

# SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

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March 9, 2012

**TO:** Commissioners and Alternates

**FROM:** Steven Goldbeck, Acting Executive Director (415/352-3611, steveg@bcdc.ca.gov)  
Ming Yeung (415/352-3616, mingy@bcdc.ca.gov)

**SUBJECT:** **Staff Recommendation on BCDC Permit Application No. 2012.002.00, James R. Herman International Cruise Terminal at Piers 27-29, Embarcadero, City and County of San Francisco**  
(For Commission consideration on March 15, 2012)

## Recommendation Summary

The staff recommends that the Commission approve BCDC Permit Application No. 2012.002.00 to the Port of San Francisco, which, as conditioned, would authorize the construction of a new international cruise terminal project at Piers 27 and 29 in the City and County of San Francisco. The project would be constructed in three phases.

Phase 1 would involve substructure repairs at Pier 29 by repairing deteriorated concrete and steel elements and replacing up to 20 existing piles, and construction of a new two-story core and shell of the cruise terminal building at the site of the former Pier 27 shed for possible use by the 34<sup>th</sup> America's Cup event (AC34) in 2013.

Phase 2 would involve repairing the Pier 27 apron by installing up to eight piles and repairing up to 52 existing piles, additional improvements to construct the core and shell of the cruise terminal building for maritime use, including constructing interior spaces and exterior gangway, bollards, fendering work, constructing a new Ground Transportation Area (GTA) within the valley of Piers 27-29, and installing fencing and lighting to meet U.S. Homeland Security requirements. If funding is available, the Northeast Wharf Plaza would be fully built-out or, if funding is not available in Phase 2, "interim" public access improvements would be constructed at the Northeast Wharf Plaza site including repaving, benches, lighting and



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railings, until funds are secured for full build-out. In addition, public access would be constructed along the Pier 29 apron, the Pier 29 tip (pending further review of the amount of the Pier 29 shed to be removed), pathways between Piers 27 and 29 and the GTA, and the Pier 29 Bayside History Walk with benches, trash receptacles, and lighting. Additional public access along the Pier 27 apron and Pier 27 tip would be provided when not needed for maritime activities.

Phase 3 would complete the public access required both on-site and off-site, including completing the Northeast Wharf Plaza (if not done in Phase 2), a Northeast Wharf Plaza restroom, public access along the Pier 23 south and east aprons, the Pier 19 north and east aprons, the Pier 19½ and 29½ east aprons, and public access through the Pier 19½ and 29½ connector buildings. These improvements would be constructed as soon as funding is secured and no later than 11 years after issuance of the certificate of occupancy of the cruise terminal building.

The Port is developing plans to demolish up to approximately 32,250 square feet (0.74 acres) of the northern end of the Pier 29 pier shed, which would be reviewed and approved by BCDC pursuant to a subsequent permit amendment. The area uncovered by removal of portions of the Pier 29 shed would be used for public access and included in the access at the Pier 29 tip. Public access may also be provided in any portion of the 32,250 square foot section of the Pier 29 shed that may be retained.

The staff recommendation includes a number of conditions requiring public access areas and improvements, restrictions on public access closures and uses in these areas, the provision of open water basins (a requirement of the *San Francisco Waterfront Special Area Plan*), pile-driving, the use of shoreside power, discharges from cruise ships, litter control, and a number of conditions requiring the use of construction best management practices to assure that construction of the project meets the requirements of the Commission's law and policies.

#### **Staff Recommendation**

The staff recommends that the Commission adopt the following resolution:

##### **I. Authorization**

- A. Subject to the conditions stated below, the permittee, the Port of San Francisco, is hereby granted permission to construct the following at Piers 27 and 29, located along the San Francisco waterfront, near the intersection of Lombard Street and the Embarcadero, in the City and County of San Francisco:

**Phase I:****In the Bay:**

1. **Piers 27-29 Substructure Work.** Repair and strengthen damaged substructure components by: (1) removing and replacing deteriorated concrete and reinforcing steel in spalled concrete areas with new cast-in-place material or shotcrete marine concrete; (2) cleaning, sealing, and grouting cracked areas and recoating corroded steel elements; and (3) at Pier 29, repairing up to 20 piles, with 1-inch thick wrap or 6-inch thick pile jackets.

**Within the 100-foot Shoreline Band:**

1. **James R. Herman International Cruise Terminal Building – Core and Shell.** Construct an approximately 91,200-square-foot (2.09 acre), 40-foot-tall two-story core and shell of the new cruise terminal building with an approximately 46,100-square-foot (1.06 acre) footprint on top of the existing Pier 27 concrete deck for special events, including possibly the AC34 event in 2013;
2. **Pier 27 Deck.** Repair areas of the Pier 27 deck damaged during demolition of existing structures by repaving up to a total of 11,000 square feet (0.25 acre) of the existing deck surface;
3. **Stormwater Control Plan.** Collect and treat stormwater runoff by: (a) constructing, using and maintaining a rainwater harvesting system to collect rainwater from the roof of the proposed cruise terminal building in three 12,800-gallon tanks (approximately 3,000-square-foot total footprint) located on the northwest side of the cruise terminal building for indoor uses such as toilet flushing and two 1,300-gallon tanks located on the southwest side of the cruise terminal building (approximately 225-square-foot total footprint) for irrigation use; and (b) installing, using and maintaining 17 two-foot square catch basin media filters; and
4. **Temporary Public Safety and Security Improvements.** Construct and maintain 780 linear feet of temporary safety railing along the edge of the Pier 27 loading dock and temporary lighting to promote public safety and security.

**Phase 2:****In the Bay:**

1. **Pier 27 Fenders.** Repair and strengthen fenders along Pier 27 by: (a) installing, using and maintaining up to 60, 14-inch steel H-beam piles and three new, 14-foot by 7-foot foam filled fenders along the edge of Pier 27 (there are nine existing foam filled fenders); and (b) installing, using and maintaining three, 48-inch-in-diameter pipe piles to support three new cone fenders at the seaward corner of Pier 27; and
2. **Pier 27 Water Basin.** Use and maintain the Pier 27 water basin for berthing passenger cruise ships, military vessels, tall ships, research and other vessels managed by the Port of San Francisco for temporary and ceremonial berthing.

**Within the 100-foot Shoreline Band:**

1. **James R. Herman International Cruise Terminal Building – Interior Finishes.** (a) Complete construction of the cruise terminal building for cruise terminal use by constructing, using and maintaining passenger embarkation spaces, debarkation spaces, Customs and Border Patrol offices, vessel provisioning and stevedore services and utilities; and (b) allow use of the cruise terminal building for special events such as conferences, ceremonies, festivals and parties, when not in use for cruise ship or other maritime berthing operations;

2. **Pier 27 Apron.** (a) Repair and strengthen the Pier 27 apron by installing, using and maintaining up to eight, 18-inch octagonal concrete piles, repairing up to 52, 18-inch square concrete piles with 6-inch thick pile sleeves and repairing approximately 5,000 square feet (0.11 acre) of asphalt paving; (b) construct, use and maintain up to two mobile gangways along the Pier 27 apron for passenger cruise ship embarkation and disembarkation; (c) refurbish 15 of the existing 22 mooring bollards to increase vessel mooring load capacity; (d) install three gates across the Pier 27 apron (one adjacent to The Embarcadero, one at the west side of the cruise terminal building, and one near the baggage area east of the cruise terminal building) to close apron areas as required to comply with U.S. Department of Homeland Security requirements, scaled to varying vessel sizes; and (e) construct, use and maintain approximately 75,000 square feet (1.72 acre) of public access when not precluded by maritime security requirements;
3. **Pier 27 Tip.** (a) Install, use and maintain approximately 380 linear feet of foldable fencing to secure an approximately 73,825-square-foot (1.69 acres) area for cruise ship provisioning, baggage drop off and laydown, truck loading and support space as needed for other maritime vessels berthed at Pier 27 consistent with applicable U.S. Department of Homeland Security requirements; (b) construct, use and maintain the 73,825-square-foot (1.69 acres) ship provisioning area for public access use when not precluded by maritime security requirements; and (c) install, use and maintain lighting;
4. **Shoreside Power Reinstallation.** Reinstall, use and maintain an approximately 1,200-square-foot shoreside power control transformer at the eastern end of the cruise terminal building and the two power connection cable davits on the apron edge;
5. **Ground Transportation Area (GTA).** Construct, use and maintain an approximately 2.7-acre GTA within the “valley” of Piers 27-29 for: (a) vehicle staging, drop-off, pick-up, and parking by trucks, taxis, buses and passenger cars for ship passenger loading needs of the cruise terminal, including parking for U.S. Customs and Border Protection and cruise terminal operations staff, and staging or support use as may be required to support other maritime vessel berthing operations by paving, striping, and installing and maintaining signage, planters, landscaping and lighting; (b) special events when not in use for cruise ship or other maritime berthing operations; (c) special event support space for visitor parking, staging and working areas for caterers, event and entertainment managers when not in use for cruise ship or other maritime berthing operations; and (d) community events free of charge when the terminal is not in use;
6. **Pier 29 Storage and Operation Support Space.** Construct, use and maintain an approximately 3,000-square-foot (0.07 acre) facility operations areas within the southeast corner of the Pier 29 cargo shed building for a battery recharging area for electric fork lifts and an operations area for cruise terminal workers;
7. **Pier 29 Tip.** Construct, use and maintain up to an approximately 23,297-square-foot (1.22 acre) public access area (depending on how much of the Pier 29 shed is removed) north of the Pier 29 shed to remain open at all times, even when Pier 27 is being used for maritime activities, and connecting with public access at the Pier 27 tip when this space is not in maritime use by installing and maintaining 490 feet of foldable fencing and public access improvements such as benches, litter receptacles and lighting;
8. **Pier 29 Public Access.** Construct, use and maintain an approximately 30,000-square-foot (0.68 acre), 30-foot-wide public access walkway along the Pier 29 apron, a 3,360-square-foot (0.08 acre), 20 foot-wide interior walkway inside and around the

Pier 29 operation and storage space, and a 15,593-square-foot (0.36 acre), 20-foot-wide public access walkway along the southwest side of the Pier 29 shed, and install public access improvements such as benches, litter receptacles, and lighting;

9. **Stormwater Control Plan.** Install, use and maintain a bio-retention system, additional storm drains and additional two-foot square catch basin media filters;
10. **Northeast Wharf Plaza.** If funds are available in time for Phase 2, construct, use and maintain a 2.73-acre public park that includes approximately 84,270 square feet (1.93 acres) of improved walkways, special paving and gathering areas; a 35,000-square-foot (0.80 acre) lawn with three large specimen trees for passive recreation; a climbable public art installation; a landscaped planting and seating area between the plaza and the GTA; 800 linear feet of concrete walls, steps and ramps; preservation and reuse of the Beltline Railroad Building for commercial use; signs; and public access improvements such as benches, trash receptacles, and lighting. Or, if funds are not available in time for Phase 2, construct, use and maintain interim public access improvements as required in Special Condition II-B, within the 2.73-acre area of the Northeast Wharf Plaza; and
11. **Bayside History Walk.** Improve, use and maintain a 20-foot-wide public access walkway through the Pier 29 shed connecting the Pier 29 apron and public access walkway created along the southwest exterior of the Pier 29 shed.

