **Safety railing.** A safety railing on multiple Bay Trail segments along approximately 3,700 linear feet of shoreline that maximizes visual access to the Bay;

- (3) **Public Shore Parking.** A minimum of 25 public shore parking spaces, located in the project site's western parking lot, including two ADA-accessible spaces (at least one of which shall be a van accessible space) and adequate public shore parking signage. The location of the public shore parking spaces shall maximize opportunities for in-car Bay viewing; and
  - (4) **Public Restroom.** A public restroom along the Bay Trail in or adjacent to the current Buildings 25 and 26.
- e. *Clement Avenue Open Space*
- (1) **Park.** An approximately 0.15-acre (6,685 square feet) open space area along Clement Avenue, including a 12-foot-wide Bay Trail segment and bicycle parking for a minimum of four bicycles.

## 5. Interim Public Access Areas

Prior to closing for construction any portion of the approximately 4,085-square-foot public access area required under BCDC Permit No. 1988.025, the permittees shall submit for review and approval by the Executive Director, pursuant to Special Condition II.A, an interim public access site plan to provide temporary public access on the western side of the project site, during the time that construction activities preclude access to the area, and shall build and implement the interim requirements in accordance with the approved plan. The plan shall generally conform with Exhibit B ("Interim Public Access Site Plan") and shall include two alternate public access areas with walkways, picnic and viewing areas, public restrooms, public shore parking (including ADA-accessible stalls), and adequate public access and wayfinding signage. The approximately 2,430-square-foot area labelled as Option 1 and approximately 1,920-square-foot area labelled as Option 2 on Exhibit B, and associated amenities as described above, shall remain open from sunrise to sunset until such time that the permanent public access improvements at Harbor View Park are complete and open to the public, except for short periods during which either interim area may need to close temporarily due to construction. The permittees shall not close either interim area without first receiving written approval by the Executive Director and shall minimize the duration of the closure to the greatest extent possible. At no point shall the permittees close both interim areas simultaneously, until the permanent improvements at Harbor View Park are complete.

## 6. Interim Bay Trail Connections

Prior to commencing construction of each phase of work, as illustrated in Exhibit D ("Phasing Plan"), the permittees shall submit for review and approval by or on behalf of the Commission, in accordance with Special Condition II.A, an interim Bay Trail connection plan to provide temporary Bay Trail connections to Clement Avenue and

throughout the site as the project develops. The permittees shall install and open to the public the temporary Bay Trail connections in accordance with approved plans prior to the use of any facilities authorized within each relevant phase of work.

**7. Temporary Bay Trail Closures During Boat Hoist Operations**

The permittees are authorized to temporarily close an approximately 55-linear-foot section of the Bay Trail adjacent to the proposed boat hoist, using two electronically operated gates, for short periods during boat hoist operations only. Prior to completion of construction of the boat hoist, the permittees shall submit for review and approval by or on behalf of the Commission a signage program to: 1) alert the public that Bay Trail passage will be temporarily limited during boat hoist operations, and 2) provide basic controls for boat hoist operators to ensure operations occur swiftly and limit the duration of individual Bay Trail closure events to just a few minutes. Among other requirements, the signage shall include infographics and a phone number to contact the Harbormaster. The sign program will be reviewed through the plan review process established in Special Condition II.A above.

**8. Small Vessel Storage and Rentals and Public Use of the Floating Dock**

The permittees shall ensure that the public access floating dock required pursuant to Special Condition II.B.4.c is open to the public at all times for its intended uses, including launching of small vessels. Storage of small vessels or operation of a small vessel rental or instructional business on the floating dock shall not inhibit the use of the dock by other members of the public.

**9. Public Access, Wayfinding, and Interpretive Signs**

Prior to construction of any public access improvements authorized or required herein, the permittees shall submit for review and approval by or on behalf of the Commission, a comprehensive public access, wayfinding, interpretive sign program. The interpretive portion of the signage program shall be generally consistent with the criteria established by the “Alameda Marina Open Space Master Plan, Historic Advisory Board” document, dated February 8, 2019, and submitted as part of the application. The sign program shall be designed to maximize public recognition, use, and enjoyment of the site’s public access improvements and highlight the site’s history and shall provide detail on the location, quantity, and design of wayfinding, interpretive, “Public Shore,” and Bay Trail signs.

The sign program will be reviewed through the plan review process established in Special Condition II.A above.

**10. Public Art Plan**

Prior to installing any permanent or temporary public art installations within any public access area or view corridor required by this permit, the permittees shall submit for review and approval by or on behalf of the Commission a public art plan

that will identify design and siting criteria for public art installations. The public art plan will be reviewed to ensure design and siting criteria are adequate to provide for use of public access areas by a wide range of users and maintain important views of the Bay. The plan will be reviewed through the plan review process established in Special Condition II.A above. No art installations are permitted in the view corridors required under Special Condition II.C unless the Executive Director determines the impacts to view corridors will not be significant.

#### **11. Hours of Operation**

Unless otherwise restricted pursuant to Special Condition II.B.12 (“Reasonable Rules and Restrictions”), all public access areas required herein shall be open to the public at all times (i.e., 24 hours a day), with the exception of the restroom building at Harbor View Park, which shall remain open to the public seven days a week from sunrise to sunset.

#### **12. Reasonable Rules and Restrictions**

The permittees may impose reasonable rules and restrictions for the use of the public access areas 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 the permittees have both identified and substantiated. Rules may include restricting hours of use and delineating appropriate behavior.

#### **13. Sea Level Rise and Adaptation**

##### *a. Flood Reporting*

If any portion of the public access area required herein and described in Special Condition II.B.4, other than the public access floating dock, is subject to flooding that results in a closure of any area, the permittees shall submit to the Commission a written report within 30 days after the closure of the public access area. The written report shall include: the date and duration of the public access closure; the location of the affected site; the recorded water levels during the closure period; the source of flooding (e.g., Bay shoreline overtopping, stormwater backup, or overland flow); the resulting damage and/or cleanup; and representative photographs with site details.

##### *b. Risk Assessment*

By December 31, 2050, or within six months of a closure of a required public access area, other than the public access floating dock, due to sea level rise and associated storm events, whichever is sooner, the permittees shall prepare and

submit a revised risk assessment for the public access areas required herein, to be approved by or on behalf of the Commission, pursuant to Special Condition II.A.

The risk assessment shall incorporate: (1) the most up-to-date sea level rise guidance and policies from relevant state and federal agencies, including the Commission; (2) an analysis of current and future water levels; (3) an analysis of landfill subsidence and groundwater rise and their contribution to flooding; (4) any observed flooding events as reported in Special Condition II.B.13.a; (5) an analysis of the risk of flooding due to all types of potential flooding; (6) consequences of defense failure; and (7) degrees of uncertainty.

*c. Adaptation Plan and Implementation*

Should the risk assessment identify current or future risk of flooding due to sea level rise for public access areas required under this authorization before the end of the century, or other date required under relevant Commission policies at time of preparation of the risk assessment, the permittees shall prepare and submit an adaptation plan, based on the risk assessment, that shall identify: (1) preferred adaptation strategies to ensure the viability of the public access to flooding from sea level rise and storms; and (2) a timeline for implementation of shoreline adaptation to protect the required public access areas from flooding.

Upon review and approval of the adaptation by or on behalf of the Commission, the permittees shall implement, including through any necessary Commission permits or amendments to Commission permits, all approved adaptation strategies within the approved timelines. No permanent restrictions or closures of required public access areas may take place without additional approval by or on behalf of the Commission. If avoiding permanent closures is infeasible, the permittees shall provide equivalent public access to ensure public access to and along the shoreline in the event of permanent restrictions or closures, contingent in part on the Commission's review and approval of such project modifications.

**14. Maintenance**

The areas and improvements within the total 4.20-acre public access area shall be permanently maintained by and at the expense of the permittees or their assignees. 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 assuring that the public access signs remain in place and visible. An entity or entities shall be selected to maintain all public access areas required and conditioned in this permit in order to provide

consistency in the overall maintenance program of the waterfront. Within 30 days after notification by staff, the permittees shall correct any maintenance deficiency noted in a staff inspection of the site.

#### **15. Assignment**

The permittees may transfer maintenance responsibility to another entity, such as a Community Facilities District or Lighting and Landscaping District, or another party at such time as the property transfers to a new party in interest but only provided that: a) the transferee is accepted by the Executive Director as being reasonably capable of complying with the applicable terms and conditions of this permit and agrees in writing acceptable to counsel for the Commission, to be bound by all such applicable terms and conditions; and b) the financing mechanism makes provision to account for increased maintenance costs over time. The acceptance of the Executive Director of a transfer of maintenance responsibility shall not be unreasonably withheld.

#### **C. View Corridors**

The permittees shall not construct buildings or other structures taller than three feet within the following view corridors, both within and outside of BCDC's jurisdiction, unless otherwise approved by or on behalf of the Commission upon a finding that said development will not prevent a view to the Bay within the area of the relevant view corridor. Furthermore, the permittees shall maintain vegetation in the view corridors to ensure that plants do not exceed three feet in height, and that tree canopies remain above seven feet. Locations of the view corridors are shown in Exhibit C ("View Corridors") and are described below along with their approximate widths:

- Corridor A: Alameda Marina Drive, between Clement Avenue and the waterfront (50 feet wide)
- Corridor B: Schiller Street, between Clement Avenue and the waterfront (45 to 75 feet wide)
- Corridor C: Lafayette Street, between Clement Avenue and the waterfront (45 feet wide)
- Corridor D: Emergency Vehicle Access lane between Chestnut Street and Stanford Street, between Clement Avenue and the waterfront (55 feet wide)
- Corridor E: Stanford Street, between Clement Avenue and the waterfront (75 feet wide)
- Corridor F: Bay Trail alignment between Clement Avenue and the waterfront (25 feet wide)
- Corridor G: Willow Street, between Clement Avenue and the waterfront (50 feet wide)

#### **D. Protection of Bay Resources and Water Quality**

The permittees shall reduce impacts to water quality, fish, wildlife, and habitat at the site 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.

##### **1. United States Fish and Wildlife Consultation**

The permittees shall adhere to the avoidance and minimization measures to protect the federally endangered California least tern, as specified in the “Informal Consultation on the Alameda Marina Shoreline Improvement Project in the City of Alameda, California (Service file no. 08ESMF00-2020-I-1030)”, dated March 6, 2020, issued by the United States Fish and Wildlife Service (USFWS).

##### **2. National Marine Fisheries Service Consultation**

The permittees shall adhere to the avoidance and minimization measures to protect the threatened Central California Coast (CCC) steelhead, threatened Southern Distinct Population Segment of North American green sturgeon, and designated critical habitat, as well as Essential Fish Habitat, as specified in the “Reinitiation of Endangered Species Act Section 7 Consultation and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Response for the Alameda Marina Improvement Project (Corps File No. 2015-00387S),” dated June 17, 2020, issued by the National Marine Fisheries Service (NMFS).

##### **3. Marine Mammal Protection**

The permittees shall adhere to the general conditions and mitigation, monitoring, and reporting measures to protect marine mammals as specified in the two Incidental Harassment Authorization for project Years 1 and 2, issued by the National Marine Fisheries Service under section 101(a)(5)(D) of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1371(a)(5)(D)), both dated June 19, 2020.

##### **4. California Department of Fish and Wildlife Consultation**

No in-water work shall commence until the permittees provide to the Commission a copy of any required "take" authorization or other approval needed from the California Department of Fish and Wildlife (CDFW) for the work authorized by this permit. All work authorized herein shall be conducted in accordance with the “take” authorization (or subsequent amendments to such “take” authorization as approved by CDFW).

##### **5. Pile Installation and Removal Work Windows and Best Management Practices**

The permittees shall adhere to the following work windows and best management practices during pile installation and removal, as further specified in the above-referenced consultation documentation and take authorizations from USFWS and NMFS. These work windows shall apply unless the permittees seek and obtain

approval by the Executive Director to work outside these windows and consult with the relevant resource agencies regarding minimization and avoidance measures for listed species and essential habitat.

- a. All steel piles shall be installed with a vibratory hammer unless design depth cannot be achieved, in which case an impact hammer may be used to drive to final depths. Impact pile-driving for large steel piles (30 or 36 inch) shall only occur between June 1 and November 30. The use of vibratory hammers and impact hammer for piles other than large steel piles may occur outside the June 1 to November 30 window. A bubble curtain sound attenuation system or isolation casing shall be used during the use of an impact hammer on steel piles. The use of an impact hammer shall include a "soft-start" technique.
- b. Pile removal and installation that occurs during the peak seasonal salmonid migration period (November 1 to May 31) shall occur during daylight hours only, from one hour after sunrise to one hour before sunset. Pile removal and installation that occurs from June 1 to October 31 shall direct illumination away from the water when night work is required.
- c. A turbidity curtain shall be used during all pile driving installation to minimize any impacts to water quality from disturbed sediments.
- d. Removed piles shall be either vibrated out or cut at the mudline and disposed of at an appropriate upland facility.

