

San Francisco Bay Conservation and Development Commission

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January 2, 2026

TO: Commission Members

FROM: Lawrence J. Goldzband, Executive Director, (415-352-3653; larry.goldzband@bcdc.ca.gov)
Michael Ng, Senior Staff Attorney, (415-352-3610; michael.ng@bcdc.ca.gov)

SUBJECT: Executive Director's Recommended Enforcement Decision on Stipulated Cease and Desist Order, CCD2025.006.00, SPF China Basin Holdings, LLC
(For Commission consideration on January 15, 2026)

Summary

This Recommended Enforcement Decision (the “RED”) comprises a stipulated Cease and Desist Order No. CCD2025.006.00 (the “Order”) between BCD and Respondent SPF China Basin Holdings, LLC (“Respondent”). The Order requires Respondent to:

1. Consent to an amendment (Amendment No. 17) of Permit No. 1976.011.16 (the “Permit”) to incorporate into the Permit authorization of a partially-constructed, unpermitted third-story balcony cantilevered at 185 Berry Street (within the China Basin Building) in the City and County of San Francisco.
2. Dedicate as public access 830 square feet of an existing 1,740 square-foot area on the wharf adjoining the China Basin Building that currently may be used for private purposes.

Respondent may complete construction of the balcony only upon issuance of Amendment No. 17 to the Permit that reflects Sections I.1 and I.2 above and, subsequent to issuance, approval of the work by or on behalf of the Commission pursuant to the plan review condition of the Permit. Respondent may only occupy or otherwise utilize the completed balcony upon compliance with the permanent guarantee condition of the Permit as required to be amended to reflect Section I.2 above. A fuller description of these requirements is contained in Section I of the Order (**Attachment 1**).

Background

A full recounting of the facts and circumstances informing this RED is contained in Sections II.A (Factual Findings) and II.B (Legal and Policy Findings) of the Order.



To summarize, this Order arises out of a misunderstanding when BCDC staff issued to Respondent a non-material Amendment No. 16 to the Permit on August 26, 2025 for the construction of a new public access amenity space and café seating area on the existing wharf adjoining the China Basin Building¹ in the City and County of San Francisco (the “Project”).

Respondent began construction of a third-story balcony cantilevered over the wharf at 185 Berry Street in the China Basin Building, based on Respondent’s misunderstanding that the Permit authorized the balcony, which would exclusively benefit a private office tenant. While Respondent did propose authorization of the balcony as part of the Project that was the subject of its Permit amendment request, in issuing Permit Amendment No. 16 as a non-material amendment to the Permit, BCDC staff did not consider the consistency of authorizing the balcony with BCDC’s laws and policies either way.

Upon being informed by BCDC staff on October 2, 2025 that the balcony for which Respondent had begun partial construction was not actually authorized under Amendment No. 16 to the Permit, Respondent timely ceased work on the unpermitted balcony. Through its counsel, Respondent engaged in good faith discussions with BCDC staff as to possible avenues for legalizing the balcony, which Respondent represents was the financial incentive for providing the public access amenities that comprise the Project and which without Respondent would not have submitted a request for Permit Amendment No. 16 for the Project.

As explained in Legal and Policy Finding II.B.4 of the Order, the balcony constitutes Bay fill because it would be cantilevered over the wharf, which itself is jurisdictional fill constructed in BCDC’s Bay jurisdiction. Because the balcony is intended exclusively for private office use, it cannot be approved as permissible Bay fill consistent with BCDC’s laws and policies because it does not constitute a water-oriented use (Gov. Code § 66605(a)) or minor fill for improving shoreline appearance (14 CCR § 10700) or for improving public access to the Bay (14 CCR § 10701).

However, as explained above and in Legal and Policy Finding II.B.6 of the Order, Respondent arguably did not receive “the benefit of the bargain” of Permit Amendment No. 16 if the balcony is not authorized. Furthermore, potential abandonment of Amendment No. 16 by Respondent as a consequence of being denied approval of the proposed balcony would adversely impact public access on the wharf by resulting in loss of the public access improvements secured and authorized by Amendment No. 16.