**Phase 3:**

**Within the 100-foot-shoreline band:**

1. **Northeast Wharf Plaza.** If necessary grants or other funding are not available to include in Phase 2, within 11 years of the issuance of occupancy of the Cruise Terminal Building, construct, use and maintain a 2.73 acre public park that includes approximately 84,270 square feet (1.93 acres) of improved walkways, special paving and gathering areas; a 35,000-square-foot (0.80 acre) lawn with three large specimen trees for passive recreation; a climbable public art installation; a landscaped planting and seating area between the plaza and the GTA; 800 linear feet of concrete walls, steps and ramps; preservation and reuse of the Beltline Railroad Building for commercial use; signs; and public access improvements such as benches, trash receptacles, and lighting;
  2. **Northeast Wharf Plaza Restroom.** Construct, use and maintain an accessible public restroom facility within 11 years of issuance of certificate of occupancy of the cruise terminal building, or sooner if additional grants or other funding are secured, beyond those required for the Northeast Wharf Plaza construction; and
  3. **Off-site Public Access.** Construct, use and maintain off-site public access on: (a) Pier 23 south and east aprons; (b) Pier 19 north and east aprons; (c) Pier 19½ and 29½ east aprons; and (d) connections through the Pier 19½ and 29½ connector buildings. Improvements to the public access areas include benches, lighting, signage, railings and/or bullrails, and trash containers.
- B. This authority is generally pursuant to and limited by the application dated February 14, 2012, including all accompanying and subsequently submitted correspondence and exhibits, but subject to the modifications required by conditions hereto.
- C. Work authorized under Phase 1 of the project must commence prior to December 1, 2012, or this permit will lapse and become null and void. All work authorized in Phase 1 must be diligently pursued to completion and must be completed within two years of commencement or by December 1, 2014, whichever is earlier, unless an extension of time is granted by amendment of the permit.

Work authorized under Phase 2 of the project must commence prior to December 1, 2014, or this permit will lapse and become null and void. All work authorized in Phase 2 must be diligently pursued to completion and must be completed within two years of commencement or by December 1, 2016, whichever is earlier, unless an extension of time is granted by amendment of the permit.

Work authorized under Phase 3 of the project must commence as soon as funding is secured to construct the improvements required and must be diligently pursued to completion and must be completed within 11 years of certificate of occupancy of the cruise terminal building, unless an extension of time is granted by amendment of the permit. Changes in the work authorized for any phase may require amendments to this authorization.

- D. The project involves placing a total of 969 square feet (0.022 acres) of fill in the Bay in Phases 1 and 2. Additional fill may be required for the public access improvements required in Phase 3 and will require an amendment to this permit. During Phase 1, a total of 330 square feet (0.0076 acres) of new fill will be placed, consisting of approximately 920 cubic yards of new solid fill to repair 20 piles to strengthen the Pier 29 substructure. During Phase 2, an additional 639 square feet (0.015 acres) of new Bay fill will be placed, consisting of approximately 20 cubic yards of solid fill for repairing up to 52 piles to strengthen the Pier 27 substructure and marginal wharf, 290 cubic yards of solid fill for eight, 18-inch-in-diameter piles to repair the Pier 27 apron, 130 cubic yards of new solid fill for 60, 14-inch-in-diameter and three 48-inch-in-diameter fender piles, 294 square feet (0.0067 acres) of new floating fill for three new foam filled fenders at Pier 27, and 30 square feet (0.00069 acres) of pile-supported fill for three new cone fenders.

In total, the project will increase the amount of solid and floating fill in the Bay by a small amount, but only the proposed fenders and fender piles (approximately 416 square feet) will be placed beyond the existing footprint of Piers 27-29. The proposed project will result in a net reduction of 416 square feet (0.0095 acres) of Bay surface water.

Type of Fill	Removed	New	Total Net Fill
<b>Phase 1</b>			
Solid (sf)	0	330	330
Solid (cy)	0	920	920
<b>Phase 2</b>			
Solid (sf)	0	315	315
Solid (cy)	0	440	440
Floating (sf)	0	294	294
Pile-Supported (sf)	0	30	30
<b>Totals</b>			
Total (sf)	0	969	969
Total (cy)	0	1,360	1,360

- E. The project will create a total of up to (depending on how much of the Pier 29 shed is removed) approximately 416,612 square feet (9.56 acres) of new public access both on-site and off-site. The public access improvements on-site include: the Northeast Wharf Plaza (Phase 2 or Phase 3); the Pier 29 apron and Pier 29 tip (Phase 2); the Pier 29 Bay-

side History Walk (Phase 2); an internal walkway within Pier 29 (Phase 2); walkways between Pier 27 and the GTA and Pier 29 and the GTA (Phase 2); and limited access along the Pier 27 apron and tip when not needed for maritime activities (Phase 2). Public access off-site includes: the Pier 23 south and east aprons (Phase 3); the Pier 19 north and east aprons (Phase 3); the Pier 19½ and 29½ east aprons (Phase 3); and connections through the Pier 19½ and 29½ connector buildings (Phase 3). Improvements to the public access areas will include benches, lighting, railings, signage, trash containers and landscaping.

Type of Public Access	Square Feet	Acres	Shoreline Length (miles)
<b>Phase 1</b>			
On-Site (new)	0	0	0
Off-Site (new)	0	0	0
Protected or Maintained	0	0	0
Sub Total	0	0	0
<b>Phase 2</b>			
Non-Maritime (new)	Up to 209,533*	Up to 4.81*	0.45
Maritime (new)	148,825	3.42	0.28
Protected or Maintained	0	0	0
Sub Total	358,358	8.23	0.73
<b>Phase 3</b>			
On-Site (new)	0	0	0
Off-Site (new)	58,254	1.41	0.29
Protected or Maintained	0	0	0
Sub Total	58,254	1.41	
<b>Total</b>	<b>Up to 416,612*</b>	<b>9.56</b>	<b>1.06</b>
*Based on amount of Pier 29 shed is removed, pending final review and approval by BCDC.			

## 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

- Construction.** The final plans submitted pursuant to this condition shall generally conform to Exhibits A, B, C and D to this permit. Final plans for the construction of the structures authorized herein shall be prepared and submitted for Commission review as described below. No changes to the design of the project shall be made without the prior written approval of the Commission staff.
- Plan Review.** No work whatsoever shall be commenced pursuant to this authorization until final precise site, demolition, construction staging, engineering, architectural, grading, lighting, landscaping, and best management practices 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. Construction staging plans shall ensure that there is always at least a 15-foot-wide, continuous public access pathway available along the Embarcadero promenade. The specific drawings and information required will be determined by the staff. To save time, preliminary drawings should be submitted and approved prior to final drawings.

- a. **Site, Architectural, and Public Access Plans.** Site, demolition, architectural, lighting and public access plans shall include and clearly label the shoreline (Mean High Water Line), the line 100 feet inland of the line of the shoreline, property lines, Herb Caen Way, the boundaries of all areas to be reserved for public access purposes, details showing the location, types, dimensions, and materials to be used for all structures, irrigation, lighting, landscaping, drainage, seating, parking, signs, lighting, fences, paths, trash containers, utilities and other improvements.
- b. **Engineering Plans.** Engineering plans shall include a complete set of construction drawings and specifications and design criteria. The design criteria shall be appropriate to the nature of the project, the use of any structures, soil and foundation conditions at the site, and potential earthquake-induced forces. Final plans shall be signed by the professionals of record and be accompanied by:
  - (1) Evidence that the design complies with all applicable codes; and
  - (2) Evidence that a thorough and independent review of the design details, calculations, and construction drawings has been made.
- c. **Preliminary and Final Plans.** Plans submitted shall be accompanied by a letter requesting plan approval, identifying the type of plans submitted, the portion of the project involved, and indicating whether the plans are final or preliminary. Approval or disapproval shall be based upon:
  - (1) Completeness and accuracy of the plans in showing the features required above, particularly the shoreline (Mean High Water or deck edge), property lines, and the line 100 feet inland of the shoreline, and any other criteria required by this authorization;
  - (2) Consistency with the terms and conditions of this authorization;
  - (3) The provision of the amount and quality of public access to and along the shoreline and in and through the project to the shoreline required by this authorization;
  - (4) Consistency with legal instruments reserving public access areas;
  - (5) Assuring that any fill in the Bay does not exceed this authorization;
  - (6) Consistency of the plans with the recommendations of the Design Review Board and the Engineering Criteria Review Board;
  - (7) Assuring that appropriate provisions have been incorporated for safety in case of seismic event;
  - (8) Assuring that the placement of fill in the Bay will avoid or minimize impacts to the Bay;
  - (9) Assuring that appropriate elevations have been met to prevent overtopping, flooding, and 100-year storm events in all public access areas; and
  - (10) Assuring that existing public access will not be impeded during construction to the maximum extent feasible.

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

3. **Conformity with Final Approved Plans.** All work, improvements, and uses shall conform to the final approved plans. Prior to any use of the facilities authorized herein, the appropriate design professional(s) of record shall certify in writing that, through personal knowledge, the work covered by the authorization has been performed in accordance with the approved design criteria and in substantial conformance with the approved plans. No noticeable changes shall be made thereafter to any final plans or to the exterior of any constructed structure, outside fixture, lighting, landscaping, signage, landscaping, parking area, or shoreline protection work without first obtaining written approval of the change(s) by or on behalf of the Commission.
4. **Discrepancies between Approved Plans and Special Conditions.** In case of any discrepancy between final approved plans and Special Conditions of this authorization or legal instruments approved pursuant to this authorization, the Special Condition or the legal instrument shall prevail. The permittee are responsible for assuring that all plans accurately and fully reflect the Special Conditions of this authorization and any legal instruments submitted pursuant to this authorization.
5. **Appeals of Plan Review Decisions.** Any plan approval, conditional plan approval or plan denial may be appealed by the permittee or any other interested party to the Design Review Board or, if necessary, subsequently to the Commission. Such appeals must be submitted to the Executive Director within 30 days of the plan review action and must include the specific reasons for appeal. The Design Review Board shall hold a public hearing and act on the appeal within 60 days of the receipt of the appeal. If subsequently appealed to the Commission, the Commission shall hold a public hearing and act on the appeal within 90 days of the receipt of the subsequent appeal.
6. **Design Review Board Reviews.** All required public access and improvements not previously reviewed by the Design Review Board or requiring further review, including those required in Special Conditions II-B-2 ("**Phase 1 – Areas and Improvements**"), II-B-3(a)(1) ("**Interim Northeast Wharf Plaza Improvements**"), II-B-3(e) ("**Pier 29 Apron and Tip**"), II-B-4 ("**Phase 3 – Areas and Improvements**"), II-B-7 ("**Pier 29 Tip**") and II-B-8 ("**Programming for Piers 27 and 29 Tip**") shall be reviewed by the Design Review Board prior to the submittal of final plans for approval.