#### **6. Riprap and Cofferdam Installation Work Windows and Best Management Practices**

The permittees shall implement the following work windows and best management practices during riprap and cofferdam installation, as further specified in the above-referenced consultation documentation and take authorizations from USFWS and NMFS. These work windows shall apply unless the permittees seek and obtain approval by the Executive Director to work outside these windows and consult with relevant resource agencies regarding minimization and avoidance measures for listed species and essential habitat.

- a. Installation of the final cofferdam sheet piles shall occur during low tide, between June 1 - November 30.
- b. A qualified biological monitor shall be present during all in-water work associated with cofferdam installation and removal.
- c. A silt curtain shall be used during riprap shoreline work, and during cofferdam installation and removal.

#### **7. Water Quality Protection**

The permittees shall conduct work consistent with the Regional Water Quality Control Board (RWQCB) Water Quality Certification issued on August 14, 2020 (or subsequent amendments to such certification approved by the RWQCB) and shall implement the following measures to protect water quality:



- a. Prior to project commencement, A Worker Environmental Awareness Program (WEAP) shall be implemented to educate all construction personnel of the area's environmental concerns and conditions, including special-status and listed species, site contamination prevention, and other relevant environmental concerns and appropriate work practices. Any new workers who arrive after construction has started shall be trained under the WEAP within two days of starting work at the Project site.
- b. The permittees shall monitor the 72-hour forecast from the National Weather Service. When there is a forecast of more than 40% chance of rain, or at the onset of unanticipated precipitation, the permittees shall remove all equipment from the shoreline area and shall implement erosion and sediment control measures, and all Project activities shall cease and can resume once precipitation has stopped for a 12-hour period and there is not a 40% chance of rain in the next 72 hours.
- c. Best Management Practices shall be implemented during construction and maintenance activities to avoid impacts to Bay resources such as debris or construction-related materials or wastes entering the Bay.
- d. No unauthorized construction-related materials or wastes (e.g., debris, soil, silt, excessive bark, rubbish, creosote-treated wood, raw cement/concrete or washings thereof, asphalt, paint or other coating material, oil or other petroleum products, or any other substances which could be hazardous to aquatic life) shall be allowed to enter into or be placed where they may be washed by rainfall or runoff into the Bay. To the maximum extent practicable, work along the shoreline shall be conducted at low tide. When construction is completed, any excess material shall be removed from the work area and any areas adjacent to the work area where such material may be discharged to waters of the State.
- e. Prior to the start of the rainy season, the permittees shall ensure that disturbed areas of the Bay and disturbed areas that drain to waters of the Bay are protected with correctly-installed and -maintained erosion control measures (e.g., jute, straw, coconut fiber erosion control fabric, coir logs, etc.), and/or revegetated with propagules (seeds, cuttings, divisions) of locally collected native plants. Erosion control textiles that include plastic monofilament netting are prohibited from use at the project site.
- f. Where areas of bare soil are exposed during the rainy season, appropriate erosion and sediment control measures shall be used where sediment and/or earthen fill threaten to enter waters of the State, consistent with the requirements. Sediment control structures shall be monitored for effectiveness and shall be repaired or replaced as needed. Buildup of soil behind silt fences shall be removed promptly and any breaches or undermined areas repaired at once.

- g. Prior to use, all equipment shall be cleaned to remove external oil, grease, dirt, or mud. Wash sites shall be located in upland locations so that wash water does not flow into the Bay. Project personnel shall remove mud, snails, algae, and other debris from nets, traps, boots, vehicle tires, and all other surfaces.
- h. No fueling, cleaning, or maintenance of vehicles or equipment shall take place within waters of the State, or within any areas where an accidental discharge to waters of the State may occur; and construction materials and heavy equipment must be stored outside of the active flow of the creek or other waters of the State.
- i. Disturbance or removal of vegetation shall not exceed the minimum necessary to complete the project.
- j. All staging shall occur on adjacent access roads or previously disturbed areas. Any stockpiling of materials shall be conducted pursuant to Special Condition II.F.
- k. 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.

#### **E. Shoreline Protection Material, Placement, and Maintenance**

Riprap material shall be either quarry rock or specially cast or carefully selected concrete pieces free of reinforcing steel and other extraneous material and conforming to quality requirements for specific gravity, absorption, and durability specified by the California Department of Transportation (Caltrans) or the U.S. Army Corps of Engineers. The material shall be generally spheroid-shaped. The overall thickness of the slope protection shall be no more than three feet measured perpendicular to the slope. Use of dirt, small concrete rubble, concrete pieces with exposed rebar, large and odd shaped pieces of concrete, and asphalt concrete as riprap is prohibited. Riprap material shall be placed so that a permanent shoreline with a minimum amount of fill is established by means of an engineered slope not steeper than two (horizontal) to one (vertical) unless slope is keyed at the toe, except for the riprap placed at the drydock gate sloped embankment, which must be no steeper than 1.5 (horizontal) to one (vertical). The slope shall be created by the placement of a filter layer protected by riprap material of sufficient size to withstand wind and wave generated forces at the site.

The shoreline protection improvements authorized herein shall be regularly maintained by, and at the expense of, the permittees, lessee, assignee or other successor in interest to the project. Maintenance shall include the collection of riprap material that becomes dislodged, the in-kind replacement of damaged or missing riprap material and associated filter fabric or other material, and the removal of debris on riprap. Within 30 days of notification by or on behalf of the Commission, the permittees or any successor in interest shall correct any identified maintenance deficiency.

## **F. Stockpiling of Materials near the Shoreline**

Prior to stockpiling any materials within the area of the Commission's jurisdiction, the permittees shall submit a stockpiling plan for review and approval by or on behalf of the Commission, pursuant to Special Condition II.A. The plan shall be signed by a qualified engineer and shall demonstrate that the shoreline can physically support stockpiling at the proposed location(s), and that the stockpiling will not result in adverse impacts to the Bay or the public access required by this permit.

## **G. Safety of Fills**

### **1. Seismic Instrumentation**

Prior to substantial project completion, the permittees shall consult with the California Geological Survey (CGS) to determine whether seismic instrumentation should be installed at the site and provide evidence of such consultation.

## **H. Marina Conditions**

### **1. Waste Discharge**

The discharge of any solid or liquid wastes, including oily bilge water, waste oil, or sewage into the Bay within the marina basin, shall be in accordance with federal and state regulations. This restriction shall not apply to the discharge of liquid wastes associated with the use of an automatic bilge pump.

### **2. Waste Facilities**

Prior to the use of any berth, the permittees shall provide a suitable facility for receiving and disposing of oily wastes, and a facility for pumping out vessel holding tanks and receiving wastes from portable toilets. Such facilities shall be constructed to all applicable codes and standards, shall be connected to onshore waste treatment facilities, and shall be maintained by the permittees in a safe and sanitary manner. Such facilities shall be available to boaters every day of the week and any fees for the use of the facilities shall be limited in amount to cover the cost of the operation of the facilities.

### **3. Marine Toilets**

The permittees shall make it a requirement of the use or occupancy of any berth that: (a) any vessel berthed, if equipped with a marine toilet, shall contain an adequate holding tank, incinerator recirculation device, or other equivalent device approved by applicable agencies to preclude discharge of wastes into the waters of the marina, or have the marine toilet rendered inoperable while any such vessel is moored in the marina; and (b) any violation of the waste discharge requirements of this authorization shall be cause for immediate cancellation of the right of such use or occupancy.

## **I. Live-Aboard Boats**

### **1. Live-Aboard Boats Requirements**

Live-aboard boats authorized to be moored in the marina pursuant to Authorization I.A.2.a.4 shall be capable of being used for active self-propelled navigation and shall also be occupied as a residence as that term is defined in California Government Code Section 244. The number of live-aboard boats shall at no time exceed 10% of the total number of berths or up to 45 berths, whichever is fewer. No houseboats, as that term is defined in Commission Regulation Section 10127, shall be moored in the marina.

### **2. Adequate Facilities**

The permittees shall provide occupants of the live-aboard boats bathrooms, parking, showers, garbage disposal facilities, and vessel sewage pump-out facilities. These facilities shall be maintained in a safe and sanitary condition.

### **3. Berthing Plan**

Prior to the use of any berth for live-aboard purposes, the permittees shall submit for review and approval by or on behalf of the Commission, pursuant to Special Condition II.A, a plan showing the specific berth locations of each live-aboard vessel within the marina. The permittees shall request review and approval by or on behalf of the Commission for any changes to berthing locations of live-aboard vessels, pursuant to Special Condition II.A.

### **4. Distribution of Boats**

The live-aboard boats shall be distributed throughout the marina, in a manner that will provide the greatest security benefit to the marina and shall not be concentrated solely in one portion of the marina.

### **5. Berthing Agreement and Rules**

Prior to the use of any berth for live-aboard purposes, the permittees shall submit for review and approval by or on behalf of the Commission the proposed berthing agreement and rules for live-aboard boats in the marina. The berthing agreement shall define a live-aboard boat consistent with the definition provided in Commission Regulation Section 10128.

### **6. Permittees' Responsibility to Enforce**

Failure to comply with any of the special conditions at any time after the issuance of this amended permit may result in the Executive Director pursuing any or all of the enforcement remedies in Chapter 13 of the Commission's Regulations, including, but not limited to, revocation of this permit.

## **7. Termination of Authorized Live-Aboard Use**

Failure to comply with any of the special conditions at any time after the issuance of this amended permit may result in the Executive Director pursuing any or all of the enforcement remedies in Chapter 13 of the Commission's Regulations, including, but not limited to, revocation of this permit.

## **J. Recording**

The permittees shall record this permit or a notice specifically referring to this permit on all parcels affected by this permit with the County of Alameda within 30 days after execution of the permit issued pursuant to this authorization and shall, within 30 days after recordation, provide a copy of the recorded permit to the Commission.

## **K. Certificate of Occupancy or Use**

Prior to occupancy or use of any of the improvements authorized herein, the permittees shall submit the Notice of Completion and Compliance required herein and request in writing an inspection of the project site by the Commission staff. Within 30 days of receipt of the written request for an inspection, the Commission's staff will: (1) review all permit conditions; (2) inspect the project site; and (3) provide the permittees with written notification of all outstanding permit compliance problems, if any. The permittees shall not occupy or make use of any improvements authorized herein until the staff has confirmed that the identified permit compliance problems have been satisfactorily resolved and has provided the permittees with a Certificate of Occupancy or Use. Failure by the staff to perform such review and inspection and notify the permittee of any deficiencies of the project within this 30-day period shall not deem the project to be in compliance with the permit, but the permittees may occupy and use the improvements authorized herein.

## **III. Findings**

This authorization is given on the basis of the Commission's findings and declarations that the work authorized herein is consistent with the McAteer-Petris Act, the San Francisco Bay Plan (Bay Plan), the California Environmental Quality Act (CEQA), and the Commission's amended Coastal Management Program for San Francisco Bay for the following reasons:

### **A. Bay Fill**

Section 66605 of the McAteer-Petris Act provides that further filling of the Bay may be authorized by the Commission only when the public benefits from fill clearly exceed public detriment from the loss of water areas, and is limited to water-oriented uses or minor fill for improving shoreline appearance or public access to the Bay. Additionally, fill of the Bay should be authorized only if: no alternative upland location is available for such purpose; the water area authorized to be filled is the minimum necessary to achieve the purpose of the fill; harmful effects to the Bay and its waters are minimized;

the fill is constructed in accordance with sound safety standards; the fill establishes, to the maximum extent feasible, a permanent shoreline; and, the applicant has valid title to the property in question.

#### 1. **Authorized Fill**

Bay fill authorized by this permit includes installation of riprap and seawalls for shoreline protection, a floating dock and pedestrian footbridge for public access at the Waterlife Park, various marina improvements (including pier piles, gangways, headwalks [floating access docks running generally parallel to the shoreline], a boat hoist, and a transient dock), retrofits of existing wharves, and new outfall installation. The project also involves removing riprap, seawalls, walers, and lagging used for shoreline protection, floating docks at the Waterlife Park, and pier piles, decks, covers, gangways, and headwalks at the marina. In total, the project will result in a permanent net increase of approximately 6,236 square feet (803 cubic yards) of solid Bay fill and approximately 7,740 square feet of floating fill, and a permanent net decrease of 28,878 square feet of cantilevered and pile-supported fill. The temporary cofferdam will result in 35 square feet and 17 cubic yards of temporary fill that will be removed after completion of construction.

##### *a. Shoreline Protection*

The project includes repairing and replacing seawalls, bulkheads, and revetments along approximately 4,009 linear feet of the shoreline, where the existing shoreline protection has surpassed its useful life, is unsafe, and requires substantial repair and replacement. Approximately 5,590 square feet (549 cubic yards) of existing riprap and 484 square feet (104 cubic yards) of existing seawall will be removed. Approximately 10,912 square feet (1,051 cubic yards) of riprap will be placed in the Bay along four sections of the shoreline (totaling 923 linear feet) to repair and rehabilitate existing riprap. In addition, new 1.5-foot thick seawall segments will be installed bayward of the existing deteriorated seawall segments along approximately 800 linear feet of shoreline. An additional 480 linear feet of seawall will be installed landward of existing seawall within the 100-foot shoreline band.