To resolve the above-mentioned issues regarding legalization of the partially-constructed, unpermitted balcony, Respondent proposes to dedicate as public access 830 square feet of an existing area of the wharf currently available for private use, resulting in increased public access in a manner that BCDC could not otherwise compel of Respondent. The proposed square footage to be dedicated as public access on the wharf would wholly “offset” the 830 square footage of the balcony.

¹ As stated in Section I.A of the Permit, the China Basin Building is on the north side of the Channel Street Channel (Mission Creek) between Third and Fourth Streets, adjacent to China Basin.

In consideration of the above facts and circumstances, the Executive Director recommends that the Commission authorize the Executive Director to execute the Order in order to legalize the balcony, subject to satisfaction of the requirements described in Section I above, and as more specifically described in Sections I.A and I.B of the Order. Authorization of the balcony is not premised upon consistency of the balcony with BCDC's laws and policies as permissible Bay fill, but rather to resolve the legal uncertainties of the situation in a manner mutually acceptable to both Respondent and BCDC.

Admitted and Contested Essential Allegations

The relevant facts informing the Order and this RED are contained in Section II.A of the Order as the Factual Findings. Respondent has reviewed and concurs with the characterization of the Factual Findings of the Order.

Unresolved Issues

Proposed Commission adoption of the Order does not present any unresolved issues because Respondent and BCDC staff have worked together to reach mutual agreement as to the terms of the Order.

Previous Enforcement Actions

No prior enforcement actions have been taken in this matter. Because proposed resolution of the partially-constructed, unpermitted balcony resulted from mutual agreement between Respondent and BCDC staff shortly following issuance of Permit Amendment No. 16, the Order was developed by BCDC staff and is being presented to the Commission for approval outside of the context of a formal, active enforcement case (ER).

Recommendation

The Executive Director recommends that the Commission approve this RED, which would authorize the Executive Director to execute and issue the Order to Respondent.

Proposed Order

The Order is attached herein as **Attachment 1**.

San Francisco Bay Conservation and Development Commission

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Commission Cease and Desist Order

CCD2025.006.00

Effective Date:

[Pending Executive Director execution, following
Commission action at its January 15, 2026 meeting]

Respondent:

SPF China Basin Holdings, LLC

Stipulated Cease and Desist Order to SPF China Basin Holdings, LLC

I. Commission Cease and Desist Order (Order)

Pursuant to Government Code section 66638, SPF China Basin Holdings, LLC (“Respondent”) is hereby ordered to:

- A. Consent to an amendment (Amendment No. 17), by or on behalf of the San Francisco Bay Conservation and Development Commission (“BCDC” or “Commission”), of Permit No. 1976.011 (“Permit”), as currently amended through Amendment No. 16, in order to incorporate into the Permit authorization the third-story balcony cantilevered over the Bay at 185 Berry Street (within the China Basin Building¹) in the City and County of San Francisco, which Respondent has already begun to partially construct but halted upon direction by BCDC staff on October 2, 2025.
- B. As part of the Permit amendment required by Section I.A above, Respondent agrees to dedicate as public access 830 square feet of an existing 1,740 square-foot area on the wharf that adjoins the China Basin Building and that, as previously authorized by Amendment No. 2 of the Permit, may be used for private purposes. The required dedication is depicted on **Exhibit A**, attached herein.
- C. Respondent may complete construction of the partially-constructed balcony only: (1) upon issuance of an amendment to the Permit (Amendment No. 17) by or on behalf of the Commission which reflects Sections I.A and .B above; and (2) subsequent to issuance of the Permit amendment, approval of the construction by or on behalf of the

¹ As stated in Section I.A of the Permit, the China Basin Building is on the north side of the Channel Street Channel (Mission Creek) between Third and Fourth Streets, adjacent to China Basin, in the City and County of San Francisco.



Commission pursuant to the plan review condition of the Permit (Special Condition II.A.1).