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

1. **Total Area.** The approximately 416,612-square-foot (9.56 acres) public access area provided by the project, as generally shown in Exhibits C and D, shall be made available exclusively to the public for unrestricted public access in accord with the timelines described below, except as allowed by Special Conditions II-B-5 ("**Public Access Restrictions**"). All public access improvements including, but not limited to benches, lighting, signage, bicycle racks, railings, trash containers, and sculptures and art, shall be subject to final plan review approval or Design Review Board review and final plan review approval, as needed pursuant to Special Condition II-A of this permit.
2. **Phase 1 - Areas and Improvements.** If the core and shell of the cruise terminal building is used for special events prior to its use as a cruise terminal (such as for the 34<sup>th</sup> America's Cup Event), then no later than three months prior to the use of the building for an event, the permittee shall submit and obtain approval for such uses from the Commission and provide maximum feasible public access consistent with the event use in accord with a schedule, approved by or on behalf of the Commis-

sion. Such access could include, but is not limited to: full apron access, a minimum of 35% of the project pier area, and appropriate connections to the piers from the Embarcadero. All special event use and public access provided with the project shall be subject to Design Review Board review and final plan review, subject to Special Condition II-A, and may require additional permitting authorization.

3. **Phase 2 – Areas and Improvements.** Prior to the use of the cruise terminal building for cruise terminal functions, the permittee shall construct and make available to the public for public access uses, including walking, running, bicycling, sitting, viewing, picnicking and related purposes, the following public access areas and improvements, as generally shown on Exhibit C:
  - a. **Northeast Wharf Plaza.** The permittee shall improve, construct, and make available for public access use the approximately 119,270-square-foot (2.74 acre) area of the Northeast Wharf Plaza (Exhibit C, Numbered Region 1):
    - (1) **Interim Northeast Wharf Plaza Improvements.** If funding is not secured for full build-out of the Northeast Wharf Plaza as required in Special Condition II-B-3(a)(ii) below, the permittee shall improve the approximately 119,270-square-foot (2.74-acre) area of the Northeast Wharf Plaza with the following improvements, subject to Design Review Board review and final plan approval in Special Condition II-A: (1) repave the site to provide a smooth, safe and barrier-free plaza area; (2) install railings and steps as necessary to separate areas with grade changes; (3) install a minimum of 30 benches or other seating throughout the site, including benches along the waterfront edge facing the Bay, the Embarcadero Edge and throughout the area of the future Bay Lawn and Entry Plaza (as noted in Exhibit B); (4) install appropriate lighting, signage, and possibly large sculptures, art, planters and landscaping to create a more aesthetically-pleasing plaza site that softens the hardscape of the site; and (5) provide a programming plan that includes possible use of the space for free cultural and civic events that draw the public to the site; and
    - (2) **Northeast Wharf Plaza –** As soon as funding is secured and no later than 11 years from the certificate of occupancy of the cruise terminal building, the permittee shall construct the Northeast Wharf Plaza as previously reviewed by the Design Review Board and generally shown in Exhibit B, that includes approximately 84,270 square feet (1.93 acres) of paved walkways and gathering areas with special paving, and a 35,000-square-foot lawn with three large specimen trees for passive recreation, a climbable art installation, a landscaped planting and seating area between the Plaza and the GTA, 800 linear feet of concrete walls, steps and ramps, a minimum of 60 benches, approximately 15 covered litter receptacles, preservation and reuse of the Beltline Railroad Building for commercial use, pier identification signs, and lighting. Adaptive reuse of this building is anticipated to require use of limited areas outside the building for supporting services such as outdoor tables and seating, and enclosed trash/recycling receptacles. Any alterations to the building will be required to comply with Secretary of the Interior historic preservation standards. Any such improvements will be subject to further Design Review Board review and approval by staff, pursuant to Special Condition II-A.

- b. **Pier 29/GTA Walkway.** An approximately 15,593-square-foot (0.36 acre), 20-foot-wide, 525-foot-long walkway along the eastern exterior of the Pier 29 shed adjacent to the GTA, that includes approximately four benches, signage, lighting, bollards and bullrails that define the pedestrian walkway and adequately separates this area from the GTA (Exhibit C, Numbered Region 2).
  - c. **Pier 29 Bayside History Walk.** An approximately 3,217-square-foot (0.07 acre), 20-foot-wide, 160-foot-long Bayside History Walk through the Pier 29 shed that provides views of the inner structure of the pier shed and includes interpretation of San Francisco's maritime history (Exhibit C, Numbered Region 3).
  - d. **Pier 29 North Interior Walkway.** An approximately 3,360-square-foot (0.08 acre), 20-foot-wide, 168-foot-long walkway through the northeastern end of the Pier 29 shed, to allow access from the Pier 29/GTA Walkway to the Pier 29 Apron and tip, if access is not otherwise provided continuously along the eastern exterior of the Pier 29 shed to the Pier 29 tip, subject to Special Conditions II-B-6 and II-B-7 (Exhibit C, Numbered Region 4).
  - e. **Pier 29 Apron and Tip.** Approximately 53,297 square feet (1.22 acre) of apron and north end access that includes: (1) an approximately 30-foot-wide and 1,000-foot-long walkway along the west apron of Pier 29; (2) depending on how much of the Pier 29 shed is removed pursuant to Special Condition II-B-7 below, up to approximately 23,297-square-foot (0.53-acre) area of the Pier 29 tip, programmed as required in Special Condition II-B-8, or public access within a retained portion of the end of the Pier 29 shed; (3) approximately 490 feet of foldable fencing to separate the Pier 29 tip and apron area from the Pier 27 tip when needed for maritime use; and (4) approximately 15 benches, 6 covered trashcans, signage, lighting and railings (Exhibit C, Numbered Region 5).
  - f. **Pier 27/GTA Walkway.** An approximately 14,796-square-foot (0.34 acre), 20-foot-wide by 500-foot-long walkway between Pier 27 and the GTA, that includes signage, lighting, and bollards that define the pedestrian walkway and adequately separates this area from the GTA (Exhibit C, Numbered Region 6).
  - g. **Pier 27 Apron and Tip.** Approximately 148,825-square-feet (3.42 acre) of shared maritime/public access apron and north end access, subject to Special Conditions II-B-5 and that includes: (1) an approximately 50-foot-wide and 1,500-foot-long walkway along the Pier 27 east apron and that includes approximately 410 feet of foldable fencing to close apron areas off in two locations adjacent to the Northeast Wharf Plaza when needed for maritime; (2) an approximately 73,825-square-foot (1.64 acre) area of the Pier 27 tip and that includes approximately 380 feet of foldable fencing to secure the area for cruise ship provisioning, baggage drop-off and laydown, truck loading and support space for maritime vessels; and (3) appropriate signage and lighting.
4. **Phase 3 – Areas and Improvements.** The permittee shall construct and make available to the public for public access uses including walking, running, bicycling, sitting, viewing, picnicking and related purposes, the following public access areas and improvements, as generally shown on Exhibits B and D:
- a. **Northeast Wharf Plaza and Restroom.** As soon as funding is secured and no later than 11 years from certificate of occupancy of the cruise terminal building, the approximately 119,270-square-foot (2.74 acre) Northeast Wharf Plaza as required in Special Condition II-B-3(a)(ii) above and as generally shown on Exhibit B, and an approximately 450-square-foot public restroom adjacent to the

planter area separating the Northeast Wharf Plaza from the GTA, subject to Design Review Board review and final plan review approval in Special Condition II-A.

- b. **Piers 19 and 23 Aprons.** Within five years of certificate of occupancy for the cruise ship terminal at Pier 27, or 11 years if funding is not available, approximately 22,574 square feet (0.52 acres) of apron access along the entire length of the north and east aprons of Pier 19 and the south and east aprons of Pier 23, subject to Design Review Board review and final plan approval required in Special Condition II-A. Apron widths shall maintain current widths and shall be no less than 15 feet and appropriate lighting shall be provided for security. A minimum of 10 benches and five covered trashcans each, shall be provided along the north apron of Pier 19 and along the south apron of Pier 23, and a minimum of four benches and two covered trashcans each shall be provided along the east apron of Pier 19 and along the east apron of Pier 23 (for a total of 28 benches and 14 covered trashcans in these areas). The permittee shall seek and obtain any amendments to this permit that are needed to authorize any reconstruction or repair of apron areas needed to satisfy this condition.
  - c. **Piers 19½ and 29½.** Within five years of certificate of occupancy for the cruise ship terminal at Pier 27, or 11 years if funding is not available, approximately 35,680 square feet (0.82 acres) of access that includes: (1) the Bayside aprons of the Piers 19½ and 29½ connector buildings, with a minimum width of 25 feet; and (2) connections through the Piers 19½ and 29½ connector buildings, subject to Design Review Board review and final plan review approval in Special Condition II-A.
5. **Public Access Restrictions – Pier 27 Apron and Tip.** To accommodate maritime activity and vessel berthing along Pier 27, the Pier 27 apron and tip may be closed for public access during limited times of the year subject to the following conditions:
    - a. **Closure Times.** The Pier 27 apron and tip shall be closed as little as possible and only when needed for U.S. Homeland Security reasons when cruise ships, other visiting vessels such as tall ships, research vessels, military vessels from other countries, and U.S. Navy vessels are berthed at Pier 27. When cruise ships are in berth, the apron and tip may be closed generally one day before and up to one day after the cruise ship is in berth for provisioning requirements. All berthing shall be limited to vessel calls of no more than ten days in duration. Closures could occur up to half of the year but this number may fluctuate from year to year. The Port shall use its best efforts to ensure that the Pier 27 apron and tip is available for public access to the maximum extent feasible. If visiting vessels or other ships do not require security closures, these areas shall be open for public access and all foldable fences shall remain retracted in the open position. No public access closures may occur for private events occurring within the cruise terminal building.
    - b. **Annual Reporting of Vessel Call Schedule.** By December 1<sup>st</sup> of each year, the Port shall provide BCDC a schedule of cruise calls and scheduled ceremonial and visiting vessels that are planned to berth at Pier 27 the following year. The vessel call schedule shall include: (1) the number and type of vessels that are scheduled to visit in the upcoming year; (2) the date of the visit and the likely duration of the berthing; (3) the calls that would have public visitation programs; and (4) the calls that would require closure of the Pier 27 apron and tip and the likely duration of such closure. BCDC shall review the call schedule and the Port will provide further information as needed and as requested by BCDC

so that both agencies have a consistent understanding of the shared maritime and public access use of these areas. The call schedule review shall include provisions to accommodate refinements as needed for the scheduled calls, and the ability to respond to short notice requests for berth assignments.