##### *b. Floating Dock and Pedestrian Footbridge at Waterlife Park.*

At Waterlife Park, the project involves fill for public access, consisting of the construction of a new floating dock and associated gangways and water access amenities (approximately 8,665 square feet of floating fill) and a pedestrian footbridge across the graving dock (approximately 440 square feet of cantilevered fill). Approximately 1,875 square feet of existing floating docks will be removed. A small vessel storage area, operated by a small vessel rental or instructional business, will be installed atop the floating dock.

*c. Marina Redevelopment*

The project includes rehabilitation of an approximately 529-slip marina that pre-dates the establishment of BCDC. Reconfigured, the marina will be reduced to approximately 459 slips but will be the same size and have very similar linear feet of boat storage. The work will involve installation of new piles (approximately 29 square feet and 9 cubic yards of solid fill), headwalks and docks (approximately 3,330 square feet of floating fill), and gangways (approximately 1,970 square feet of cantilevered fill). In addition, a boat hoist will be constructed to provide a launch for sailboats into and out of the Oakland Estuary (approximately 41 square feet and 13 cubic yards of solid fill (piles), and approximately 1,212 square feet of cantilevered fill). Finally, a transient dock will be relocated (approximately 2,600 square feet of floating fill) and will be accessible to the public for temporary berthing. The marina redevelopment will result in the removal of approximately 414 square feet (129 cubic yards) of solid fill, 9,605 square feet of floating fill (including the previous location of the transient dock), and 27,830 square feet of cantilevered and pile-supported fill.

*d. Wharf Retrofits*

The project involves seismic retrofits to four wharves: Building 13 wharf, Promenade wharf, and Building 5 wharf (which will collectively form a portion of the “Wharf Promenade” public access area upon project completion), and Building 14 wharf, as well as removal of certain wharf portions adjacent to Building 13 and 5 wharves. This work involves installation of 101 square feet (36 cubic yards) of new solid fill (new piles), and the removal of 104 square feet (32 cubic yards) of solid fill (existing piles) and 4,230 square feet of cantilevered fill.

*e. Outfalls*

Finally, the project includes installation of a new storm drain outfalls in the Bay, resulting in the placement of 1,005 square feet (106 cubic yards) of new solid fill. The project will also remove five existing outfalls and retrofit five others, resulting in removal of 125 square feet (60 cubic yards) of solid fill. The new outfall will be constructed using a temporary coffer dam, resulting in 35 square feet and 17 cubic yards of temporary fill during construction activities.

**2. Public Benefit versus Public Detriment and Water-Oriented Use**

McAteer-Petris Act Section 66605 provides that fill should be limited to water-oriented uses, including recreation and public assembly, or minor fill to improve shoreline appearance or public access. The fill authorized for this project will provide shoreline stabilization and water-oriented recreational uses at the site. The purpose of the riprap and seawall is to stabilize and enhance existing shoreline protection, and thus will be for a water-oriented use. The shoreline protection will also serve to stabilize and protect the upland public access amenities. The floating dock at

Waterlife Park will be a continuation of the park and provide water-oriented recreational opportunities for a variety of users in a location where no water access currently exists. The Waterlife Park footbridge will provide contiguous circulation along the shoreline and allow the public to view and enjoy the Bay over the water. The new fill associated with the marina configuration will also enhance water-oriented recreational opportunities. The seismic wharf retrofit will greatly enhance public safety and allow for increased access to the Bay, while the outfall and associated temporary cofferdam are necessary to provide proper storm drainage at the site. Together, the enhanced shoreline protection, public safety, public access, and water-oriented recreational opportunities associated with the Bay fill create substantial public benefits, which exceed the public detriment from the increase in fill in the Bay.

### **3. Alternative Upland Location**

There is no alternative upland location for the fill authorized by this permit. The shoreline protection authorized by this permit cannot be located upland because of the constrained nature of most of the site. During the application process, the shoreline protection was redesigned to locate as much of the shoreline protection upland as possible. The purpose of the floating dock and footbridge at Waterlife Park and the new fill for the marina reconfiguration is to provide water-oriented recreational opportunities, including new public access to the Bay, and to provide contiguous circulation along the shoreline. The new fill for the wharf retrofit and outfall installation are required to enhance public safety and storm drainage of the upland areas. Finally, the placement of a small vessel storage area on the floating dock at Waterlife Park will improve access to the Bay via small watercraft. Alternate upland storage locations are not feasible due to the site's proximity to surrounding residential developments and public access parks. Relocating this storage at the dock to an upland location would encroach on other upland public access amenities.

### **4. Minimum Amount of Fill Necessary**

The riprap and seawall installations will repair and rehabilitate existing shoreline protection that has surpassed its useful life and is unsafe, and are designed to use the minimum amount of fill necessary to meet current shoreline protection standards. The project went through various design iterations that resulted in significantly reduced fill for both riprap and seawalls. Initially, new riprap was proposed along a much longer portion of the shoreline, including where seawall currently exists. However, this design was modified to replace much of the initially proposed riprap with seawall improvements, greatly reducing the amount of combined riprap and seawall fill. The permittees also estimated that approximately 50% of existing riprap meets CalTrans design requirements, and therefore could be re-used in the new revetments, further reducing the need for new fill.

Furthermore, the fill required for proposed seawall improvements was significantly reduced by placing the new Seawalls 4 and 6 landward, rather than bayward, of existing deteriorated seawall.

Special Condition II.E includes requirements for the design of the riprap, to ensure that the shoreline protection is constructed consistent with the application and sound safety standards and is the minimum fill necessary for this work.

The footprint for the floating dock and Waterlife Park, the marina reconfiguration, and the outfall, will be of a size appropriate for the anticipated use. The fill for the pedestrian footbridge at Waterlife Park is the size necessary to provide comfortable contiguous circulation along the shoreline. Finally, the fill associated with the wharf retrofits is the minimum amount to enhance public safety and allow for greater public access to the Bay. Special Condition II.A requires final plan review and approval to ensure these features are constructed consistent with the application and to minimize fill.

## 5. Effects on Bay Resources

In addition to Section 66605(d) of the McAteer-Petris Act regarding the impacts of fill on Bay resources, the Bay Plan contains applicable policies, cited below, to provide for the protection of Bay resources.

### a. *Fish, Other Aquatic Organisms, and Wildlife*

#### Applicable Policies:

The Bay Plan Fish, Other Aquatic Organisms and Wildlife Policy No. 1 states that “[t]o assure the benefits of fish, other aquatic organisms and wildlife for future generations, to the greatest extent feasible, the Bay’s tidal marshes, tidal flats, and subtidal habitat should be conserved, restored and increased.” Moreover, Policy No. 4 states, in part, that “[t]he Commission should consult with the California Department of Fish and [Wildlife] and the U.S. Fish and Wildlife Service or the National Marine Fisheries Service whenever a proposed project may adversely affect an endangered or threatened plant, fish, other aquatic organism or wildlife species...and give appropriate consideration of (their) recommendations in order to avoid possible adverse impacts of a proposed project on fish, other aquatic organisms and wildlife habitat.”

#### Analysis:

The project involves various activities in the Bay and along the shoreline that have the potential to impact fish, wildlife, and associated habitats, including riprap removal and placement, seawall installation and repair, wharf refurbishment, outfall installation (including use of a cofferdam), marina reconfiguration, boat hoist construction, and pile installation and removal.

On June 17, 2020, the National Marine Fisheries Service (NMFS) issued a consultation letter titled “Re-initiation of Endangered Species Act Section 7 Consultation and Magnuson-Stevens Fishery Conservation and Management Act

Essential Fish Habitat Response for Alameda Marina Improvement Project.” Based on the permittees’ proposed avoidance and minimization measures, which included use of a bubble curtain, turbidity curtain, and other pile driving best management techniques, the NMFS determined that the project is not likely to adversely affect the subject species listed as endangered or threatened (Central California Coast steelhead Distinct Population Segment [DPS] and North American green sturgeon southern DPS) and their designated critical habitats.

However, NMFS determined that the proposed action would adversely affect Essential Fish Habitat (EFH) designated under the Pacific Groundfish and the Coastal Pelagic Fishery Management Plan (FMP) due to localized increases in turbidity and disturbance of benthic habitat. The anticipated effects of increased turbidity and disturbance to EFH are expected to be minor, temporary and localized, and would occur in a marina with highly modified and degraded aquatic habitat conditions and persistent vessel traffic. NMFS determined that the proposed project already contained appropriate measures to avoid, minimize, mitigate, or otherwise offset the adverse effects to EFH. As such, NMFS did not provide additional EFH conservation recommendations to avoid or further reduce the magnitude of these effects.

Furthermore, on June 19, 2020, NMFS issued to the permittees two Incidental Harassment Authorizations (IHAs) under Section 101(a)(5)(D) of the Marine Mammal Protection Act, for the periods August 1, 2020 to July 31, 2021, and August 1, 2021 to July 31, 2022. The IHAs authorize a specified amount of take, by Level B harassment only, for the following marine mammal species: bottlenose dolphin, harbor porpoise, California sea lion, northern fur seal, northern elephant seal, and harbor seal. As stated on NMFS’ website, “Level B harassment refers to acts that have the potential to disturb (but not injure) a marine mammal or marine mammal stock in the wild by disrupting behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.” The IHAs require the permittees to implement a series of measures to mitigate, monitor, and report on any impacts to marine mammal species, including but not limited to use of protected species observers, use of a bubble curtain, and other pile driving best management practices.

Moreover, on March 6, 2020, the United States Fish and Wildlife Service (USFWS) issued a letter in response to the U.S. Army Corps of Engineers’ request for informal consultation on the project under the Endangered Species Act Section 7. In the letter, the USFWS concurred with the U.S. Army Corps of Engineers’ determination that the project “may affect, but is not likely to adversely affect the California least tern because the project effects are likely to be discountable based on the following: (1) no effects to the least tern colony at Alameda Point will occur due to the distance from the colony to the proposed project; (2) the work activities in the Oakland Estuary will be minimal and will not have significant effects to foraging terns; and (3) no significant loss of foraging habitat

will occur as a result of this project.” The letter from the USFWS included a series of best management practices to minimize potential adverse effects to environmental resources, including but not limited to worker environmental awareness training, project site best management practices, use of a qualified biological monitor during all in-water work associated with the cofferdam and installation of the tidal flap gate, requiring certain portions of work to occur at low tide, and various pile driving best management practices.

Special Condition II.D requires the permittees to implement measures to protect Bay species and water quality during construction. Special Conditions II.D.1 through II.D.3 require adherence to the avoidance and minimization measures and other requirements specified in the consultation documentation and take authorizations issued by USWFS and NMFS to protect marine mammals, listed species, and EFH. Special Condition II.D.4 requires the permittees to obtain all required take authorizations or other approvals from the California Department of Fish and Wildlife (CDFW) before commencing in-water work; the permittees stated a CDFW incidental take permit was necessary, but had not yet been obtained. Special Conditions II.D.5 and II.D.6 require adherence to the specified environmental work windows and best management practices related to pile driving and removal and installation of riprap and cofferdams.

*b. Water Quality*

Applicable Policies:

Bay Plan Water Quality Policy No. 1 states, in part, that “[b]ay 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.” Policy No. 2 states, in part, that “[w]ater quality in all parts of the Bay should be maintained at a level that will support and promote the beneficial uses of the Bay...” and “[t]he 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.” Additionally, Policy No. 3 states, in part, 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...” Finally, Policy No. 6 states that “to protect the Bay and its tributaries from the water quality impacts of nonpoint source pollution, new development should be sited and designed consistent with standards in municipal stormwater permits and state and regional stormwater management guidelines, where applicable, and with the protection of Bay resources. To offset impacts from increased impervious areas and land disturbances, vegetated swales, permeable pavement materials,

preservation of existing trees and vegetation' planting native vegetation and other appropriate measures should be evaluated and implemented where appropriate.”

**Analysis:**

The project may have temporary water quality impacts during construction, including during placement of riprap and installation of piles, as well as impacts from stormwater discharge and stormwater runoff. The San Francisco Bay Regional Water Quality Control Board (Water Board) issued a Water Quality Certification for the proposed project on August 14, 2020. The Water Quality Certification determined that the project will have permanent impacts to 0.43 acres of waters of the State associated with new fill, will permanently shade 0.04 acres of waters of the state, and will temporarily impact 0.01 acres of waters of the State. The Certification requires measures to protect water quality, including through stormwater control measures.

Special Condition II.D.7 requires the permittees to conduct work consistent with the Water Board’s Water Quality Certification and to implement best management practices and other measures to protect water quality, including implementation of a Worker Environmental Awareness Program (WEAP), weather forecast monitoring, and spill prevention and erosion control measures.

**c. Mitigation**

**Applicable Policies:**

Bay Plan Mitigation Policy No. 1 states that: “[p]rojects should be designed to avoid adverse environmental impacts to Bay natural resources such as to water surface area, volume, or circulation and to plants, fish, other aquatic organisms and wildlife habitat, subtidal areas, or tidal marshes or tidal flats. 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. Mitigation is not a substitute for meeting the other requirements of the McAteer-Petris Act.”