- D. As will be reflected in the forthcoming Permit amendment, Respondent may only occupy or otherwise utilize the completed balcony upon compliance with the permanent guarantee condition of the Permit (Special Condition II.D.3), as amended, to reflect that the required dedication area depicted on **Exhibit A** has been accounted for in the instrument to be revised and recorded pursuant to the permanent guarantee condition.

II. Findings

A. Factual Findings

1. On January 16, 2025, Respondent submitted a permit amendment request in the form of a letter to BCDC staff requesting Amendment No. 16 to the Permit. The amendment request proposed construction of a new public access amenity space and café seating area on the existing wharf adjoining the China Basin Building and situated within BCDC's Bay jurisdiction, specifically including construction of a new 5,235 square foot deck with publicly-accessible amphitheater-style seating, as well as public access improvements on the lower-level wharf. The amendment request also proposed initiation of operations of a new café/restaurant within the amenity space, with outdoor seating located on a 2,623 square-foot portion of the upper level of the amenity deck. (See Section III.D.13 of the Permit.)
2. In processing Amendment No. 16, BCDC staff initially understood the entirety of the scope of Respondent's proposal to be situated within BCDC's Shoreline Band jurisdiction. However, upon review of additional materials presented by Respondent, BCDC staff determined that the existing wharf was reconstructed, under authorization of Permit Amendment No. 2, wholly within BCDC's Bay jurisdiction in 1993 following fire damage. Therefore, because the proposal that was the subject of Amendment No. 16 is situated entirely on the existing wharf, the scope of the proposal is also entirely within Bay jurisdiction.
3. The amendment request also sought approval for a third-story, 830 square-foot balcony cantilevered over the Bay at 185 Berry Street within the China Basin Building exclusively for private office use. The balcony was mentioned in the amendment request letter and shown on renderings in the submitted project plans. However,

any discussion of the balcony was inadvertently left out of the issued permit amendment altogether.

4. The Commission issued to Respondent Amendment No. 16 to the Permit on August 26, 2025 as a non-material amendment to a major permit for the project as described in Factual Finding II.A.1 above and as described in more detail in Section III.D.13 of the Permit. Permit Amendment No. 16 results in the requirement that 1,013 square feet of previously-identified “private use areas” on the eastern end of the upper wharf authorized by Amendment No. 2 be dedicated for the new upper-level amenity deck where the café is proposed to operate. This dedication does not result in any loss of the existing 23,594 square-foot dedicated public access area on the wharf, is not anticipated to negatively affect existing public access, and instead is expected to activate the central portion of the wharf by drawing more visitors from public roadways at either end of the wharf, thereby encouraging use of a broader range of the wharf than previously envisioned. Amendment No. 16 also authorizes significant public access improvements to adjacent portions of the wharf, as described in more detail in Section III.D.13 of the Permit. The Permit, as authorized by Amendment No. 16, does not include authorization for the balcony because BCDC staff mistakenly did not understand it to be part the amendment request for Amendment No. 16.
5. Prior to issuance of Amendment No. 16 to the Permit, BCDC staff shared a working draft with Respondent and its consultants for their review. Respondent did not point out that the balcony was omitted from the draft authorization, and Respondent executed the Permit as “receipt acknowledged, contents understood and agreed to” on August 26, 2025.
6. According to Respondent, it did not realize that the balcony was omitted from the authorization for Amendment No. 16 and, under this misunderstanding, mistakenly began construction of the balcony. Respondent also proceeded without requesting and receiving plan review approval by or on behalf of the Commission prior to construction, which is a requirement of the plan review condition of the Permit. The plan review condition of the Permit states: “No work whatsoever shall be commenced pursuant to this amended authorization until final precise site, engineering, grading, architectural, and landscaping plans and any other relevant criteria, specifications, and plan information for that portion of the work have been submitted to, reviewed, and approved in writing by or on behalf of the

Commission.” (See Special Condition II.A.1 of the Permit.) Upon being informed by BCDC staff on October 2, 2025 that the balcony was not authorized by Amendment No. 16, did not have plan review approval to proceed, and that Respondent should cease work immediately, Respondent did so in a timely manner.