- c. **Pier 27 Apron.** All vessels shall be berthed towards the northern end of Pier 27-29 to maintain open water views from the Northeast Wharf Plaza to the maximum extent feasible. When smaller ships are in berth and security requires fence closure, vessels shall be berthed as far north as possible to allow the northernmost fence line (alongside the cruise terminal building) to be secured. The apron shall be kept as free and clear as possible to allow for public access passage along the apron whenever open. When security does not require apron closure, gangways shall be designed with as minimal footprint as possible to allow passage through and around the space.
6. **Possible Relocation of Security Fencing at Tip.** The permittee shall use its best efforts to relocate maritime storage/forklift activities that are currently programmed to occur at the back of the Pier 29 shed and to locate these uses closer to the Pier 27 tip, to allow fencing separating the Pier 27 and Pier 29 tips to be moved further to the east towards Pier 27, to increase year-round public access at the Pier 29 tip. The permittee shall conduct a cost estimate of this proposal and shall provide the details of its findings to BCDC no later than the construction of Phase 2 of this permit. If this option is found to be feasible, the permittee shall request, if needed, an amendment to the permit, or plan review approval for the change, and include updated exhibits and public access information for this change.
7. **Pier 29 Tip.** No later than July 1, 2012 or sooner as needed to coordinate with permitting for possible use of the site for the AC34 event in 2013, the permittee shall seek an amendment for the removal of a portion of the Pier 29 shed to provide public access on the uncovered portions of the piers following shed removal, or within a portion of the retained shed itself, and shall provide BCDC staff with any revised public access numbers as needed to reflect any portion of the Pier 29 shed that would be removed. The amendment request shall be subject to Design Review Board review and final plan approval in Special Condition II-A, and coordinated with the programming submittal requirements in Special Condition II-B-8 below.
8. **Programming for Piers 27 and 29 Tip.** By July 1, 2012, the permittee shall develop a program and/or development proposal for the Piers 27 and 29 tip to be reviewed by or on behalf of the Commission, to enliven the space, draw the public out to the tip, and provide activities or cultural events that are free of charge and open to the public. The plan and program could include rotating or permanent art installations, windscreens, small structures or other improvements to activate the space, promote recreational enjoyment of the Bay, and complement the maritime and cruise activities that would occur. The program and development proposal shall be subject to Design Review Board review and final plan approval in Special Condition II-A, as needed.
9. **Night and Security Closures.** For security purposes, the permittee may close the Piers 27 and 29 aprons and the tip during the evening hours from 10 p.m. to 7 a.m. The Northeast Wharf Plaza and all other public access areas shall remain open 24 hours a day.
10. **Vehicle Restrictions.** All vehicles are restricted to the GTA area and, during maritime activities, within the Pier 27 tip and Pier 27 apron. No service vehicles shall be operated in any other public access area required herein with the exception of service vehicles required during an emergency.

11. **Garbage Storage and Handling.** No garbage or trash enclosures shall be located, stored, or temporarily placed, for any period of time, in any public access areas described in Special Condition II-B above, except as may be needed for the Beltline Railroad Building, following subsequent plan review approval. Prior to the use of any structure authorized herein, the permittee shall submit plans, pursuant to Special Condition II-A, that describe in detail all trash storage locations and trash enclosure structures to be used as part of the project and when and how often the trash would be removed. Further, the garbage storage and handling plans shall describe how the facility's garbage, especially any garbage associated with any food service facility, will be handled in a manner that will not create any adverse impacts to any public access areas.
12. **Permanent Guarantee of Public Access.** At least six months prior to the issuance of a certificate of occupancy for the cruise terminal, the permittee shall, by instrument or instruments acceptable to counsel for the Commission, dedicate to a public agency or otherwise permanently guarantee such rights for the public to the new up to 358,358 square-foot public access areas (depending on how much of the Pier 29 shed is removed) at the Piers 27-29 site. At least six months prior to the completion and opening of the off-site public access areas at Piers 19, 23, 19½ and 29½, the permittee shall amend such instrument or instruments to include the additional approximately 58,254 square-foot off-site public access areas. The instrument(s) shall create rights in favor of the public for the entire 416,612-square-foot public access area, which shall commence no later than after completion of construction of any public access improvements required by this authorization and prior to the use of any structures authorized herein. Such instrument shall be in a form that meets recordation requirements of the City and County of San Francisco and shall include a legal description of the property being restricted and a map that clearly shows the shoreline (Mean High Water Line or edge of seawall), 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 or seawall, 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.
13. **Recordation of the Public Access Instrument.** Within 30 days after approval of the instrument, the permittee shall record the instrument on all parcels affected by this permit and shall provide evidence of recording to the Commission. No changes shall be made to the instrument after approval without the express written consent by or on behalf of the Commission. The instrument shall create rights in favor of the public, which shall commence no later than the date of occupancy and shall continue so long as any use or improvements authorized herein remain. Such improvements shall be fully consistent with the plans approved pursuant to Special Condition II-A of this authorization and substantially conform to Exhibit A.

14. **Maintenance.** The areas and improvements within the up to 416,612-square-foot (9.56 acres) public access area described above shall be permanently maintained by and at the expense of the permittee or its assignee. Such maintenance shall include, but is not limited to: repairs to all path surfaces; replacement of any plant materials that die or become unkempt; repairs or replacement as needed of any public access amenities such as signs, benches, trash containers, and lights; periodic cleanup of litter and other materials deposited within the access areas; removal of any encroachments into the access areas; assurance that the public access signs remain in place and visible; and repairs to any public access areas or improvements that are damaged by future subsidence, uneven settlement, or flooding, or inundation caused by sea level rise, including raising land elevations or redesigning public access features to protect and ensure the usability of the public access areas and improvements at all times. Within 30 days after notification by staff, the permittee shall correct any maintenance deficiency noted in a staff inspection of the site. The permittee shall obtain approval by or on behalf of the Commission of any maintenance that involves more than in-kind repair and replacement.
  15. **Assignment.** The permittee shall transfer maintenance responsibility to a public agency or another party acceptable to the Commission at such time as the property transfers to a new party in interest but only provided that the transferee agrees in writing, acceptable to counsel for the Commission, to be bound by all terms and conditions of this permit.
  16. **Reasonable Rules and Restrictions.** The permittee 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 will not significantly affect the public nature of the area, will not unduly interfere with reasonable public use of the public access areas, and will tend to correct a specific problem that the permittee have both identified and substantiated. Rules may include restricting hours of use and delineating appropriate behavior.
- C. **Open Water Basin Planning Studies.** The permittee shall undertake a three-year public planning process beginning no later than July 2012 and completed by July 2015 to identify the location of a fourth open water basin within the Northeastern Waterfront (between Pier 35 and China Basin) and a public plaza and open water basin within the Fisherman's Wharf area. By December 31, 2015, the permittee shall identify and submit a request for an amendment to the SAP, as needed, for the fourth open water basin within the Northeastern Waterfront, and by July 1, 2015, the permittee shall develop a plan for a public plaza and open water basin within the Fisherman's Wharf area, and submit a request for an amendment to the SAP as needed.
- D. **Special Events.** When not needed to support cruise or other maritime berthing operations, the permittee may use the cruise terminal building and/or the GTA for special events. All or portions of the GTA may be used for special event support space for visitor parking, staging and work areas for caterers, entertainment, and event managers. Special events may be held for both public and private purposes in these areas but shall be programmed and planned to ensure that the private events do not spill onto required public access areas or adversely affect these areas.
- E. **Vendor Management.** At least sixty days prior to the first special event at the site or use of the site by vendors, the permittee shall submit a management plan, pursuant to Special Condition II-A, to manage vendors, commercial enterprises, food service facilities, and queues so as to ensure that public access is not impeded or diminished. Such management shall give priority to: (1) the efficient and comfortable pedestrian circulation to, in, and through the Northeast Wharf Plaza, the apron areas, and all other

public access areas; and (b) controlling litter generated by various uses of the plaza. The permittee shall be responsible for implementing and enforcing any approved plan. Food and vendor service at the site is subject to revocation by the Commission if it is determined that such service significantly impedes or diminishes public use or enjoyment of the public access areas.

- F. **Litter Control.** The permittee shall prevent litter generated in waterfront areas associated with the cruise terminal, special events, or use of the public access areas from entering the Bay by placing an adequate number of covered trash receptacles, regularly emptying trash containers to minimize trash overflows, collecting trash, and placing public notices. Covered trash receptacles shall be conveniently placed throughout the Northeast Wharf Plaza, on apron areas, and within the GTA and other pathways, and widely available for public use. Trash collection shall occur routinely when cruise ships are in berth or other special events occur, recycling services shall be provided for solid waste from cruise ships offloaded in port, and measures to discourage the use of single-use plastic bottles or plastic bags by passengers embarking or debarking at the Port of San Francisco shall be provided in the berthing agreement.
- G. **Ground Transportation Area (GTA).** The permittee shall prepare a circulation and operation plan for the GTA that includes details on how the GTA would be managed and designed to remedy traffic congestion and transportation conflicts currently experienced along the Embarcadero roadway and Promenade related to existing operations at the Pier 35 cruise terminal. The plan shall include information such as: procedures for vehicular, truck and bus access into the GTA; provision of vehicle queuing space and striping to provide separated access and circulation; use of traffic monitors and transportation control personnel and protocols for such staff to monitor vehicular, bicycle and pedestrian ingress and egress, serve as safety crossing guards, and to provide way-finding assistance for provisioning trucks to designated pick-up or drop-off areas; directional signage; keep the Embarcadero bike lane free of queuing vehicles, assure the safety and minimize interruptions to pedestrians and bicyclists on Herb Caen Way caused by vehicles crossing into the GTA, and distribution of information on drop-off and pick-up procedures for cruise terminal passengers as well as information on alternatives to vehicular access. The permittee shall provide a copy of the circulation and operation plan to the Commission staff.
- H. **Final Approval by Office of Administrative Law.** No work authorized herein shall commence until the Office of Administrative Law (OAL) has approved and adopted the March 1, 2012 SAP amendment language into law. If OAL approval modifies the SAP such that activities or requirements authorized herein are not consistent with the SAP, the permittee shall seek and obtain an amendment to this authorization to assure project consistency with the SAP.
- I. **Pile Driving Restrictions**
1. **Pile Driving Method.** The permittee shall use a vibratory hammer to install all steel piles in the Bay to avoid potential impacts to fish species from elevated underwater sound pressure levels. If geotechnical studies indicate that an impact hammer is necessary due to unforeseen hard driving conditions, the permittee shall inform the Commission in writing that an impact hammer is needed, shall limit impact pile-driving of piles greater than 18 inches to between June 1 and November 30 of each year to minimize impacts to particularly sensitive or rare fish species such as steelhead trout and Chinook salmon. For impact hammer driving of steel piles, the permittee shall use bubble curtains and a wood cushion between the pile and impact hammer to attenuate sound levels from the steel piles, or shall assure that sound pressure levels generated from the pile-driving do not exceed the maximum

decibels and accumulated sound pressure levels established by NMFS. In addition, the permittee shall use a “soft start” technique during pile-driving to give marine mammals an opportunity to vacate the area. The permittee shall have a NMFS-approved biological monitor present before and during pile driving, to halt pile driving if marine mammals are observed within 500 meters of the project site, and to maintain sound levels below 90dBA in air when seals or sea lions are present. The permittee shall submit a copy of the NMFS-approved sound attenuation and monitoring plan to the Commission staff within 15 days of its approval.