**Analysis:**

As described in Finding III.A.1, the project includes placement of new permanent Bay fill, including 13,410 square feet (1,692 cubic yards) of solid fill, 3,182 square feet of cantilevered and pile-supported fill, and 19,220 square feet of floating fill. The project also involves removing substantial amounts of fill of each type. Overall, the project results in a permanent net increase of approximately 6,236 square feet (803 cubic yards) of solid Bay fill and approximately 7,740 square feet of floating fill, and a permanent net decrease of 28,878 square feet of cantilevered and pile-supported fill. Special Condition II.D requires the permittees to implement measures to avoid or minimize impacts to Bay resources and water quality, consistent with the requirements of the Water Board and the state and federal resource agencies. Because the permittees will

remove cantilevered and pile-supported fill at a rate of approximately two times the amount of solid and floating fill, and the project has been designed to minimize and avoid permanent and significant adverse impacts, no additional compensatory mitigation for the new Bay fill is required.

Therefore, as conditioned the project is consistent with Section 66605(d) of the McAteer-Petris Act and related Bay Plan policies.

## 6. Safety of Fills and Permanent Shoreline

Applicable Policies:

In addition to Sections 66605(e) and 66605(f) of the McAteer-Petris Act regarding safety of fills and the establishment of a permanent shoreline, the Bay Plan contains related policies on Shoreline Protection, Safety of Fills, and Climate Change.

### a. Shoreline Protection

Applicable Policies:

Shoreline Protection Policy No. 1 states, in part, that: “[n]ew shoreline protection projects and the maintenance or reconstruction of existing projects and uses should be authorized if: (a) the project is necessary to provide flood or erosion protection for (i) existing development, use or infrastructure, or (ii) proposed development, use or infrastructure that is consistent with other Bay Plan policies; (b) the type of the protective structure is appropriate for the project site, the uses to be protected, and the causes and conditions of erosion and flooding at the site; (c) the project is properly engineered to provide erosion control and flood protection for the expected life of the project based on a 100-year flood event that takes future sea level rise into account; (d) the project is properly designed and constructed to prevent significant impediments to physical and visual public access; (e) the protection is integrated with current or planned adjacent shoreline protection measures; and (f) adverse impacts to adjacent or nearby areas, such as increased flooding or accelerated erosion, are avoided or minimized...”

Shoreline Protection Policy No. 3 states, in part, that “[r]iprap revetments... should be constructed of properly sized and placed material that meet sound engineering criteria for durability, density, and porosity.” Policy No. 4 states, in part, that “[a]uthorized protective projects should be regularly maintained according to a long-term maintenance program...”, while Policy No. 5 states, in part, that “...shoreline protection projects should evaluate the use of natural and nature-based features...and should incorporate these features to the greatest extent practicable.” Finally, Policy No. 6 states, in part, that “[a]dverse impacts to natural resources and public access from new shoreline protection should be avoided...when feasible, shoreline protection projects should include components to retain safe and convenient water access...”

**Analysis:**

The project includes reconstructing approximately 4,009 linear feet shoreline embankments, seawall, bulkheads, and revetment slopes, where the existing shoreline protection has surpassed its useful life, is unsafe, and requires substantial repair and replacement. Approximately 10,912 square feet (1,051 cubic yards) of riprap will be placed in the Bay along four sections of the shoreline to repair and rehabilitate existing riprap. In addition, new seismically sound 1.5-foot-thick seawall segments will be installed in locations where seawall currently exists but does not meet sound safety standards. New seawall segments will be installed bayward of existing deteriorated seawall along approximately 800 linear feet of shoreline, with an additional 480 linear feet of seawall installed landward of existing seawall. In addition, 190 feet of existing seawall will be repaired and reinforced. Nature-based shoreline protection features were not included as part of the project, as the proposed shoreline protection will be used to replace or strengthen existing sections of armored shoreline, and because using nature-based features would have required placing greater amount of fill. Nevertheless, the permittees stated they will explore options for nature-based shoreline protection features at the site; implementing such features may require an amendment to this authorization.

Engineering analysis performed to assess the shoreline protection requirements for major storm events indicated that the existing shoreline at the site is exposed to moderate wave actions in a 100-year storm event, and that certain areas of the shoreline are not adequately protected due to deterioration of the revetment and seawalls. As such, the shoreline protection is necessary to provide flood and erosion protection from both current storm events and future sea level rise. As discussed further under Finding III.B.5 below, the proposed shoreline, revetments and seawalls, and adjacent land side improvements will be elevated to a minimum elevation of 13.5 feet North American Vertical Datum of 1988 (NAVD 88), which is seven feet above the current mean higher high water (MHHW) line and 3.7 feet above the current 100-year storm base flood elevation, which is equivalent to the sea level rise expected to occur between 2070 and 2080 based on the project's design assumptions (as discussed further in Finding III.B.5).

The proposed shoreline improvements provide approximately 4,000 feet of improved, long term shoreline protection for the northern waterfront of the City of Alameda. The permittees stated the shoreline improvements are a significant component of the climate change resiliency strategy for the City of Alameda and can be integrated with other future improvements to the shoreline east and west of the project site.

Special Condition II.E includes requirements for the shoreline protection, to ensure the riprap revetment is constructed consistent with standards specified by Caltrans or the U.S. Army Corps of Engineers and is the minimum fill necessary for this work, and that all shoreline protection elements authorized herein are regularly maintained. Special Condition II.D on Bay Resources ensures the placement of shoreline protection will avoid or minimize impacts on natural resources, while Special Condition II.B.4.c (Waterlife Park and East Park) ensures that safe and convenient water access are integrated with the project.

Therefore, as conditioned, the project is consistent with applicable Bay Plan policies on Shoreline Protection.

*b. Safety of Fills and Climate Change*

**Applicable Policies:**

The Bay Plan Safety of Fill Policies state, in part, that: "[t]he Commission has appointed the Engineering Criteria Review Board...to: establish and revise safety criteria for Bay fills and structures thereon...[and]...review all except minor projects for the adequacy of their specific safety provisions, and make recommendations concerning these provisions..." (Policy No. 1); that "...no fill or building should be constructed if hazards cannot be overcome adequately for the intended use in accordance with the criteria prescribed by the Engineering Criteria Review Board" (Policy No. 2); that "[to] provide vitally needed information on the effects of earthquakes on all kinds of soils, installation of strong-motion seismographs should be required on all future major land fills..." (Policy No. 3); and that "[a]dequate measures should be provided to prevent damage from sea level rise and storm activity that may occur on fill or near the shoreline over the expected life of a project..." (Policy No. 4).

Moreover, the Bay Plan Climate Change policies state, in part, that "[w]hen planning shoreline areas or designing larger shoreline projects, a risk assessment should be prepared by a qualified engineer and should be based on the estimated 100-year flood elevation that takes into account the best estimates of future sea level rise 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." (Policy No. 2). The policies also state: "To protect public safety and ecosystem services, within areas that a risk assessment determines are vulnerable to future shoreline flooding that threatens public safety, all projects—other than repairs of existing facilities, small projects that

do not increase risks to public safety, interim projects and infill projects within existing urbanized areas—should be designed to be resilient to a mid-century sea level rise projection. If it is likely the project will remain in place longer than mid-century, an adaptive management plan should be developed to address the long-term impacts that will arise based on a risk assessment using the best available science-based projection for sea level rise at the end of the century” (Policy No. 3).

Analysis:

The project features the following shoreline structural improvements:

(1) **Seawalls and Graving Dock.** Improvements will be made to four seawalls (numbered 1, 4, 5, and 6), and to the graving dock on the east side of the project site. The seawalls, which range in length from 200 feet (Seawall 6) to 860 feet (graving dock), will be constructed or repaired in locations where seawalls currently exist but do not meet sound safety standards. The retrofit will involve installing new seawalls bayward (Seawall 1) and landward (Seawalls 4 and 6) of existing deteriorated seawall. The permittees conducted design checks that indicated that Seawall 5 and the graving dock already met or exceeded the life safety and seismic requirements under the California Building Code, and as such will receive only structural repairs or replacements to walers and anchoring devices.

In materials submitted for review of the project by the Engineering Criteria Review Board (ECRB) on July 25, 2019, the permittees stated that all new and repaired walls were designed to California Building Code. According to the permittees, several additional conservative design measures exceeded the safety requirements in California Building Code: 1) elastic design was incorporated where possible; 2) the walls are designed for full maximum considered earthquake (MCE) using life-safety criteria ; 3) adequate corrosion protection was provided for the seawalls; and 4) although the existing seawalls currently carry the static design loads in a safe manner, the new seawalls will be designed to carry entire static and seismic loads without any reliance on existing seawalls.

When the engineering criteria for the seawalls was reviewed and accepted by the ECRB, the design for Seawalls 4 and 6 included placing new seawalls bayward of the existing walls. However, the permittees subsequently modified the design to place the new seawalls landward of existing walls and provided evidence that the new design had been peer reviewed and that the engineering criteria is in conformance with the original criteria presented to, and accepted by, the ECRB.

- (2) **Boat Hoist.** The project involves construction of a new pile-supported boat hoist designed to support a 3-ton boat crane and 34-foot boat. It will use conventional design to current California Building Code.
- (3) **Wharf retrofits.** The project involves seismic retrofits to four wharves: Building 13 wharf, Promenade wharf, and Building 5 wharf (which will collectively form a portion of the “Wharf Promenade” public access area upon project completion), and Building 14 wharf, which is not proposed for public access. Two smaller wharves located adjacent to Building 13 and Building 5 wharves will be demolished. The four wharves collectively forming the Wharf Promenade will be improved and seismically retrofitted by replacing approximately 38 existing piles with new 16-inch square piles, adding two new 36-inch steel pipe piles alongside Building 13 wharf, and adding deep soil mixing and a series of steel king piles adjacent (landside) to the wharves. Building 14 will be demolished, while the wharf beneath it will be retrofitted by strengthening existing piles and girders, installing new HP piles landside of the wharf, and installing a new 36-inch steel pipe pile adjacent to one of the wharf’s north east corners.

The wharves pre-date the establishment of the Commission, with initial construction dates ranging from 1940 to 1960. For overwater structures that predate the Commission and that have not undergone significant structural repairs or modified to the extent that the work will significantly extend the life of the structure, the Commission's practice has been to review development on these overwater structures under the same policies that it will for development within the 100-foot shoreline band. However, the proposed seismic retrofits will extend the useful lives of the structures by approximately 40 to 50 years; as such, the overwater portions of the wharves, and the structures built thereon, will become subject to the Commission’s Bay jurisdiction and associated policies upon project completion.

The permittees stated that the design check for the wharves indicated that, with the proposed retrofits, the wharves will meet and exceed the performance requirements in the Building Code.

In addition to seismic safety, proposed fill and structural improvement elements were evaluated for their sea level rise resilience and adaptive capacity. As discussed further in Finding III.C.5, the permittees prepared a sea level risk assessment and adaptive management plan for relevant fill and public access elements, relying on the 2018 Ocean Protection Council Guidance, in accordance with Bay Plan Climate Change Policy No. 3.

The project was designed such that the landside public access areas, streets, and building sites, including all seawalls, the boat hoist, and the pedestrian footbridge in Waterlife Park, will be raised to achieve a minimum elevation of +13.5 feet NAVD 88, after accounting for estimated long-term settlement associated with underlying compressible soils and rising groundwater conditions. By comparison, the current MHHW elevation at the site is +6.4 feet NAVD 88, while the current 100-year storm base flood elevation is +9.8 feet. In the year 2050, with projected sea level rise of 1.9 feet (using a high emissions scenario and medium-to-high risk aversion), these areas will be safe from flooding even during a 100-year storm, as such they are resilient to mid-century sea level rise.

In contrast to the seawalls and landside improvements, the wharves proposed for retrofit will not be raised as part of the initial project. The three wharves that will become public access (Promenade Wharf, Building 5 Wharf, and Building 13 Wharf) will remain at their current elevations of +12 to +12.3 feet NAVD 88, while Wharf 14, which is not proposed for public access, will remain at +11.6 feet NAVD 88. At these elevations, the public access wharves will remain above the 100-year storm base flood elevation projected for 2050 (+11.7 feet NAVD 88). Building 14 wharf will experience some flooding by 2050 in a 100-year storm but will be designed to tolerate periodic flooding.

Beyond mid-century, the project's sea level risk assessment includes measures to adapt the structures to sea level rise as needed throughout their lifespan. These measures, as specified further in the plan, include implementation of floodwalls and earthen berms, elevating wharves and the pedestrian footbridge, and other storm drain system enhancements.

The Commission sought the advice of the Engineering Criteria Review Board (ECRB) on several Safety of Fills issues, including: 1) groundwater rise and whether the shoreline improvements were adequate and will meet life-safety criteria over the life of the project; 2) whether the seawalls will support additional fill required to raise the shoreline for sea level rise adaptation; 3) whether there were structural or life-safety risks associated with the historic wharves and their future adaptation; 4) whether the DSM criteria is adequate for the project; and 5) whether the structural investigations and proposed repairs were adequate to ensure the future durability of the graving dock.