7. Following issuance of Amendment No. 16 to the Permit, Respondent asserted its belief that omission of the balcony from the Permit authorization was a drafting or clerical oversight or error. However, upon realization that the amendment application requested authorization of the private, third-floor balcony, BCDC staff communicated to Respondent that consistency of the balcony, as cantilevered Bay fill, with BCDC’s laws and policies under the McAteer-Petris Act and the San Francisco Bay Plan (“Bay Plan”) had not been considered as part of the authorization of Amendment No. 16, so omission of the balcony authorization from Amendment No. 16 of the Permit was not simply an inadvertent oversight or error.
8. In discussions regarding resolution of the partially-constructed, unpermitted balcony, Respondent asserted to BCDC staff that the proposed public access improvements and enhancements that were the subject of Amendment No. 16 were specifically premised upon authorization of the private, third-floor balcony, and that Respondent would not have otherwise pursued Amendment No. 16 without approval of the balcony. Respondent further asserted to BCDC staff that as between having to remove the partially-constructed, unpermitted balcony or leaving it in place as an architectural feature (*e.g.*, for sun shading), Respondent would prefer to simply leave it in place, as removal of the partially-constructed structure would impose upon Respondent a significant monetary cost without any corresponding benefit to Respondent.
9. In response to BCDC staff’s inquiry whether the third-floor balcony, if authorized, could be made available to the public as a public access amenity, Respondent considered this proposal in good faith but concluded that given the nature of the private office tenancy to which the balcony would attach and the building protocols for accessing the private office space and balcony, making the balcony available as a public access amenity was infeasible.
10. In a good-faith effort to resolve the status of the partially-constructed, unpermitted balcony, Respondent now proposes to dedicate as public access 830 square feet of a 1,740 square-foot area on the wharf that has not previously been dedicated for public access, and that is thus understood to be available for use by the property

owner for private purposes, in consideration of BCDC legalization of the balcony. The 830 square-foot area proposed to be used as public access going forward would fully “offset” the 830 square feet in area of the proposed balcony.

B. Legal and Policy Findings

1. Failure of BCDC staff to consider and address the proposed balcony – whether through approval or denial – as part of Respondent’s amendment request when BCDC issued Amendment No. 16 to the Permit occurred as a result of oversights and misunderstandings of both BCDC staff as well as Respondent during the Permit amendment process.
2. Because the balcony is not expressly authorized by the Permit, current through Amendment No. 16, the partially-constructed balcony constitutes unpermitted development under the McAteer-Petris Act for which the Commission may issue this Order. (Gov. Code § 66638.)
3. However, as explained in Factual Finding II.A.6 above, Respondent represents that it did not realize that the balcony was not included in the authorization of Amendment No. 16 – despite including the balcony as part of its amendment request. As further explained in Factual Finding II.A.6 above, Respondent immediately ceased construction of the balcony upon being informed by BCDC staff that the balcony was not authorized by Amendment No. 16. For these reasons, the Commission does not seek civil penalties or administrative civil liability for Respondent’s unpermitted construction of the balcony that has occurred to date. (Reference Gov. Code §§ 66641.5(a) [civil penalties for violations of McAteer-Petris Act], (d) [civil penalties for negligent violations of BCDC permit or for activities requiring permit], and (e) [administrative civil liability for violations of McAteer-Petris Act or BCDC permit].)
4. As explained in Factual Finding II.A.2 above, the balcony, if built, would constitute Bay fill because it would be cantilevered over the wharf, which itself is jurisdictional fill constructed in Bay jurisdiction. (Reference 14 CCR § 10711 [cantilevering definition].) As further explained in Factual Finding II.A.3 above, the proposed balcony is intended exclusively for private office use. Therefore, the balcony cannot be approved as permissible Bay fill consistent with BCDC’s laws and policies because it does not constitute a water-oriented use or minor fill for improving shoreline appearance or public access to the Bay. (Reference Gov. Code § 66605(a) [water-oriented use]; 14 CCR §§ 10700 [minor fill for improving shoreline appearance], 10701 [minor fill for improving public access].)