2. **Herring Monitoring.** If pile driving occurs between December 1 and February 28 of any year, the permittee shall have an on-site biological monitor, as approved by the California Department of Fish and Game (DFG) for monitoring herring. If herring spawning is observed, pile driving shall cease for two weeks following the spawning event. The biological monitor shall survey the area prior to resuming work to ensure that further work does not impact spawning or newly hatched herring.
  3. **Marine Mammals.** If marine mammals are observed within 500 meters of the project site, pile driving shall cease and only resume once the mammals have completely exited the project site.
- J. **Minimizing Impacts to Western Gulls.** To the extent feasible, the permittee shall not undertake demolition activities between March 1 and August 1, the nesting season for western gulls. If construction or demolition occurs during the nesting season, the permittee shall employ an avian biologist and shall employ appropriate measures to prevent nesting of western gulls on the project site, prior to the nesting season. Such measures may include:
1. Netting all potential nesting areas on the roofs of the structures to prevent gulls from nesting there with weekly inspections by the avian biologist to ensure that the barrier is functioning properly; or
  2. Setting up a grid of wires (no more than 1 foot squares) across nesting areas, approximately 1 foot or more above the surface, that are thin enough so that they do not provide a stable surface for gulls to perch on but that are strong enough so that they do not break, with weekly inspections by the avian biologist to ensure that the barrier is functioning properly; or
  3. Netting smaller areas where gulls are known to nest and hazing gulls in areas outside the netted areas. Hazing is the intentional disturbance and removal of nests prior to egg laying to prevent birds from nesting during the construction period. Beginning at least two weeks prior to the onset of the nesting season, one or more avian biologists shall inspect the roof at least every other day and use a broom or leaf blower to disrupt any nests outside the netted areas before they have eggs in them. If eggs are observed within nests, they may not be disturbed. Avian biologists shall inspect the roofs at least every two days and continue hazing throughout the nesting season, while demolition is occurring.
- K. **Incidental Harassment Authorization Approval.** No in water work shall commence until the permittee provides the Commission staff with an approved Incidental Harassment Authorization from NMFS for marine mammals and incorporates any required mitigation measures in its construction plans.

- L. **Other Agency Approvals.** No in water work shall commence until the permittee provides the Commission staff with all required and final approvals from relevant resource agencies, including, but not limited to, a biological opinion, a consistency determination or incidental take permit from the California Department of Fish and Game, U.S. Fish and Wildlife Service, and National Marine Fisheries Service, as needed.
- M. **Shoreside Power.** Prior to the use of the cruise terminal building for cruise ship operations, but not later than April 1, 2014, the permittee shall re-install shoreside power equipment and conduct necessary upgrades, as authorized by this permit, to power cruise ships while berthed at the pier. All shoreside power-equipped cruise ships shall be assigned to berth at Pier 27 and shall be required to utilize and power up using the shoreside power equipment in order to reduce air emissions while in berth. The permittee shall also provide incentives, through the berthing agreement or other appropriate measures reviewed and approved by or on behalf of the Commission, to encourage additional calls by shoreside power-equipped vessels to berth at the terminal, and to achieve emission reductions from non-shoreside power equipped vessels by measures such as slowing speeds while entering and exiting the port, emission offsets, use of low-sulfur fuel, or other operational and design measures. No later than December 31, 2012, the permittee shall provide documents for Commission staff review and comment, to confirm that installation of a new Pier 70 shoreside power facility has been completed by the Port of San Francisco and BAE Systems and is operating to offset excess emissions from cruise ships that are precluded from using the Pier 27 shoreside power facility while it is decommissioned from 2012 to 2014, and document that air emissions are being reduced.
- N. **Cruise Ship Discharges and Ballast Water.** Prior to the use of the cruise terminal building for cruise ship operations, the permittee shall ensure, through the berthing agreement or other appropriate measures reviewed and approved by or on behalf of the Commission, that cruise ships using the cruise ship terminal do not discharge into the Bay treated or untreated solid or liquid wastes, treated or untreated oily bilge water, gray water, sewage, and unauthorized releases of ballast water. The berthing agreement shall also provide that cruise ships using the Port that repeatedly violate the discharge prohibition, as determined by or on behalf of the Commission in consultation with the Port and the San Francisco Bay Regional Water Quality Control Board, are denied future berthing rights at the Port of San Francisco.
- O. **Mitigation Measures and Best Management Practices.** In order to minimize impacts to natural resources, the permittee shall implement the mitigation measures, best management practices and other conditions required by other federal, state, local or other regulatory agencies applicable. In addition, the following conditions apply:
1. **Creosote Treated Wood.** No pilings or other wood structures that have been pressure treated with creosote shall be used in any area subject to tidal action in the Bay or any certain waterway, in any salt pond, or in any managed wetland within the Commission's jurisdiction as part of the project authorized herein.
  2. **Construction Operations and Debris Removal.** All construction operations shall be performed to prevent construction materials from falling, washing or blowing into the Bay or drifting and becoming a navigation or pollution hazard. In the event that such material escapes or is placed in an area subject to tidal action of the Bay, the permittee shall immediately retrieve and remove such material at its expense. 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 permittee, its assignee, or successor in

interest, or the owners of the improvements, shall remove such material, at its expense, within ten days after it has been notified by the Executive Director of such placement.

3. **Water Quality.** Pursuant to the Water Quality Certification issued by the Regional Water Quality Control Board (RWQCB), the permittee shall implement post-construction stormwater best management practices (BMPs) that include a rain-water harvesting and distribution system, biofiltration planters, impervious surface replacement with pervious landscaping, and media filters containing dual media cartridges designed to remove metals, hydrocarbons, and sediment. The permittee shall also submit and implement a Storm Water Pollution Prevention Plan (SWPPP), A Spill Prevention Control and Countermeasure Plan (SPCCP) and a Materials Management Disposal Plan (MMDP), which would apply to project construction phases.
- P. **In-Kind Repairs and Maintenance.** Any in-kind repairs and maintenance of structures or improvements inundated by Bay water shall only use construction material that is approved for use in San Francisco Bay. Construction shall only occur during current approved months during the year to avoid potential impacts to fish and wildlife. Commission staff should be contacted to confirm current restrictions. Repair and maintenance work shall be confined to existing structural footprints and shall not result in the enlargement of the existing pier, gangway or dock structures.
  - Q. **Recording.** The permittee shall record this permit or a notice specifically referring to this permit on all parcels affected by this permit with the City and County of San Francisco 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.
  - R. **Certification of Contractor Review.** Prior to commencing any grading, demolition, or construction, the general contractor or contractors in charge of that portion of the work shall submit written certification that s/he has reviewed and understands the requirements of the permit and the final BCDC-approved plans, particularly as they pertain to any public access or open space required herein, or environmentally sensitive areas.
  - S. **Abandonment.** If, at any time, the Commission determines that the improvements in the Bay authorized herein have been abandoned for a period of two years or more, or have deteriorated to the point that public health, safety or welfare is adversely affected, the Commission may require that the improvements be removed by the permittee, its assignee or successor in interest, or by the owner of the improvements, within 60 days or such other reasonable time as the Commission may direct.

### III. Findings and Declarations

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 *San Francisco Waterfront Special Area Plan* (SAP), the California Environmental Quality Act (CEQA), and the Commission's amended coastal zone management program for San Francisco Bay for the following reasons:

- A. **San Francisco Waterfront Special Area Plan.** The *San Francisco Waterfront Special Area Plan* (Waterfront SAP), as amended in 2000, identified an open water basin (the Northeast Wharf Open Water Basin) between Piers 19 and 27, including removal of a portion of the Pier 23 shed to improve Bay views. On Piers 27-29, the 2000 SAP also required the construction of a "Northeast Wharf Plaza", an approximately two-acre public plaza oriented to the Northeast Wharf Open Water Basin, that provides for waterside uses, such as temporary, small craft tie-ups and handheld boat launching, and a number of

other amenities identified in the SAP and illustrated on Figure 3 of the SAP. The 2000 SAP recognized the use of the Pier 27 apron and the Northeast Wharf Open Water Basin for the temporary berthing of ceremonial and visiting ships, but required these uses to not extend landward of the Pier 27 shed in order to preserve views to the Bay from the Northeast Wharf Plaza.

On March 1, 2012, the Commission approved an amendment to the SAP to reflect changes to these policies to accommodate a future new international cruise ship terminal at Piers 27-29 that would otherwise conflict with the 2000 SAP. The amendment recognized that, “a number of public benefits identified in the 2000 amendment were predicated on the development of Piers 27-31 in a way that would result in the preservation of an open water basin adjacent to the Northeast Wharf Plaza, public access along the adjoining pier aprons, the removal of a portion of Pier 23 to open up views to the Bay from the plaza and the Embarcadero and boating access from the plaza to the open water basin.” Based on a more thorough analysis of the condition of the Port’s piers and sheds, it found that, “Pier 27 is the most suitable location for a new, international cruise ship terminal on the San Francisco waterfront due to its size, its apron length and width, structural integrity, and the availability of the infrastructure to easily supply the cruise ships with shoreside power.” However, the relocation of the new international cruise ship terminal to Pier 27 and the retention of Pier 23, “compromises many of the public benefits envisioned in 2000 in conjunction with the development of these piers, requiring that new public benefits be identified for this area of the waterfront that are equal to or better than the public benefits required by the 2000 amendment.”