The ECRB did not raise concerns about structural or life-safety risks associated with the wharves and their adaptation, the DSM criteria, or the proposed repairs to the graving dock. However, the Board raised several other concerns with the project that were subsequently addressed, including but not limited to incorporation of groundwater and fill settlement into the

sea level risk assessment, a site response analysis of shear wave velocity versus depth, and addressing site contamination concerns. In addition, the ECRB requested further information regarding potential locations for seismic instrumentation at the site to provide information on the effects of earthquakes on site soils. Special Condition II.G.1 requires the permittees to consult with the California Geological Survey to determine whether seismic instrumentation should be installed.

With these special conditions, the project is consistent with Sections 66605(e) and 66605(f) of the McAteer-Petris Act regarding safety of fills and the establishment of a permanent shoreline, as well as relevant Bay Plan policies related to Shoreline Protection, Safety of Fills, and Climate Change.

#### **7. Valid Title**

Approximately 27 acres of the 44-acre project site is owned in fee by Alameda Marina, LLC. The remainder of the project site, including most portions of the site in the Bay and along the shoreline, is held in trust by the City of Alameda and leased to Alameda Marina, LLC. Alameda Marina, LLC and the City of Alameda are co-permittees and jointly responsible for all aspects of the project.

All portions of property on which the authorized work will occur are either owned by Alameda Marina, LLC, held in trust by the City of Alameda and leased to Alameda Marina, LLC via a Tidelands and Marina Lease. The permittees therefore have valid title to the property where fill is authorized herein.

For the reasons discussed above, the Commission therefore finds that the project, as conditioned, is consistent with the Commission's law and related policies on allowable Bay fill.

#### **B. Public Access**

The Commission finds that the project, as conditioned, is consistent with McAteer-Petris Act and Bay Plan policies related to public access for the following reasons:

##### **1. Maximum Feasible Public Access**

Applicable Policies:

Section 66602 of the McAteer-Petris Act states, in part, that "...maximum feasible public access, consistent with a proposed project, should be provided," and Section 66632.4 states, in part, that "[w]ithin any portion or portions of the shoreline band that are located outside the boundaries of water-oriented priority land uses...the commission may deny an application for a permit for a proposed project only on the grounds that the project fails to provide maximum feasible public access, consistent with the proposed project, to the bay and its shoreline."

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 “[w]henver public access to the Bay is provided as a condition of development, on fill or on the shoreline, the access should be permanently guaranteed...” (Policy No. 7).

The McAteer-Petris Act and Bay Plan policies must be read in light of court decisions that have established that a public agency must show a nexus, or essential connection, between any requirements included as a condition of a permit and the public burden created by a private development project, and that the condition must be roughly proportional to the burden.

Analysis:

*Public Access Demand Generated by Project*

In assessing whether a project increases public access to the Bay and its shoreline, the Commission considers a number of factors, including the demand on existing public access areas and the need for additional public access generated by the employment and housing associated with the project.

At present, the project site is mostly inaccessible to the public, with exception of a 4,085-square-foot public access area and amenities along 355 feet of shoreline, located at the east end of the project site, required under BCDC Permit No. 1988.025.01. Access to that site is provided by a gate that is open to the public from 8:00 AM to 5:00 PM daily. This public access area will be redeveloped and superseded as part of the project. Interim public access will be required and provided when construction prevents access to this area (see Special Condition II.B.5).

Additionally, a limited amount of improved public access currently exists along the shoreline to the west of the project site. BCDC Permit No. M1982.024, issued to the City of Alameda, includes a 6,200 square foot public area adjacent to a public boat launch. Just to the west of the site, a public shoreline trail required under BCDC Permit No. 1983.005 extends along the shoreline.

Approximately 2,200 people are expected to be on the project site daily once the project reaches full build-out; the projected residential population is approximately 1,932 residents, while the commercial uses are anticipated to bring a workforce of approximately 250 employees to the site.

The project includes a “Boat Yard Flex Space”, outlined in Exhibit A of this permit, proposed for maritime uses. However, the permittees were unable to secure an operator for the boat yard or provide further details about the boat yard prior to

issuance of the permit. As such, no boat yard or other improvements are authorized by this permit, but authorization for such activities may be requested by the permittees through an amendment to this permit. Additional public access may be required depending on the future use.

*Public Access Provided by Project*

The project will provide a series of waterfront public access areas interlinked by the Bay Trail and secondary circulation paths. These improvements include an extension of the San Francisco Bay Trail; a Wharf Promenade; three waterfront parks (Harborview Park, Waterlife Park, and East Park); and a small open space at the interior of the project site (“Clement Avenue Open Space”). The details of the design and amenities of these public access areas are discussed below.

Of the 44-acre project site, approximately 4.72 acres will be developed as parks and open space. Among this, a total of 4.20 acres (182,994 square feet), comprising approximately 10 percent of the project site, will be required public access under the permit, including 0.77 acres in the Bay, 3.16 acres within the 100-foot shoreline band, and 0.28 acres outside of the Commission’s permitting jurisdiction. Among the 4.20 acres of required public access, approximately 3.83 acres, including the main portion of Bay Trail, the Wharf Promenade, Harbor View Park, and the upland portions of Waterlife and East Parks), will be permanently guaranteed as required in Special Condition II.B.2. The remaining 0.37 acres of required public access, which include the floating dock and pedestrian footbridge at Waterlife Park, the Clement Avenue Open Space, and the Bay Trail portion between Waterlife Park and Clement Avenue, are not required to be permanently guarantee to allow flexibility for these areas to change location or evolve over time.

Special Condition II.B.1 requires the 4.20-acre public access area to be made available exclusively to the public for unrestricted access for walking, biking, sitting, viewing, fishing, picnicking, and related purposes, while Special Condition II.B.2 requires an approximately 3.83-acre area to be permanently guaranteed as public access through a legal instrument. Finally, Special Condition II.B.3 requires recordation of the instrument on all parcels affected by the instrument.

*Comparable Projects Approved by the Commission*

The Commission considers its previous actions on comparable projects to help inform a decision about whether public access proposed as part of a project represents the maximum feasible scope and type consistent with the project. Table 1 below presents a comparison of the current project with three comparable waterfront redevelopment projects previously approved by the Commission.

*Table 1 Public Access Provided in Comparable Projects*

<b>Project Name and BCDC Permit No.</b>	<b>Number of Residents and Workers</b>	<b>Total Project Area</b>	<b>Public Access Area Required</b>	<b>Public Access as a Percentage of Total Project Area</b>	<b>Area of Public Access Provided Per Resident/ Worker</b>
Mission Bay Development, BCDC Permit No. 2000.005	41,000	305 acres	17.20 acres	5.6%	18 sf
Potrero Power Station Project, BCDC Permit No. 2019.06	11,335	29 acres	2.86 acres	9.8%	11 sf
Pier 70 Development, BCDC Permit No. 2018.008	11,250	28 acres	2.6 acres	9.2%	10 sf
<b>Alameda Marina Shoreline Improvement Project, BCDC Permit No. 2018.003</b>	<b>2,182</b>	<b>44 acres</b>	<b>4.20 acres</b>	<b>10%</b>	<b>84 sf</b>

The three comparison projects, the Mission Bay Development, Pier 70 Development and the Potrero Power Station Project, are urban infill mixed-use projects similar in character to the Alameda Marina project. The Alameda Marina project provides 10% of the total project site as required public access, roughly comparable to and exceeding the three other projects, which range from 5.6% to 9.2%. Meanwhile, the Alameda Marina provides a much higher rate of average square feet of required public access per resident or worker, with 84 square feet compared to between 10 and 18 square feet from the comparison projects; this is due primarily to a higher density of residents and workers at the comparison projects. Overall, the table shows that Alameda Marina has a total public access comparable to other projects approved by the Commission.

## 2. Public Access Improvements and Amenities

Applicable Policies:

Bay Plan Recreation Policy No. 1 establishes, in part, that “[d]iverse and accessible water-oriented recreational facilities, such as marinas, launch ramps, beaches, and fishing piers, should be provided to meet the needs of a growing and diversifying population, and should...accommodate a broad range of water-oriented recreational activities for people of all races, cultures, ages and income levels...” and that “...waterfront parks should be provided wherever possible.” Recreation Policy No. 4 states, in part, that “[t]o capitalize on the attractiveness of their bayfront location, parks should emphasize, among other things, hiking, bicycling, riding trails, picnic facilities, swimming, environmental, historical and cultural education and interpretation, viewpoints, beaches, and fishing facilities...”; that “[p]ublic

launching facilities for a variety of boats and other water-oriented recreational craft, such as kayaks, canoes and sailboards, should be provided...where feasible...”; and that “...[t]rails that can be used as components of the San Francisco Bay Trail...should be developed in waterfront parks...”.

Furthermore, Public Access Policy No. 8 states that “...improvements provided as a condition of any approval...” should, among other things: “...be designed and built to encourage diverse Bay-related activities and movement to and along the shoreline”; “...provide barrier free access for persons with disabilities to the maximum feasible extent...”; “...include an ongoing maintenance program...”; and “...be identified with appropriate signs...”. In addition, Recreation Policy No. 4.a.8 states that “...interpretive information describing natural, historical and cultural resources should be provided in waterfront parks where feasible.”

**Analysis:**

*Permanent Public Access Improvements Provided by Project*

Required shoreline public access areas provided as part of the project are grouped into five general areas: (1) the “Wharf Promenade”; (2) “Harbor View Park”; (3) “Waterlife and East Park”; (4) the Bay Trail; and (5) Clement Avenue Open Space. The public access improvements provided in these spaces are designed to accommodate diverse Bay-related activities and waterfront experiences, including everyday passive and active uses such as biking, walking, and picnicking, and water-oriented recreation such as kayaking and paddle-boarding.

**Wharf Promenade**

An approximately 1.18-acre Wharf Promenade public access area will be constructed along the waterfront in the center of the project site. It will be constructed partially on top of wharves that pre-date the establishment of the Commission and that will be seismically retrofitted as part of the project. The Wharf Promenade, required under Special Condition II.B.4.a, will accommodate a range of passive and active uses and will include a 16-foot-wide Bay Trail segment, bicycle parking, benches, built-in wood bench seating, a multiuse recreational promenade, public art, marina artifacts, pedestrian plazas, a history kiosk, and gathering areas for small groups.

Special Condition II.B.10 requires the permittees to submit for review and approval by or on behalf of the Commission a public art plan prior to installing any permanent or temporary public art.

**Harbor View Park**

The largest of the required public access areas, the approximately 1.22-acre Harbor View Park will be constructed along the waterfront, adjacent to the former graving dock. Required under Special Condition II.B.4.b, the park will supersede and improve upon the existing approximately 4,085-square-foot public access area required under Permit No. 1988.025.01. Harbor View Park will accommodate a range of uses and include a 16-foot wide Bay Trail segment,



bicycle parking, benches, picnic tables and barbeques, passive recreation space, shade trees, large and small group gathering areas, a public lawn, a multi-use plaza, and a public restroom.

In addition, ten required public shore parking spaces, including two ADA spaces, will be provided in an approximately 48-space parking lot located immediately adjacent to the park. The specific locations of the public shore parking spaces will be determined through plan review, and are required to maximize opportunities for in-car viewing of the Bay.

#### **Waterlife Park and East Park**

Two additional waterfront parks, Waterlife Park and East Park, required under Special Condition II.B.4.c, will be built in and around the site of the former graving dock, located on the east end of the project site. The area will include an approximately 0.96-acre (42,000 square feet) upland park area, including a multi-use Bay Trail portion, benches, landscaping, a planted slope transition between finished grade (13.5 feet NAVD 88) and the graving dock (10.6 feet NAVD 88), and an open lawn area adjacent to the northeast corner of the graving dock. In addition, the park will include a pedestrian footbridge crossing the former graving dock, to provide circulation around the park, and a floating dock with launching facilities for small vessels such as kayaks, stand-up paddleboards, and row boats.

This permit also authorizes the placement of small vessel storage and operation of a small vessel rental or instructional business on the floating dock. The business will provide small vessel rentals or lessons to members of the public, increasing the public's access to the Bay via small watercraft, and will also provide low- or no-cost recreational programming aimed at youth, low-income, minority, disabled, or otherwise underserved communities, for activities such as kayaking, paddle-boarding, and rowing. Special Condition II.C.8 requires the permittees to ensure that the public access floating dock is open to members of the public at all times for its intended uses, and that use of the dock for small vessel storage, rentals, or lessons does not inhibit the use of the dock by other members of the public.