5. Allowance of the balcony may potentially be inconsistent with the “Appearance, Design, and Scenic Views” Policies of the Bay Plan, particularly Policies 2 and 4.
6. However, as explained in Factual Finding II.A.8 above, Respondent arguably did not receive “the benefit of the bargain” of Amendment No. 16 in the sense that Respondent represents that it would not have proposed the public access improvements that are the subject of Amendment No. 16 or otherwise have pursued that amendment request but for approval of the balcony as the financial incentive for funding the public access improvements.
7. Potential abandonment of Amendment No. 16 by Respondent as a consequence of being denied approval of the proposed balcony would adversely impact public access at the wharf fronting the China Basin Building by resulting in loss of the public access improvements secured and authorized by Amendment No. 16.
8. As explained in Factual Finding II.A.10 above, Respondent’s proposal to dedicate as public access 830 square feet of an existing area of the wharf currently available for private use would further increase public access availability on the wharf in a manner that BCDC could not otherwise compel of the Respondent. As also explained in Factual Finding II.A.10 above, the proposed square footage of this area to be dedicated as public access would wholly “offset” the square footage of the proposed balcony (830 square feet).
9. Notwithstanding potential inconsistency of the balcony with the Appearance, Design, and Scenic Views Policies of the Bay Plan, allowance of the balcony would not otherwise adversely impact the physical usability of the public access area on the wharf itself.
10. In consideration of Legal and Policy Findings II.B.1 through II.B.9 above, the Commission hereby authorizes the partially-constructed balcony, subject to Respondent’s satisfaction of the conditions of Sections I.A through I.B above. Commission authorization of the balcony is not premised upon consistency of the balcony with BCDC’s laws and policies as permissible Bay fill. (Reference Legal and Policy Finding II.B.4 above.) Rather, authorization of the balcony is premised upon resolving the legal uncertainties of the situation presented in a manner mutually acceptable to both Respondent and BCDC. Furthermore, authorization of the balcony is limited by the specific facts and circumstances presented, and in

authorizing the balcony here the Commission does not intend to establish any sort of precedence that a cantilevered balcony exclusively benefitting a private office use can be found consistent with BCDC's laws and policies under the McAteer-Petris Act or the Bay Plan as permissible Bay fill.

III. Terms

- A. If Respondent violates Sections I.C or I.D without first complying with Sections I.A and .B above, the Commission reserves the discretion to take any further appropriate action necessary, taking into consideration Respondent's actions or inaction up to that date, including, for example, requesting that the State Attorney General petition the Superior Court of California, County of San Francisco, for the issuance of a preliminary or permanent injunction to restrain Respondent from continuing any activity in violation of this Order, pursuant to Government Code section 66640(a).
- B. Respondent must strictly conform to the express terms of this Order. Pursuant to Government Code section 66641(a), any person who intentionally or negligently violates any part of any cease and desist order issued by the Commission may be liable civilly in the sum of up to six thousand dollars (\$6,000) for each day in which such violations persist. Pursuant to Government Code section 66641(b), upon the request of the Commission, the State Attorney General shall petition the Superior Court of California, County of San Francisco, to impose, assess, and recover such sums. In addition, pursuant to Government Code section 66640(a), upon the failure of any person to comply with any cease and desist order issued by the Commission and upon the request of the Commission, the State Attorney General may petition the Superior Court of California, County of San Francisco, for the issuance of a preliminary or permanent injunction, or both, restraining the person(s) from continuing any activity in violation of the cease and desist order.
- C. This Order does not constitute a recognition of property rights.
- D. This Order is effective upon the date of execution by the Executive Director below.

IV. Judicial Review

- A. Under Government Code sections 66639 and 66641.7(a), within thirty (30) days after service of a copy of a cease and desist order and civil penalty order issued by the Commission, an aggrieved party may file with the Superior Court of California, County of



San Francisco, a petition of writ of mandate for review of the order pursuant to Section 1094.5 of the Code of Civil Procedure.