The following SAP policies apply to the project and include the March 2012 SAP amendments describing new public benefits and public access to offset those lost from the relocation of the cruise terminal to Piers 27-29:

1. **Open Water Basin Policies.** The amended SAP deletes the Northeast Wharf open water basin requirement between Piers 19 and 27 and requires that, “the Port must identify and BCDC must approve in a subsequent amendment to this plan, a new location for the fourth open water basin within the Northeastern Waterfront (Pier 35 to China Basin) by December 31, 2015.” The findings to the policies recognize that “the removal of Pier 31 could create a suitable replacement for the Northeast Wharf Open Water basin between Pier 29 and Pier 33. In combination with the removal of the shed at the tip of Pier 27-29 to create a pier-end public space, providing public access on the north side of Pier 29, opening Pier 29½ public access and providing the Bayside History Walk in Pier 29, the open water basin created here could provide similar benefits as those eliminated by developing the primary cruise terminal at Pier 27, eliminating the Northeast Wharf Open Water Basin and retaining the Pier 23 shed.” However, if siting a replacement open water basin is found to be infeasible during the three-year public planning process between July 2012 and July 2015, the SAP policy requiring the removal of at least 315 feet of the easternmost portion of Pier 23 would remain and no development within this portion of Pier 23 may be authorized until BCDC has approved the replacement open water basin in an amendment to the SAP.

In addition to four open water basins within the Northeastern Waterfront, the amended SAP policies require the creation of a “Fisherman’s Wharf Open Water Basin” and public plaza within the Fisherman’s Wharf area that includes a small craft launch to allow for water recreation and transient boating opportunities. The amended policies require a similar three-year planning process (July 2012-July 2015) to be initiated to develop a plan that includes the open water basin and plaza design and financing.

The Port has agreed to undertake both of these public planning processes to identify the location of a fourth open water basin within the Northeastern Waterfront by December 31, 2015, to develop a plan and implementation requirements for a public plaza and open water basin within the Fisherman's Wharf area by July 1, 2015, and to amend the SAP to reflect the conclusions of the planning process. Special Condition II-C has been included in the permit to ensure that this public planning process is undertaken to create an appropriate fourth open water basin within the Northeastern Waterfront, and a public plaza and open water basin within Fisherman's Wharf, as required by the amended SAP (Exhibit D).

2. **Northeast Wharf Plaza Policies.** The amended SAP deletes certain policy language for the Northeast Wharf Plaza to reflect its possible siting adjacent to the cruise ship terminal. The new applicable policies state that the plaza design should in part, "consider minor grade changes to create a transition from Herb Caen Way to the Plaza and within the Plaza as a means of adding interest and accommodating different activities," "be designed to create zones or activity areas," "support both active and passive recreation uses" and "include a variety of appropriate plaza features, such as landscaping, fountains, a small amphitheater, public art, small kiosks, sheltered areas for activities such as chess and checkers, food carts and temporary seating within the café zones that are clearly incidental to the plaza and that would enliven public recreation and enjoyment of the plaza." Adjacent commercial uses may spill into and activate the plaza and adjoining public access areas to provide interest and enjoyment for users. The new policies require the plaza to be designed for permanence, the rigors of the marine environment, for high-levels of public use and reasonable maintenance. The new policies also allow for periodic high-intensity uses and events in the plaza and reasonable provision of vehicle access within the Piers 27-29 portion of the project site if the piers are redeveloped. According to the amended plan implementation policies, the Northeast Wharf Plaza is required to be completed "upon issuance of a certificate of occupancy for the cruise ship terminal at Pier 27 if necessary grants or other funding are available, or within 11 years if necessary grants or other funding are not available."

The Northeast Wharf Plaza is designed as an approximately 2.74-acre open space at the south end of Pier 27, fronting along the Embarcadero (Exhibit B). Pursuant to the amended SAP policies, the plaza will serve as a major waterfront park resource to support passive recreational enjoyment and provide expansive public views of San Francisco Bay when ships are not in berth along Pier 27. The plaza has been designed with four distinct features: (1) the Waterfront Edge; (2) the Bay Lawn; (3) the Entry Plaza; and (4) the Embarcadero Edge.

**Waterfront Edge.** The Waterfront Edge allows for both casual and secure pedestrian access to the Bay's edge. The Plaza is designed to integrate approximately 20,500 square feet (0.47 acre) of the adjacent Pier 27 apron except during periods when this apron area must be closed to meet maritime berthing and/or cruise ship berthing security requirements. When this apron area must be closed to meet maritime berthing and/or cruise ship berthing security requirements, a folding fencing system will be rolled into place and the public access experience will be that of viewing large cruise and maritime vessels. The fencing system has been designed to maximize visual transparency, be consistent with U.S. Homeland Security requirements, and to achieve maximum permeability when open for public access.

**Bay Lawn.** The Bay Lawn is a large grass lawn available for unprogrammed recreation use. According to the permittee, it would be used for informal picnicking, frisbee, kite flying, ball playing, and many types of spontaneous recreation. The lawn will be constructed in a planter on top of the pier deck and have concrete

seatwalls, stairs and ramps around its perimeter. Three large specimen trees will be located over an area with greater soil depth and a climbable art element will also be incorporated in this space.

**Entry Plaza.** The Entry Plaza will serve as the forecourt to the new cruise ship terminal. It is aligned with the Embarcadero crosswalk at Lombard Street and allows space for outdoor tables and seating that could spill out from the historic Beltline Railway building. The belt line building is a historic structure which will be preserved and rehabilitated in the future for restaurant or commercial use that is compatible with the Northeast Wharf Plaza. Plans for the building have not been developed at this time, however, the entry plaza has been designed to incorporate a potential commercial use of this site, and possible outdoor café uses adjacent to the building. The plaza space slopes gently up to the front door of the cruise terminal, where its generous dimensions could accommodate civic gatherings, festivals and welcoming events. A special paving pattern of bold swatches of colored concrete ties in with the cruise terminal building and pile spacing below the deck and directs views to the water's edge.

**Embarcadero Edge.** The Embarcadero Edge will be finished with a concrete wall with seating along Herb Caen Way. The wall will be as low as possible but will likely be about 42 inches high at its north and south ends bowing up gently to a 60 inch height in the middle. The height is necessary to accommodate the existing pier deck and a minimum soil zone depth for supporting the lawn.

According to the permittee, the Northeast Wharf Plaza has been designed to be consistent with the amended SAP policies. The plaza incorporates minor grade changes to transition from the Embarcadero to the cruise ship terminal and bay lawn, and to add interest and accommodate different activities. Various activity zones or areas have been created (as described above) to support both active and passive recreation uses at the site. Appropriate plaza features will include landscaping, public art, seating, lighting, and possible commercial uses, such as an outdoor café integrated with the Beltline Building to enliven public recreation and enjoyment of the plaza and allow commercial uses to spill onto the adjoining areas, consistent with the SAP policies for the plaza.

The Port hopes to secure the funding needed to construct the Northeast Wharf Plaza during Phase 2 when the cruise ship terminal building is completed and is being used for maritime use. Funding, however, is dependent on several factors including voter approval of several bond measures. If funding cannot be secured in time, the Port will construct a level of improvements at the Northeast Wharf Plaza during Phase 2 so that it serves as a usable and attractive public access space until sufficient funding can be obtained. Special Condition II-B-3-(a)(1) has been included in the permit to require that the "interim" plaza improvements include a smooth paved surface area that is barrier-free, and include railing protection where needed for grade changes at the site, a minimum of 30 benches, sculptural or art elements to enliven the area in the interim, lighting and other means to create a more aesthetically pleasing site, and to provide some form of programming that could include cultural events, limited food cart vendors, or other free and accessible events to draw the public to the space. The final design of a possible "interim" Northeast Wharf Plaza during Phase 2, including the exact number and placement of benches and other improvements at the site, is subject to Design Review Board review and final plan review approval pursuant to Special Condition II-A.

In Phase 3, additional improvements at the Northeast Wharf Plaza will include construction of a Northeast Wharf Plaza restroom, and, if funding has not been obtained in Phase 2, final build-out of the Northeast Wharf Plaza improvements (to be completed no later than 11 years from the issuance of a certificate of occupancy for the cruise terminal building).

The Design Review Board reviewed the design for the Northeast Wharf Plaza and provided comments and recommendations, many of which were incorporated and are now reflected in the project (see also, summary in “**Review Boards; Design Review Board**” below). At their final review of the project, the Board requested that efforts be made to lower the wall height along the Embarcadero sidewalk and to remove the steps at the southern entry into the plaza. They also provided comments regarding seating along the Embarcadero, lighting, plant materials, signage and site furniture. They further stated that the plaza materials, patterns and quality should match or blend with the cruise terminal building. Special Condition II-B-3(a) has been included in the permit to specify the public access requirements and improvements for the Northeast Wharf Plaza, consistent with the SAP policies and the Design Review Board’s recommendations, and requires final plan review approval of the design of the plaza, pursuant to Special Condition II-A.

3. **Public Access and Plan Implementation Policies.** The SAP includes public access policies for the development of “large piers” which include the redevelopment of Piers 27-29 that will result in the substantial increase of the intensity of development at the site. The policies require public access to consist of: perimeter public access; significant park(s)/plaza(s) on the pier perimeter; additional areas such as small parks or plazas integrated into the perimeter access; significant view corridors to the Bay from points on the pier which by their location have more of a relationship to the water than to the project; and the Bayside History Walk (on Pier 29).

The SAP amendments approved by the Commission on March 1, 2012, include alternative public benefits and public access associated with the siting of the cruise ship terminal at Pier 27. The policies state that, “if the cruise ship terminal or other maritime use is developed at Pier 27, provide pier perimeter public access to the north apron of Pier 29, a Bayside History Walk through Pier 29 or Pier 29½ connecting the Embarcadero Promenade to the north apron of Pier 29 and Phase 1 of the pier end open space at Pier 27-29. Within five years of certificate of occupancy for the cruise ship terminal at Pier 27, or 11 years if funding is not available, provide public access on the north apron of Pier 19, the south apron of Pier 23, the Pier 19½ apron, the Pier 29½ apron and provide public access through the Pier 19½ and Pier 29½ connector buildings.”

Exhibit C illustrates the proposed public access that will be provided on the Piers 27-29 site and Exhibit D illustrates the additional off-site public access areas that will be provided, consistent with the SAP policies.