#### **Bay Trail and associated improvements**

The project includes construction of an approximately 4,050 linear foot segment of the San Francisco Bay Trail, composed of two sections. A main, 3,800-linear-foot segment will run generally east-to-west along the entire shoreline of the project site and will connect the required public access areas on the site. The trail will be 16 feet wide in all sections, except an approximately 55-linear-foot portion in front of the boat hoist, which was narrowed slightly to accommodate the hoist. As the Bay Trail is located between the boat hoist and the dry boat storage yard, boat hoist users will need to transport vessels across the trail when using the boat hoist, necessitating periodic closures of the Bay Trail for short

periods. To ensure the closures are managed smoothly and minimize disruptions to the Bay Trail, Authorization I.A.9.a.3 authorizes two electronically-operated gates for temporary Bay Trail closures, while Special Condition II.B.7 requires submission for review and approval, and implementation, of a signage program to inform Bay Trail and boat hoist users of the closures and boat hoist operational protocol.

At the western boundary of the project site, the Bay Trail will connect to the adjacent Grand Street public boat launch facility and a public access area required under BCDC Permit No. M1982.024, and Grand Marina Village, which includes a public trail continuing to the west along the waterfront (required public access under BCDC Permit No. 1983.005). At the project's eastern boundary, the main Bay Trail portion terminates at the adjacent United States Naval Reserve, where a Bay Trail connection is not feasible at this time, though a future connection may be possible if property ownership changes.

In addition, a shorter, 12-foot-wide, 250-linear-foot segment of Bay Trail will run south from the southern edge of Waterlife Park, through the Clement Ave Open Space, and connect with Clement Avenue. This Bay Trail segment is provided because a continuation of the Bay Trail is not currently possible at the project's eastern boundary, and is intended to connect the Bay Trail to the nearest thoroughfare. Should the Bay Trail extend through the U.S. Navy site in the future, this shorter segment shall remain in place but may no longer be designated as Bay Trail.

Special Condition II.B.4.d requires construction of the Bay Trail segments and a safety railing that will be installed along certain portions of the trail. It also requires provision of 25 required public shore parking spaces, including two ADA spaces, in an approximately 218-space parking lot at the western end of the project site. The specific locations of the public shore parking spaces will be determined through plan review, and are required to maximize opportunities for in-car viewing of the Bay. Finally, a public restroom is required in or adjacent to the connected Buildings 25 and 26, which are immediately adjacent to the shoreline and the Bay Trail. In order to raise the elevation of these buildings to +13.5 feet NAVD 88, they will either be temporarily relocated and placed back at the site after grading, or if that is structurally infeasible, they will be demolished and replaced; Authorization I.A.3.b.1 provides the permittees the flexibility to take either action as needed.

#### **Clement Avenue Open Space**

The approximately 0.15-acre (6,685 square feet) Clement Avenue Open Space, required under Special Condition II.B.4.e, will include a 12-foot-wide Bay Trail segment connecting Waterlife Park with Clement Avenue, bicycle parking, seating, and small group gathering areas.

Special Condition II.B.11 requires the public access areas to remain open to the public at all times (i.e., 24 hours a day), with exception of the restroom at Harbor View Park, which shall remain open to the public seven days a week from sunrise to sunset. Finally, Special Condition II.B.11 allows the permittees to impose reasonable rules and restrictions for the use of the public access areas to correct particular problems that may arise provided that have first been approved by or on behalf of the Commission.

#### *Project Phasing and Interim Public Access Areas*

The public access improvements will be constructed in phases in association with nearby development of residential and commercial buildings. The final public access is planned to be complete by approximately the end of 2024, according to Exhibit D “Phasing Plan.” Special Condition II.B.4 requires that public access improvements associated with each phase shall be provided and open to the public prior to the use of any facilities authorized within each particular phase of work.

As stated above, the approximately 4,085-square-foot public access area required under BCDC Permit No. 1988.025 will be redeveloped and the associated requirement in the permit shall be superseded by this permit. Special Condition II.B.5 requires the permittees to provide equivalent interim public access on the western side of the project site, including walkways, picnic and viewing areas, public shore parking, public restrooms, and adequate signage, throughout the time that construction activities preclude access to the pre-existing required public access area, until the new, permanent public access improvements in Harbor View Park are complete. The area labeled as Option 2 on Exhibit B (“Interim Public Access Site Plan”), as well as parking, restrooms, and signage, will remain open throughout construction until the new improvements are complete, while Option 1 will remain open through the same period, with the exception of an approximately 60-day period, when the permittees may temporarily close it for construction on the western side of the project site upon receiving written approval by or on behalf of the Commission.

Additionally, there are opportunities to provide temporary Bay Trail connections to Clement Avenue and throughout the project site as project construction progresses. Therefore, Special Condition II.B.6 requires the permittees to construct temporary Bay Trail connections in each relevant phase of the project in accordance with plans approved under Special Condition II.A.

#### *Barrier-Free Access*

All public access areas and improvements, including circulation and recreation features such as the Bay Trail and connecting pathways, the public floating dock and associated gangway at Waterlife Park, and four of the 35 required public shore parking spaces, will be constructed to meet or exceed Americans with Disabilities Act (ADA) accessibility requirements. Special Condition II.A requires

the permittees to submit final construction plans for public access improvements, to ensure their design provides barrier-free access to the maximum feasible extent consistent with the measures described in the permit application.

#### *Ongoing Maintenance*

Ongoing maintenance of open spaces, including the proposed public access areas and publicly accessible areas, will be administered by a Master Association. The Master Association will be funded by assessments from the various residential and commercial owners or owners' associations that will be established after the project is developed pursuant to a declaration of conditions, covenants and restrictions. It is anticipated that the Master Association will engage the services of a professional management company for the ongoing maintenance and operation of the public access improvements. Maintenance and management of the maritime and commercial core area and marina will be provided by Alameda Marina, LLC, until such time another maritime and commercial core or marina operator is identified and maintenance responsibilities are transferred. The permittees are also in the process of setting up a Community Facilities District that will contribute funds to the capital improvements and ongoing maintenance of the public access improvements.

Special Condition II.B.14 requires that the public access improvements be properly maintained at all times by and at the expense of the permittees or their assignees, while Special Condition II.B.15 allows for a transfer of maintenance responsibility to another entity under specified circumstances.

#### *Signage, Interpretation, and Historical Elements*

A conceptual plan for the site's historic elements and interpretive signage was provided in the "Alameda Marina Open Space Master Plan, Historic Advisory Board" conceptual presentation, dated February 8, 2019 and submitted with the application. The project includes a history walk with appropriate signage along the site's waterfront Bay Trail, which will highlight the site's natural and industrial history. Multiple historic buildings will be retained throughout the project site, and various historical elements, such as marina artifacts and a history kiosk, will be provided along the Wharf Promenade public access area. Special Condition II.B.9 requires the permittees to submit final public access, wayfinding, and interpretive signage plans for review and approval prior to the start of construction of relevant phases of work, to ensure that the location, quantity, and design of the wayfinding, interpretive, "Public Shore," and "Bay Trail" signs are adequate to maximize public recognition, use, and enjoyment of the site's public access improvements and highlight the site's history.

### *Public Safety and Hazardous Materials*

Hazardous materials have been identified in the soils on the project site as result of the site's former maritime industrial use. Known, suspected, and possible contaminants of concern include Polychlorinated Biphenyls (PCBs), hydrocarbons associated with former underground storage tanks (USTs), volatile organic compounds, poly-aromatic hydrocarbons and poly-nucleated aromatics associated with a former potential coal gas manufacturing area, pesticides and herbicides, and metals associated with fill material.

The project's Environmental Impact Report found that the project site is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5, and could result in a safety hazard to the public or environment through exposure to previous contamination of soil or groundwater.

To address these risks, the project involves remediation outside the Commission's jurisdiction of contaminated soils and groundwater in various areas of the project site in coordination with the Alameda County Department of Environmental Health (ACDEH). Some remediation has already occurred on the site, including in the Phase IB area to the east of the proposed Wrap building A, where two former USTs were located. The project's Mitigation Monitoring and Reporting Program included in the Environmental Impact Report includes required mitigation measures to address contamination concerns prior to issuance of building or demolition permits, including: 1) submitting a hazardous building material assessment to Alameda County Department of Environmental Health and taking subsequent measures based on the results of the assessment, 2) submitting a Site-Specific Environmental Health and Safety Plan consistent with state and federal Occupational Safety and Health Administration (OSHA) standards, 3) submitting a Site Management Plan consistent with standards of the U.S. Environmental Protection Agency (EPA), Department of Toxic Substances Control, and the Water Board standards, and 4) submission of a Remedial Risk Management Plan.

### **3. Circulation to and Along the Shoreline**

#### Applicable Policies:

On waterfront trails, such as the Bay Trail proposed as part of the project, Bay Plan policies state, in part, that "[a]ccess 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..." (Public Access Policy No. 10). Within waterfront parks, "...[t]rails that can be used as components of the San Francisco Bay Trail...[should be] located near the shoreline..." (Recreation Policy No. 4.a.6).

On parking and transportation in waterfront parks, the Bay Plan policies state, "[p]ublic parking should be provided in a manner that does not diminish the park-like character of the site. Traffic demand management strategies and alternative

transportation systems should be developed where appropriate to minimize the need for large parking lots and to ensure parking for recreation uses is sufficient” (Recreation Policy No. 4.a.7.). With some exceptions, “parking areas should be located away from the shoreline” (Appearance, Design, and Scenic Views Policy No. 4).

**Analysis:**

The project will continue the City’s existing north-south street grid through the site along extensions of Schiller, Lafayette, Stanford, and Willow Streets, and provide additional access via Alameda Marina Drive. Emergency Vehicle Access (EVA) will be provided on Chestnut Lane (between Chestnut Street and Stanford Street) and on Lafayette Street. New streets will have minimum 5-foot-wide sidewalks and crosswalks at every intersection.

The primary east-west connection across the site will be the Bay Trail, open all day, every day for public use. As discussed above, a main Bay Trail segment will run along the shoreline (other than a 55-foot-portion that is only 14.5 feet wide), connecting the Grand Street boat launch at the project site’s western end to the Navy facility at the site’s east end. The Bay Trail will connect to various other pedestrian pathways throughout the site. Because no shoreline access is provided at the Navy facility (though an extension of the Bay Trail may be possible at the site in the future if property ownership changes), the Bay Trail will also connect to Clement Avenue via a 12-foot-wide segment, following the alignment of the graving dock. A dedicated bicycle lane will be provided along Clement Avenue.

The project will provide three parking lots throughout the project site, totaling approximately 348 spaces, of which 35 will be required public shore parking pursuant to Special Condition II.B. Each of the parking lots will be separated from the shoreline by, at minimum, the Bay Trail and adjacent landscaping and shoreline protection. Residential parking will be contained within the residential uses

Currently, the nearest public transportation option to the site is the AC Transit Line 19, which provides direct service to Fruitvale and 12th Street Bay Area Rapid Transit (BART). Line 19 makes multiple stops along Buena Vista, located two blocks south of Clement Avenue, which forms the southern border of the project site. To reduce the number of vehicle miles traveled and automobile trips generated by the project, the project’s Mitigation Monitoring and Reporting Program, included in the project’s Final Environmental Impact Report, requires the permittees to prepare a Transportation Demand Management (TDM) Plan and funding program for each phase of the project for City of Alameda Planning Board review and approval.

**4. Scenic Views**

**Applicable Policies:**

Bay Plan policies on Appearance, Design, and Scenic Views state, in part that “[a]ll bayfront development should be designed to enhance the pleasure of the user or viewer of the Bay,” with “[m]aximum efforts...made to provide, enhance, or



preserve views of the Bay and shoreline” (Appearance, Design, and Scenic Views 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.” (Appearance, Design, and Scenic Views Policy No. 4); and that “[s]horeline developments should be built in clusters, leaving open area around them to permit more frequent views of the Bay” (Appearance, Design, and Scenic Views Policy No. 8).

Analysis:

#### *New Shoreline Views*

The project creates new views of the Bay where views were previously very limited, due to the project site’s mostly private nature and to the presence of large buildings, gates, and other elements that blocked views of the Bay from Clement Avenue along most of the site’s shoreline.

Along the shoreline, the project will provide for unrestricted views of the Bay from the Bay Trail and the various waterfront parks and open spaces abutting the shoreline. To provide for uninterrupted views of the Bay from inland areas, Special Condition II.C requires the permittees to establish seven View Corridors, within which no development that would result in visual obstructions of the Bay would be permitted, whether inside or outside the Commission’s permitting jurisdiction. The View Corridors stretch from Clement Avenue to the waterfront and are located along the major north-south connections through the project site as identified in Exhibit C.

Therefore, as conditioned, the project is consistent with relevant Bay Plan policies related to Appearance, Design, and Scenic views.

## **5. Flooding and Sea Level Rise**

Applicable Policies:

The Bay Plan Public Access policies state, in part, that public access should “...be sited, designed, managed and maintained to avoid significant adverse impacts from sea level rise and shoreline flooding...” (Policy No. 6) and “...either be required to remain viable in the event of future sea level rise or flooding, or equivalent access consistent with the project should be provided nearby.” (Policy No. 7).

In determining the viability of public access areas in the event of future sea level rise, the Commission consults the Bay Plan Climate Change policies, which state, in part, that “[w]hen planning shoreline areas or designing larger shoreline projects, a risk assessment should be prepared by a qualified engineer and should be based on the estimated 100-year flood elevation that takes into account the best estimates of future sea level rise 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.” (Policy No. 2).