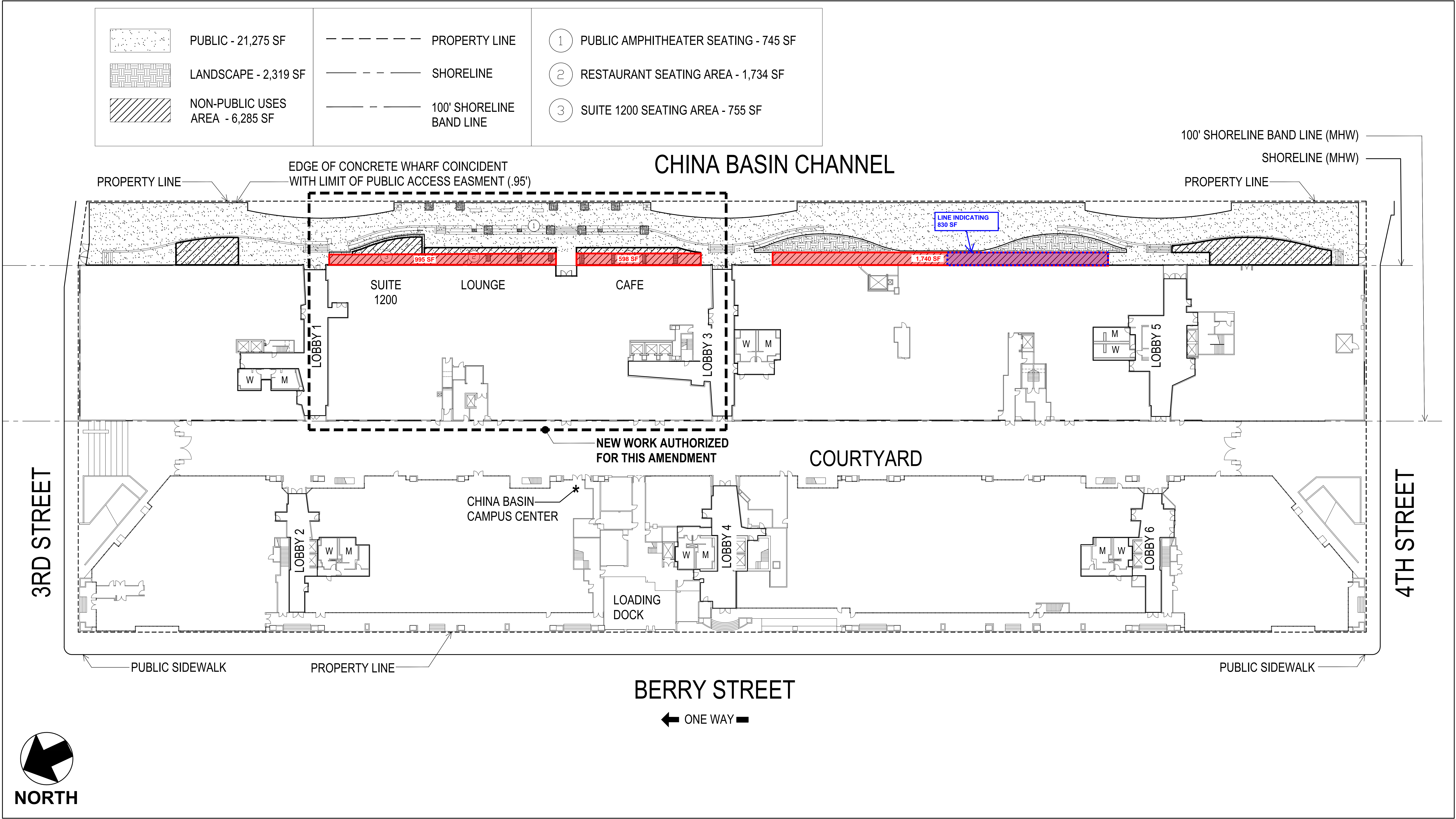
Executed at San Francisco, California, on behalf of the San Francisco Bay Conservation and Development Commission as of the date indicated below.

Lawrence J. Goldzband, BCDC Executive Director

Date

Exhibits

Exhibit A: Depiction of area to be dedicated as new public access



185 BERRY STREET
PUBLIC ACCESS AREAS

Revised: August 5, 2025 Scale: N.T.S.



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