**Pier 27 Apron and Pier 27 Tip.** At Piers 27-29, the approximately 148,825-square-foot (3.42 acre) Pier 27 apron area and Pier 27 tip could be closed off to public access for much of the year (up to 240 days if 80 ship calls occur in a year) to meet cruise and other maritime berthing needs. The approximately 1,500-foot-long Pier 27 apron is the Port’s longest berth north of China Basin Channel, which was a key consideration in selecting Pier 27 for the cruise terminal. Cruise ships and large U.S. Navy vessels will require use of the entire apron and U.S. Homeland Security regulations impose requirements that will preclude public access on the apron when these ships are in berth, and for periods (typically around 24 hours) immediately preceding and following a ship call. The Pier 27 tip will be used for provisioning of cruise ships and as needed to support other maritime vessels that

call at Pier 27 and will need to be closed off from public access during these uses. The project includes a foldable fencing system to secure these maritime areas. The proposed fence is 10 feet tall and will have vertical pickets to maximize transparency and allow the public to view maritime and cruise provisioning operations from a safe distance. The fence will fold open or closed from posts stationed at the light poles, and be further secured at intermediate bollards. When the apron is open for public access, the retractable fencing will be folded open, accordion-style, to allow full access to the Pier 27 apron and tip.

Along the Pier 27 apron, there are two points where fences will be secured. During cruise or U.S. Navy vessel calls, when regulations require the entire apron to be closed to public access, the fence will close off the Pier 27 apron from the Northeast Wharf Plaza, approximately 120 feet from the Embarcadero (see Exhibit C). When smaller ships berth at this location however, the fence could be secured at the edge of the cruise terminal building, approximately 480-feet further north from the Embarcadero edge to allow for approximately 20,500 square feet (0.47 acre) of the Pier 27 apron for public access use, directly from the Northeast Wharf Plaza (see Exhibit C).

Special Condition II-B-5 has been included in the permit to require that these areas be made available for public access whenever they are not needed for maritime use and to require that smaller ships be berthed as far north from the Embarcadero edge as possible so that as much of the Pier 27 apron can be made available for public access with the securing of the northernmost fence. In addition, to ensure that both the public access and maritime goals at this location are achieved, Special Condition II-B-5-b requires the permittee to submit by December 1<sup>st</sup> of each year, a schedule of cruise calls and scheduled ceremonial and visiting vessels that are planned to berth at Pier 27 the following year. This schedule shall be reviewed and evaluated to ensure that the public access and maritime goals are met.

**Walkways Along Piers 27 and 29 Adjacent to GTA and Pier 29 Bayside History Walk.** The Port will provide an approximately 20-foot-wide and 525-foot-long public access walkway along the exterior of the Pier 29 shed adjacent to the GTA and a 20-foot-wide and 500-foot-long public access walkway along the Pier 27 cruise terminal adjacent to the GTA to allow access to the Piers 27-29 tip when the area is open and not needed for maritime use. During maritime use when the Pier 27 tip is closed, the Pier 29 apron and tip will be accessible through the Bayside History Walk through the Pier 29 shed and through a public access corridor through the eastern portion of the Pier 29 shed (see Exhibit C). As discussed further below (see “**Pier 29 Apron and Pier 29 Tip**”), the Port is exploring the opportunity to relocate maritime storage/forklift activities currently planned for the northeast end of the Pier 29 shed to a location closer to the cruise ship terminal. In addition, the Port is also developing plans to remove up to 32,250 square feet (0.74 acres) of the northernmost end of the Pier 29 shed, which details are required to be reviewed and approved by BCDC as a subsequent permit amendment pursuant to Special Condition II-B-7. These changes could eliminate the need for the internal public access corridor within Pier 29 to the pier tip. Connections to the Piers 27-29 tip will be provided year-round along the walkway between the Pier 29 shed and the GTA. Access to the tip could be further enhanced with future development of the Pier 29 shed and development of the Pier 29½ shed for public access. The public access walkways, the relocation of the security fencing, and the final design of the Pier 29 shed end wall and the public access at the Pier 29 tip are subject to Design Review Board review and final plan review approval, pursuant to Special Condition II-A.

**Pier 29 Apron and Pier 29 Tip.** At Pier 29, approximately 30,000 square feet of the Pier 29 apron and, depending on how much of the Pier 29 shed is removed, up to 23,297-square-feet (0.53 acres) of the Pier 29 tip or within the north end of the Pier 29 shed, will be provided for year-round public access. The fence system between the Pier 27 tip and the Pier 29 tip, when used for cruise ship provisioning, provides transparency when in the closed position and, when there is no maritime use, will be open to allow access to the entire tip of Piers 27-29. According to the permittee, whether in public access or maritime use, the public access features will be interconnected and provide for the public to get out to the end of the pier for open water and maritime views.

The amount of the Pier 29 shed to be demolished is still under study and could result in up to 32,250 square feet of shed area being removed (see Exhibit B). Public access will be required on all portions of the pier uncovered with shed removal, or could be required within a portion of the retained Pier 29 shed. Special Condition II-B-7, requires that the Port submit by July 2012, an amendment request for the removal of the Pier 29 shed and the public access proposal for Design Review Board review. As explained above, the Port is also exploring an opportunity to possibly relocate maritime storage/forklift activities that are currently programmed to occur at the northeast end of the Pier 29 shed and to incorporate these uses closer to the cruise terminal building to the east. If this were to occur, the security fencing dividing the Pier 27 and Pier 29 tip during maritime activities could be moved further east closer to Pier 27 and could allow open access to the Pier 29 tip (once a portion of the shed is removed) at all times through the walkway between Pier 29 and the GTA. This walkway would need to be of adequate width to ensure safety and ease of pedestrian passage to the tip. Special Condition II-B-6 requires the Port to use its best efforts to relocate the fence to the east towards Pier 27 and to provide BCDC staff with the cost estimate for such a change. This change could increase public access at the Pier 29 tip by approximately 2,000 square feet (again, depending on how much of the Pier 29 shed is ultimately removed).

Special Condition II-B-8 requires the Port to submit by July 1, 2012, a programming plan for the Piers 27-29 tip to ensure that the area is programmed and designed for an array of different activities and uses, including special events, concerts, art installations, etc. The Design Review Board expressed interest in learning about the types of public access amenities and activities that will attract and appeal to the public and draw people out to the end when the Pier 27 tip is not needed for maritime use. The Port proposes to use the experience over the next three years to gather information on the use of the Pier 27 tip. This three-year period will also allow the Port to assess its experience in managing the Port's vessel berth assignments elsewhere along the waterfront and inform the Port on how best to manage maritime operations at this site and uphold its commitment to meeting the Port's and BCDC's shared public access goals at Pier 27.

**Piers 19 and 23 Aprons and Piers 19½ and 29½ Connector Buildings.** Special Condition II-B-4(b) and II-B-4(c), requires that within five years of certificate of occupancy of the cruise terminal building or 11 years if funding is unavailable, the Port shall provide for public access use, the north and east aprons of Pier 19, the south and east aprons of Pier 23, the aprons of Piers 19½ and 29½, and connections through the Piers 19½ and 29½ connector buildings (see Exhibit D). These areas are estimated to be approximately 58,254-square feet (1.34 acre) in size. These areas are required to be further developed and improved by the Port, pursuant to approval by or on behalf of the Commission and subject to Design Review Board review and final plan review approval, pursuant to Special Condition II-A.

Both the on-site and off-site public access areas listed above are required in Special Condition II-B, as part of the cruise ship terminal project and reflect the public benefits and public access required in the amended SAP policies.

4. **Waterfront Design, Bay Views, and Transportation and Parking Policies.** The SAP states that, “development should take advantage of its location on the Bay and reflect and recognize the unique identity of the waterfront districts established by street pattern, building scale, materials, landscaping, land uses and public access areas”, should “encourag[e] transparent buildings and other design treatments”, “include a regularly spaced series of architectural treatments” to visually emphasize the length of the pier, “...enclose all servicing facilities within structures and shield them from public view” and “prohibit exterior storage of a temporary or permanent nature except for maritime uses.” The SAP policies on Bay views state that, “public overlooks and viewing areas with convenient pedestrian access should be provided on piers, including in areas of maritime...where safety and use considerations permit” and that minor encroachments into view corridors may be permitted, “where the encroaching element has a distinct maritime character...,” “where essential maritime facilities cannot reasonably be located and designed to avoid view blockage” and that “views of the water should be maximized by designing handrails, fences...and other shoreline accessory structures with maximum practicable transparency.”

The policies for the Northeast Wharf Plaza state, “reasonable provision for vehicle access to the Pier 27-29 portion of the project site should be included in any BCDC permit issued for the redevelopment of Piers 27-31”. The policies on Transportation and Parking state, “preserve the Embarcadero as a continuous automobile, transit and bicycle access corridor with pedestrian promenade improvements along Herb Caen Way” and “parking on piers will be planned to minimize adverse impacts on public access through such measures as avoiding queuing that extends over Herb Caen Way or other public access areas...and using special paving, signing and other design treatments at crosswalks and other pedestrian-vehicle interfaces to identify the joint use and ensure a pedestrian-friendly environment.”

**Cruise Terminal Building.** The cruise ship terminal is sized to handle vessels up to 1,200 feet long and carrying 2,600 passengers and is designed with additional capacity at key areas to allow it to service vessels carrying as many as 4,000 passengers. The cruise terminal is comprised of various spaces in roughly four categories: embarkation spaces; debarkation spaces; customs and border patrol offices; and utility or support spaces. The second floor of the terminal is dedicated to passenger processing and waiting areas for both the embarkation and debarkation processes, while the ground floor houses a large warehouse-like baggage lay-down area, an office suite for the Customs and Border Patrol operations, and various building support spaces such as electrical and mechanical rooms. The cruise terminal building will be constructed on top of the existing Pier 27 concrete deck. The building will use a steel structural column grid design that will align with the existing concrete pier piles beneath the pier deck, along with a lateral force resisting system consisting of steel moment frames. The building’s second-floor structure will consist of concrete fill over a steel metal deck supported by steel beams and girder framing. The building roof structure will consist of a steel metal deck supported by steel beams and girder framing.

The two-story configuration separates passenger embarkation/disembarkation areas from provisioning and baggage handling areas. The building’s first floor will contain the building entrance/lobby; elevators and escalators, and stairs to provide access to and from the second floor for embarking/disembarking passengers; a

large baggage claim area; a Customs and Border Protection (CBP) office suite; restrooms; and various utility and storage rooms. The CBP office suite will contain CBP-associated office space, interrogation rooms, holding facilities, and storage. A secure outdoor area located east of and adjacent to the cruise terminal building will serve as an additional area for baggage laydown.