The policies also state 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. If it is likely the project will remain in place longer than mid-century, an adaptive management plan should be developed to address the long-term impacts that will arise based on a risk assessment using the best available science-based projection for sea level rise at the end of the century.” (Policy No. 3).

Analysis:

#### *Existing Conditions and Flood Risk*

As part of the application, the permittees provided a memorandum entitled “Sea Level Risk Assessment and Adaptive Management Plan – Alameda Marina” updated August 6, 2020, prepared by Angelo J. Obertello, Principal, Carlson, Barbee & Gibson, Inc. (“Memorandum”). The Memorandum includes a vulnerability and risk assessment examining existing and anticipated future flood risk at the project site, and evaluates potential adaptation strategies to guide future planning.

According to the Memorandum, current tidal water elevations at the site are: +6.4 feet NAVD 88 at Mean Higher High Water (MHHW), +7.8 feet NAVD 88 for a King Tide (2-year occurrence), and +9.8 feet NAVD 88 at the 100-year storm (1% likelihood) base flood elevation (per the Federal Emergency Management Agency). Meanwhile, current land elevations at the site range from +9 to +15 feet NAVD 88; as such, certain areas of the project site, particularly at its northwestern portion, would be flooded today during a 100-year storm.

#### *Sea Level Rise Projections*

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 2018 State Guidance recommends use of probabilistic projections to understand and address potential sea level rise impacts, which associate a likelihood of occurrence with projected sea level increases and rates tied to a range of emission scenarios.

The 2018 State Guidance outlines an approach to planning that requires establishing the level of risk aversion that can be tolerated for the project given the consequences of future flooding, then making use of probabilistic projections of sea level rise that relate to the chosen degree of risk aversion. A “low risk aversion projection” would be appropriate for projects that are easily adapted, or for which

flooding would be of low consequence. An “extreme risk aversion projection” would be called for when planning projects where no adaptive capacity exists, it would be prohibitively costly to relocate or repair the asset, or considerable health, safety, or environmental impacts might occur as a result of flooding. In analyzing the Alameda Marina project, the Commission relies on the “medium-to-high” risk aversion scenario, which, according to the 2018 State Guidance, is 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 (e.g., coastal housing development).”

Employing this scenario at the project site, the following water levels are planned for:

- At 2050 (Mid-Century), with anticipated sea level rise of approximately 1.9 feet, the MHHW level would be +8.3 feet NAVD 88, while the 100-year base flood elevation would be +11.7 feet NAVD88.
- At 2100 (End of Century), assuming a high-emissions scenario, with an anticipated sea level rise of approximately 6.9 feet, the MHHW level would be +13.3 feet NAVD 88. The water levels during a 100-year base flood elevation would be +16.7 feet NAVD 88.

#### *Resilience to Mid-Century Sea Level Rise*

The Memorandum includes strategies to ensure the project site is resilient to projected sea level rise through mid-century and can be adapted for additional sea level rise beyond 2050 to 2100. As further specified in the plan, the upland required public access areas (including Harbor View Park, Waterlife Park and East Park, Clement Avenue Open Space, and the Bay Trail), streets, parking areas, and building sites will be raised to a minimum elevation of +13.5 feet NAVD 88, after accounting for estimated long-term settlement associated with underlying compressible soils and rising groundwater conditions. This elevation provides protection from over seven feet of sea level rise above the current MHHW, six feet above current 2-Year King Tide levels, and 3.7 feet above the current 100-year base flood elevation, which is the sea level rise projected to occur between 2070 to 2080 under a high emissions scenario.

The project also includes several public access areas located on or over the Bay. The pedestrian footbridge and gangway to the floating dock in Waterlife Park will be built to +13.5 feet NAVD 88 along with the upland public access areas. Finally, as discussed in Finding III.B.6 above, the Wharf Promenade public access area will be partially built on top of wharves that will be seismically retrofitted as part of the proposed project, extending their useful life by 40 to 50 years. Currently, these wharves are at an elevation of +12 to +12.3 feet NAVD 88, which is above the 100-year storm elevation projected for 2050 (+11.7 feet).

As such, all public access areas will be resilient to mid-century sea level rise as built upon project completion.

### *Adaptation to Sea-Level Rise Beyond Mid-Century*

As designed, the upland public access areas, pedestrian footbridge, and gangway to the floating dock would experience flooding during a 100-year storm at some time between 2070 and 2080, while the Wharf Promenade public access area would experience such flooding from a 100-year storm between 2050 and 2060. However, these areas would remain dry during every day water levels. The Memorandum includes a series of adaptation measures to adapt the public access areas to higher levels of sea level rise beyond mid-century, including implementation of floodwalls and earthen berms, elevation of the wharves and the pedestrian footbridge, and other storm drain system enhancements.

To provide funding for adaptation, the project will establish a community facilities district or owners' association that will be responsible for monitoring sea level rise. This will include monitoring scientific guidance and updates on sea level rise, as well as commissioning periodic shoreline condition assessments by a coastal engineer to document the physical effects of sea level rise and life expectancy of the shoreline protection measures. The district or association will also be responsible for collecting and managing reserve funds from the project to implement the adaptive measures in the future when they are determined to be necessary.

Special Condition II.B.13 requires the permittees to monitor and report on flooding of the public areas, prepare and submit a risk assessment by the end of 2050, or upon closure of a public access area due to sea level rise and associated storm events, and as necessary, prepare and implement an adaptation plan to ensure the public access areas remain viable through 2100.

As conditioned, the project authorized by this permit provides the maximum feasible public access consistent with the project, and is consistent with the requirements of the McAteer-Petris Act and the San Francisco Bay Plan.

## **C. Recreation (Marina and Live-Aboards)**

In addition to the Recreation Policies referenced under Section III.C above, the Bay Plan contains policies specific to Marinas and Live-Aboard Boats.

### **1. Marinas**

Applicable Policies:

Bay Plan Recreation Policy No. 3b on Marinas states that “[m]arinas should be allowed at any suitable site on the Bay. Unsuitable sites are those that tend to fill up rapidly with sediment and require frequent dredging; have insufficient upland; contain valuable tidal marsh, or tidal flat, or important subtidal areas; or are needed for other water-oriented priority uses. At suitable sites, the Commission should encourage new marinas, particularly those that result in the creation of new open water through the excavation of areas not part of the Bay and not containing valuable wetlands. (2) Fill should be permitted for marina facilities that must be in or over the Bay, such as breakwaters, shoreline protection, boat berths, ramps,

launching facilities, pumpout and fuel docks, and short-term unloading areas. Fill for marina support facilities may be permitted at sites with difficult land configurations provided that the fill in the Bay is the minimum necessary and any unavoidable loss of Bay habitat, surface area, or volume is offset to the maximum amount feasible, preferably at or near the site. (3) No new marina or expansion of any existing marina should be approved unless water quality and circulation will be adequately protected and, if possible, improved, and an adequate number of vessel sewage pumpout facilities that are convenient in location and time of operation to recreational boat users should be provided free of charge or at a reasonable fee, as well as receptacles to dispose of waste oil. (4) In addition, marinas should include public amenities, such as viewing areas, restrooms, public mooring docks or floats and moorages for transient recreational boaters, non-motorized small boat launching facilities, public parking; substantial physical and visual access; and maintenance for all facilities.”

**Analysis:**

The project involves rehabilitating and improving an approximately 529-slip marina that pre-dates BCDC jurisdiction and installing marina-related infrastructure. The marina will not be expanded; its size and total linear feet of boat storage will remain largely the same, while the number of slips will be reduced to approximately 459. The marina will include an approximately 2,600-square-foot floating transient dock in the Marina north of Harbor View Park as a public amenity, although it is not required public access under this permit.

As the existing marina pre-dates BCDC and will not be expanded, Recreation Policy No. 3b has limited applicability to the project; nonetheless the permittees provided information to ensure consistency with the policies. The permittees submitted a bathymetric study indicating that some shoaling has occurred at that site and some periodic dredging of the marina may be needed in the future, however the Commission has not permitted dredging activities since the 1960s, and no dredging is proposed for the current project. The marina is also located in an area of the Oakland Alameda Estuary with numerous other marinas.

Furthermore, the new marina-related fill authorized for the project, including shoreline protection, the boat hoist, the transient dock, and other marina-related infrastructure, is consistent with Policy No. 3b in that the fill is for a marina and must be in or over the Bay in order to serve its designated function.

Special Conditions II.H.1 through II.H.3 are included to ensure the permittees protect water quality and circulation in the marina and provide an adequate number of vessel sewage pumpout and waste facilities convenient in location and time of operation to recreational boat users. There is adequate tidal circulation in the marina to mix, dilute, and carry away possible wastewater discharge due to the marina’s location on the Oakland Estuary.

Special Condition II.B.4 includes amenities such as viewing areas, parking restrooms, and small craft recreational facilities at or near the marina. The marina will also have a transient dock that will be used by recreational boaters who are non-marina tenants.

Therefore, as conditioned, the project is consistent with Bay Plan Recreation policies related to Marinas.

## 2. Live-Aboard Boats

Applicable Policies:

Bay Plan Recreation Policy No. 3c states, in part, that: “[l]ive-aboard boats should be allowed only in marinas and only if: (1) The number would not exceed ten percent of the total authorized boat berths unless the applicant can demonstrate clearly that a greater number of live-aboard boats is necessary to provide security or other use incidental to the marina use; (2) The boats would promote and further the recreational boating use of the marina (for example, providing a degree of security), and are located within the marina consistent with such purpose; (3) The marina would provide, on land, sufficient and conveniently located restrooms, showers, garbage disposal facilities, and parking adequate to serve live-aboard boat occupants and guests; (4) The marina would provide and maintain an adequate number of vessel sewage pumpout facilities in locations that are convenient in location and time of operation to all boats in the marina, particularly live-aboard boats, and would provide the service free of charge or at a reasonable fee; and (5) There would be adequate tidal circulation in the marina to mix, dilute, and carry away any possible wastewater discharge. Live-aboard boats moored in a marina on July 1, 1985, but unauthorized by the Commission, should be allowed to remain in the marina provided the tests of (2), (3), (4), and (5) above are met...”

Furthermore, Commission Regulation Section 10128 defines a “live-aboard boat” as “a boat that is not a transient boat, that is capable of being used for active self-propelled navigation, and that is occupied as a residence as that term is defined in the California Government Code Section 244.”

Analysis:

In addition to marina rehabilitation and reconfiguration, the project involves use of up to 10 percent of the boat berths for live-aboard boats (entailing an increase from nine live-aboards to approximately 45 upon project build out), as well as construction of facilities in the shoreline band to support the live-aboards, including restrooms, showers, garbage disposal facilities.

The use of recreational boat berths by live-aboard boats is generally inconsistent with the requirements of the McAteer-Petris Act, the provisions of the San Francisco Bay Plan, and the public trust, in part, because live-aboard boats constitute a residential use and are not a water-oriented use, and residential uses in the Bay generally have an alternative upland location. However, Bay Plan Recreation Policy No 3.c describes the limited circumstances in which live-aboard boat use may be

authorized. This exception to the general prohibition on live-aboard boat berths exists because, although live-aboard boats are not a water-oriented use and are not consistent with the public trust, live-aboard boats can be allowed where the use is incidental to a proper public trust use in the area and in furtherance of a statewide purpose. The Commission has determined that the security benefits of live-aboard boats occupying up to ten percent of the total berths at a marina are incidental to marina use (which is a proper public trust use) and in furtherance of a statewide purpose of providing security at the recreational marina.

The live-aboard boat use at Alameda Marina will comply with Recreation Policy No. 3c. First, the live-aboards will be limited to ten percent of boat berths. The permittees cited the need for additional security in the marina as justification for the increase in live-aboards, stating that the Harbormaster had called the Police Department or Fire Department at least nine times in the prior two years. The live-aboard slips will be dispersed evenly throughout the marina and will be designated as security slips, with the boater required to accept the duty to provide additional security to their area of the marina located as appropriate throughout the marina. The permittees also stated that increased live-aboards will provide additional safeguards should any emergency or life safety event occur by being able to alert either the Harbormaster or emergency services.

Furthermore, the marina will provide adequate on-shore facilities for the live-aboards, including sufficient and conveniently located restrooms, showers, garbage disposal facilities, and parking adequate to serve live-aboard boat occupants and their guests. Parking lots located in the property's west end, east end, and in the maritime and commercial core will provide sufficient parking for marina tenants and live-aboards. Live-aboards will be limited to one vehicle per live-aboard boat. Garbage facilities will be provided throughout the marina for boating tenants, and in the centrally located maritime and commercial core, additional dumpsters will be provided to meet the needs of live-aboard boaters. An adequate number of vessel sewage pump out facilities will be provided and maintained, one of which will be provided free of charge to the live-aboard residents. Finally, there will be adequate tidal circulation in the marina as specified under Finding III.D.1 above.

Special Conditions II.H and II.I require the permittees to operate the marina in a manner consistent with the Bay Plan Recreation Policies related to marinas and live-aboard boats. Special Conditions II.H.1 through II.H.3 require the permittees to practice proper waste management and protect water quality in the marina.

Special Condition II.I.1 requires live-aboard boats to be consistent with Commission Regulation Section 10128 defining live-aboard boats and limits the authorization to no more than ten percent of total berths. This condition also prohibits the mooring of houseboats in the marina, which are distinct from live-aboards and not authorized in this permit. In contrast to a live-aboard boat, Commission Regulation

Section 10127 defines “houseboat” as “a boat that is used for a residential or other non-water-oriented purpose and that is not capable of being used for active navigation.”

Special Condition II.I.2 requires the permittees to provide adequate facilities for live-aboards, while Special Conditions II.I.3 and II.I.4 require that a berthing plan for the live-aboards be approved by or on behalf of the Commission, and that live-aboard boats be well-distributed throughout the marina. Special Condition II.I.5 requires submittal of the proposed berth agreement and rules to the Commission for approval, to ensure the definition of live-aboards used by the permittees is consistent with the definition in the Commission’s regulations and to ensure live-aboard use is consistent with the Bay Plan policies. The Special Conditions related to the berthing plan and berthing agreement and rules are constructed to allow the permittees to use the marina for live-aboard boats prior to submitting the plan and agreement. Special Condition II.I.6 and II.I.7 are included to require the permittees to enforce live-aboard boat requirements.

Therefore, as conditioned, the project is consistent with Bay Plan Recreation policies related to live-aboards.

#### **D. Environmental Justice and Social Equity**

Applicable Policies:

Bay Plan policies on Environmental Justice and Social Equity state, in part, that: “[e]quitable, culturally-relevant community outreach and engagement should be conducted by local governments and project applicants to meaningfully involve potentially impacted communities for major projects and appropriate minor projects in underrepresented and/or identified vulnerable and/or disadvantaged communities, and such outreach and engagement should continue throughout the Commission review and permitting processes. Evidence of how community concerns were addressed should be provided. If such previous outreach and engagement did not occur, further outreach and engagement should be conducted prior to Commission action” (Policy No. 3), and that: “[i]f a project is proposed within an underrepresented and/or identified vulnerable and/or disadvantaged community, potential disproportionate impacts should be identified in collaboration with the potentially impacted communities. Local governments and the Commission should take measures through environmental review and permitting processes, within the scope of their respective authorities, to require mitigation for disproportionate adverse project impacts on the identified vulnerable or disadvantaged communities in which the project is proposed” (Policy No. 4).

As it relates to community engagement in the design of shoreline public access, the Bay Plan policies on Public Access state, in part, that: “[p]ublic access that substantially changes the use or character of the site should be sited, designed, and managed based on meaningful community involvement to create public access that is inclusive and welcoming to all and embraces local multicultural and indigenous history and presence.

In particular, vulnerable, disadvantaged, and/or underrepresented communities should be involved. If such previous outreach and engagement did not occur, further outreach and engagement should be conducted prior to Commission action” (Policy No. 5).

Analysis:

#### *Community Profile*

The Commission has developed a Community Vulnerability Mapping Tool to help inform its analysis of how socioeconomic indicators and contamination burdens contribute to a community’s vulnerability. The mapping tool collects information at the level of Census blocks and tracts and can be used by the Commission to help identify certain disadvantaged and vulnerable communities. These communities include those disproportionately affected by environmental pollution and hazards that can lead to negative public health effects, exposure, or environmental degradation, as well as with higher concentrations of people with socioeconomic characteristics indicative of a higher degree of social vulnerability. The mapping tool thus helps inform the Commission on how and where community engagement should occur, and what issues may be of relevance in the Commission’s review.

The project site is located within an historically industrial area of the waterfront, which is near established residential communities. There are four Census block groups located on the project site or within the immediate vicinity, each with varying levels of social vulnerability. Block Group 4 of Census Tract 4272, which spans most of the project site and has an estimated population of 671 persons, is categorized by high social vulnerability, due to high rates of disabled persons, renters, single parents, those without vehicles, those older than 65 who live alone, and those without high school degrees. Among the other three groups bordering the project site, Block Groups 2 and 3 of Tract 4272 are characterized by moderate and low social vulnerability, respectively, while Block Group 2 of Tract 4273 is characterized by low social vulnerability. Additionally, three of the four block groups, including Block Group 4, are characterized by “highest contamination vulnerability” due to relatively high rates of contamination vulnerability indicators identified by the California Office of Environmental Health Hazard Assessment’s *CalEnviroScreen*, including hazardous cleanup activities, groundwater threats, hazardous waste facilities, and impaired water bodies. The score is reflective of the historic industrial nature of the project site. As stated in Finding III.B.2, the project will include measures to remediate or otherwise address contaminated groundwater and soils on the project site.

#### *Community Outreach and Engagement*

The project is a major shoreline project subject to the Commission’s requirements for equitable culturally-relevant community outreach and engagement. Prior to applying for a BCDC permit, the permittees conducted community engagement for the project, which informed the design of the public access proposed for the project.

In 2017, the permittees formed a Community Advisory Group (“CAG”) for the project and met with the CAG several times over two years to present evolving iterations of project plans, answer questions, and solicit feedback. The CAG consisted of approximately 45 members and included a mix of Alameda Marina tenants, neighbors, community-based organizations (including environmental justice organizations), community thought leaders, and staff from the City of Alameda. The permittees maintained regular contact with the CAG via email and separately presented to CAG member organizations.

In addition, the permittees hosted a series of community meetings and presentations at the project site, attended by over 350 people in total, and conducted media and other outreach with local, county, and state elected and appointed officials. Furthermore, the permittees engaged in tribal consultation under California Assembly Bill 52 and conducted public outreach to the Native American Heritage Commission.

The permittees state that years of community outreach resulted in an evolution of the overall design scheme from a predominately residential development to a waterfront mixed-use development with residential, recreational, and maritime and commercial components that the permittees state are respectful of the site’s cultural, historical and maritime heritage. Specific changes made to the project design as a result of community engagement include: retaining more of the buildings designated as part of the City’s Alameda Marina Historic District; moving the dry boat storage from the east to the west end, and the Harbor View Park from the west to the east end; expanding the maritime and commercial core area, and incorporating an anthropological history of Native American tribes in the interpretive signage program along the Historical Walk/Bay Trail.

Tribal consultations under AB52 also resulted in an ongoing archaeological monitoring process with the Confederated Villages of Lisjan Tribe, as well as the rededication of park space in the northeast corner of the project site in respect of the site’s ethnographic history.

Thus, input from relevant groups and organizations, partnering agencies, and individuals were considered when creating the public open spaces permitted as part of the project, consistent with the Bay Plan policies relating to Environmental Justice and Social Equity identified above.

#### **E. Public Trust Uses**

The activities authorized herein are located on filled former tidelands subject to the public trust. The project is consistent with public trust needs for the area, as it provides recreation and open space improvements.

## **F. Review Boards**

### **1. Engineering Criteria Review Board**

The Bay Plan Safety of Fill Policies state, in part, that: "[t]he Commission has appointed the Engineering Criteria Review Board...to: establish and revise safety criteria for Bay fills and structures thereon...[and]...review all except minor projects for the adequacy of their specific safety provisions, and make recommendations concerning these provisions..." (Policy No. 1); and that "...no fill or building should be constructed if hazards cannot be overcome adequately for the intended use in accordance with the criteria prescribed by the Engineering Criteria Review Board" (Policy No. 2). The Board reviewed the project at its meeting on July 25, 2019.

As described in Finding III.A.6.b, the Board did not raise concerns about structural or life-safety risks associated with the wharves and their adaptation, the Deep Soil Mixing criteria, or the proposed repairs to the graving dock. However, the Board raised several comments or concerns, including but not limited to: 1) incorporation of groundwater and fill settlement into the sea level risk assessment; 2) additional analysis of certain clays; 3) addressing contaminants on the site; 4) changing the occupancy class of the promenade wharf; 5) conducting a site response analysis of shear wave velocity; and 6) further analysis of seismic instrumentation requirements to monitor the effects of earthquakes on site soils. Commission staff worked with the permittees to address the comments and concerns of the Engineering Criteria Review Board in the design of the project.

### **2. Design Review Board**

Bay Plan Public Access Policy No. 12 states that the Commission's "...Design Review Board should advise the Commission regarding the adequacy of the public access proposed" and that its advisory "...Public Access Design Guidelines should be used as a guide to siting and designing public access consistent with a proposed project." The Board reviewed the project at its meetings on March 5, 2018 and September 17, 2018.

At the Board's initial hearing on the project on March 5, 2018, Board members requested that the project extend the project's maritime history theme all the way to the eastern edge of the site and relocate the Bay Trail closer to the water. They expressed support for a water taxi service, proposed at the time, but stated the location may need to change for better public access. Furthermore, they stated the responsibility of the development was to make the public feel invited to visit the site, unlike the wall of buildings, gates, and other elements that blocks visual and physical access to most of the site. They expressed strong support for the Waterlife Park at the graving dock.

At the Board's second hearing on the project on September 17, 2018, Board members expressed approval of the evolution of the design since its first meeting. The Board provided several additional comments and concerns on the project's design, including but not limited to: 1) requesting information on how the public access areas would be maintained; 2) providing suggested improvements to the project's interpretive elements; 3) requesting analysis of how specific public access areas would be impacted by sea level rise; 4) requesting that the Bay Trail be pulled back from the northern edge of Harbor View Park to develop a vegetated edge, rather than having a railing along the shoreline; and 5) redesigning the east end of the residential development to maximize views of the Bay.

Commission staff worked with the permittees to address the comments and concerns of the Design Review Board in the design of the project.

#### **G. Coastal Zone Management Act**

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

#### **H. Environmental Review**

Pursuant to the California Environmental Quality Act (CEQA), an Environmental Impact Report (EIR) was prepared for the Alameda Marina Shoreline Improvement Project. The EIR was certified by the City of Alameda on July 25, 2018.

#### **I. Enforcement Program and Civil Penalties**

The Commission has an enforcement program that reviews its permits for compliance. The Commission may issue cease and desist and civil penalty orders if violations are discovered. The McAteer-Petris Act provides for the imposition of administrative civil penalties ranging from \$10 to \$2,000 per day up to a maximum of \$30,000 per violation. The Act also provides for the imposition of court-imposed civil penalties of up to \$30,000 in addition to any other penalties, penalties for negligent violations of between \$50 and \$5,000 per day, knowing and intentional penalties of between \$100 and \$10,000 per day, and exemplary penalties, which are supplemental penalties, in an amount necessary to deter future violations. In addition, anyone who places fill, extracts materials, or makes any substantial change in use of any water, land or structure within the area of the Commission's jurisdiction without securing a permit from the Commission is guilty of a misdemeanor.

#### **IV. Standard Conditions**

##### **A. Permit Execution**

This permit shall not take effect unless the permittees execute the original of this permit and return it to the Commission within ten days after the date of the issuance of the permit. No work shall be done until the acknowledgment is duly executed and returned to the Commission.

##### **B. Notice of Completion**

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

##### **C. Permit Assignment**

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

##### **D. Permit Runs With the Land**

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

##### **E. Other Government Approvals**

All required permissions from governmental bodies must be obtained before the commencement of work; these bodies include, but are not limited to, the U.S. Army Corps of Engineers, the State Lands Commission, the 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 permit does not relieve the permittees of any obligations imposed by State or Federal law, either statutory or otherwise.

##### **F. Built Project must be Consistent with Application**

Work must be performed in the precise manner and at the precise locations indicated in your application, as such may have been modified by the terms of the permit and any plans approved in writing by or on behalf of the Commission.

#### **G. Life of Authorization**

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

#### **H. Commission Jurisdiction**

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

#### **I. Changes to the Commission's Jurisdiction as a Result of Natural Processes**

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

#### **J. Violation of Permit May Lead to Permit Revocation**

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

#### **K. Should Permit Conditions Be Found to be Illegal or Unenforceable**

Unless the Commission directs otherwise, this permit shall become null and void if any term, standard condition, or special condition of this permit shall be found illegal or unenforceable through the application of statute, administrative ruling, or court determination. If this permit becomes null and void, any fill or structures placed in reliance on this permit shall be subject to removal by the permittees or their assignees if the permit has been assigned to the extent that the Commission determines that such removal is appropriate. Any uses authorized shall be terminated to the extent that the Commission determines that such uses should be terminated.

**L. Permission to Conduct Site Visit**

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

**M. Abandonment**

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

**N. Best Management Practices**

1. **Debris Removal.** All construction debris shall be removed to an authorized location outside the jurisdiction of the Commission. In the event that any such material is placed in any area within the Commission's jurisdiction, the permittees, their assignees, or successors in interest, or the owner of the improvements, shall remove such material, at their expense, within ten days after they have been notified by the Executive Director of such placement.
2. **Construction Operations.** All construction operations shall be performed to prevent construction materials from falling, washing or blowing into the Bay. In the event that such material escapes or is placed in an area subject to tidal action of the Bay, the permittees shall immediately retrieve and remove such material at their expense.

**O. In-Kind Repairs and Maintenance**

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