The second floor will contain the cruise terminal check-in and waiting/seating area, primary CBP processing area, a concourse walkway providing passenger access to/from the gangway, security screening facilities, additional CBP space and other security offices, restrooms, and utility space. The concourse will be located parallel to the cruise ship and will allow access to the cruise ship's passenger doors. Since the location of passenger doors varies for different cruise ships, the concourse will be several hundred feet long. Similarly, an automated self-propelled gangway will be used to move along the Pier 27 apron to provide easy alignment with the cruise ship passenger doors.

The height of most of the building will be 40 feet above the Pier 27 deck, although some roof core elements will be as high as 46 feet. The exterior materials used for the building will consist of corrugated metal panels (including much of the building west wall facing the proposed ground transportation area), and glazed windows (including large portions of the building's south end in the vicinity of the lobby, and the east-facing second floor). The building roof will be installed with skylights to provide additional natural lighting. The roof will also be constructed to accommodate the potential for installation of solar panels in the future. According to the permittee, the terminal has a strong connection to the site and its greater surroundings both in terms of physical access and views. The eastern edge of the building provides working apron access as well as views of berthed maritime vessels, or of San Francisco Bay when the terminal is used for special events. The south end of the terminal opens directly onto the Northeast Wharf Plaza allowing the terminal and plaza to activate and strengthen each other. The embarkation lobby at the south end of the terminal also offers views of the City, including iconic structures such as the Transamerica Pyramid and Coit Tower. The goal of the Port is to provide a project that will earn a Silver or better Certification under the Leadership in Energy and Environmental Design (LEED) guidelines.

<b>Cruise Terminal Building Summary</b>	
Number of Stories	2
Floor Area	Level 1: 46,061 square feet Level 2: 45,135 square feet Total 91,196 square feet
Building Height (above grade plane)	40 feet to roof 46 feet to core elements
Building Length (enclosed space) Roof length (with overhangs)	504 feet 520 feet
Building Width (variable)	35-116 feet
Construction	Steel Frame with Concrete Fill
Exterior	Glazing / Modular Metal Panels

**Cruise Terminal Utilities.** The Cruise Terminal project site will require a number of utility improvements to serve the cruise terminal. The cruise terminal building will be served by new domestic water distribution lines, emergency fire water distribution lines, wastewater collection lines, electricity and natural gas utilities, and communications. These proposed utilities will connect to existing utility infrastructure within The Embarcadero.

Rainwater that falls on the cruise terminal roof will be collected and may be harvested for re-use on site. The reclaimed water could be distributed via reclaimed water distribution lines to reclaimed water fixtures in the building, landscaping, and other potential uses. The cruise terminal building will also be equipped for connection to a future reclaimed water line in The Embarcadero, when such service becomes available. Other outdoor areas on the site, such as the GTA and/or pier apron, will be served by stormwater improvements (e.g., catch basins and stormwater filters) and electrical lines (e.g., for night lighting).

Shoreside power will power cruise ships while berthed at the pier. The shoreside power substation will be relocated to an open air electrical yard just east of the cruise terminal building. The shoreside power system will be upgraded from 12 MW to 20 MW to support larger cruise ships. This will require installation of larger cables through the switchboard in Pier 29 to draw more power from PG&E, and could also require new conduits, cables and utility work in portions of adjacent Embarcadero promenade and street areas.

Special Condition II-M requires that the shoreside power equipment is re-installed at the site and upgraded, as necessary and as authorized by this permit, and requires the permittee to document the installation and operation of the Pier 70 shoreside power facility and ensure that this installation will offset emissions from shoreside power-capable cruise vessels that are precluded from using the Pier 27 shoreside power facility during the period when it is decommissioned.

**Landscaping and Architectural Treatments.** The cruise terminal will contain a combination of hardscape and softscape improvements that serve passenger access to the terminal and public access. Hardscape improvements will include the installation of a system of ground pavers within the area adjacent to the length of the west and south sides of the cruise terminal building, including the taxi pickup/drop-off area. Public art will be incorporated in the final site planning details, including within the entry plaza area and the lawn area. The lawn area will feature a climbable art element. Other vehicular circulation areas within the GTA will be paved with asphalt using thermoplastic paint for ground markings/stripping. The public access improvements include tree planting along the vehicular entrance aisle to the GTA, and planting areas installed between the GTA bus parking areas and the adjacent taxi pickup/drop-off area and the Northeast Wharf Plaza. These areas and improvements have been required in Special Condition II-B-3 of the permit and are subject to final plan review approval pursuant to Special Condition II-A. As described briefly above, the fencing system needed to separate the public access areas from maritime areas for security has been designed with maximum transparency. The fence will be 10 feet tall with vertical pickets and will fold open or closed from posts stationed at the light poles that are spaced 48 feet on center. Lighting fixtures, illumination specifications and layout have been planned to meet the needs of cruise operations and security, as well as provide for an attractive pedestrian setting in public access areas. The lightpoles have been sited and distributed throughout the site to delineate the path from the Embarcadero to the

furthest point out on the pier tip. Benches, litter receptacles and other improvements, including possible windscreens at the Pier 29 tip will be provided and subject to final plan review.

**Ground Transportation Area (GTA).** Within the Piers 27-29 valley area, a 2.7-acre Ground Transportation Area (GTA) will be constructed to provide sufficient space to support access, drop-off, and exiting by trucks, taxis, buses and passenger vehicles to meet both cruise ship provisioning and passenger loading needs of the cruise terminal. The siting of the GTA within this area is consistent with the SAP policies allowing the “reasonable provision of vehicle access” within this space. Special Condition II-G requires the Port to submit a circulation and operation plan that includes vehicle queuing, and that is designed to remedy traffic congestion and transportation conflicts currently experienced along the Embarcadero roadway and promenade related to existing operations at the Pier 35 cruise terminal. The GTA will be striped to provide separated access and circulation for buses, taxis and vehicles dropping off and picking up passengers, with management provided by transportation control personnel. The managed operation of the GTA will also include schedules and designated areas to accommodate provisioning trucks that deliver supplies and services for the cruise ships before and after passenger embark/debark periods. As part of cruise ship operations planning, the cruise terminal will use a number of staff to ensure efficient and safe vehicular, bicycle, and pedestrian circulation at and adjacent to the cruise terminal. This will include the use of traffic monitors at the cruise terminal entrance at the Embarcadero to monitor vehicular, bicycle and pedestrian ingress and egress, serve as safety crossing guards, and provide way-finding assistance for provisioning trucks to designated pick-up/drop-off areas. Within the GTA, cruise terminal ground staff will direct passengers to their connecting transportation or terminal arrival area. In addition, porters-baggage staff will attend to passenger baggage and ship provision handling. Finally, security personnel will monitor terminal access and screen passengers, baggage, provisions and vehicles.

The GTA will also be used for special events when it is not needed to support cruise or other maritime berthing operations, and/or as special event support space for visitor parking, staging and work areas for caterers, entertainment and event managers, subject to Special Conditions II-D, II-E and II-F. Special events may be held for both public and private purposes. In both situations, special event space will be designed so as to not adversely affect the public’s ability to use required public access areas, as required in Special Condition II-D. The GTA could also be used for community events that are free of charge when not being used for maritime.

As conditioned, the Commission finds that the project is consistent with the *San Francisco Waterfront Special Area Plan*.

- B. **Fill.** The Commission may allow fill only when it meets the requirements identified in Section 66605 of the McAteer-Petris Act, which states, in part, that: (a) fill “should be limited to water-oriented uses (such as water-oriented recreation or public assembly) or “minor fill for improving shoreline appearance and public access”; (b) fill in the Bay should be approved only when “no alternative upland location” is available; (c) fill should be “the minimum amount necessary to achieve the purpose of the fill”; (d) “the nature, location, and extent of any fill should be such that it will minimize harmful effects to the Bay area, such as, the reduction or impairment of the volume, surface area or circulation of water, water quality, fertility of marshes or fish or wildlife resources,

or other conditions impacting the environment...”; and (e) “fill should be authorized when the permittee has such valid title to the properties in question that he or she may fill them in the manner and for the uses to be approved.”

1. **Water-Oriented Use.** In 2000, the Bay Plan and the Waterfront SAP were amended to alter BCDC’s policies on fill removal and permitted uses on piers between China Basin and Pier 35, by setting aside the McAteer-Petris Act requirement that uses on piers in these areas must be water-oriented so long as projects in these areas are consistent with the SAP and their use is consistent with the public trust. Although the SAP sets aside the water-oriented test requirement in this location, all of the project’s proposed fill in the Bay is necessary to use the site primarily as a cruise ship terminal, a maritime and water-oriented use, and for public access.

When the cruise terminal is not being used for vessel calls, the Port proposes to use the cruise terminal and GTA for other special event purposes. According to the permittee, “the architectural design and layout of the cruise terminal building has been designed to create an inviting, attractive venue for special events and activities that can support active, publicly-oriented uses during the cruise off-season.” Uses proposed include conferences and public or private gatherings, and maritime-oriented events such as Fleet Week and diplomatic visits by foreign government vessels. The Port estimates that up to 100 shared-use events could occur at the cruise terminal site annually and could use both the approximately 46,000 square feet of interior space within the cruise terminal, and the GTA area for temporary installation such as tents, stands, and stages, and outdoor public gatherings. Special Condition II-D of the permit conditions the use of this area so that it does not impact required public access areas. Although the SAP sets aside the water-oriented test requirement in this location as explained above, these additional special event uses also meet the water-oriented criteria of the McAteer-Petris Act in that the fill will be used for water-oriented recreation or public assembly.

2. **Alternative Upland Location.** All of the proposed fill in the Bay will be to strengthen the Piers 27-29 substructure and fendering for vessel berthing, a use that must be located on or directly adjacent to Bay waters with sufficient water depth to accommodate vessel drafts. Thus, there is no alternative upland location for the project.
3. **Minimum Amount Necessary.** The project will result in a total of 969 square feet and 1,360 cubic yards of Bay fill. This fill includes new piles, pile jackets and fenders needed to support the pier deck and strengthen the fendering system along the Pier 27 apron. The permittee states that the proposed solid fill is the minimum amount necessary to repair the piers’ substructure and fendering system to a level of safety necessary to support the cruise ship terminal, public access, and allow for ships to berth alongside Pier 27.
4. **Effects on Bay Resources** (See also discussions below on “**Natural Resources**”). The Bay Plan policies on water surface area and volume state that, “the surface area and volume of the Bay should be kept as large as possible in order to maximize active oxygen interchange, vigorous circulation, and effective tidal action” and that “water circulation in the Bay should be maintained, and improved as much as possible.” These policies also state that “any proposed fills, dikes or piers should be thoroughly evaluated to determine their effects on water circulation and then modified as necessary to improve circulation or at least to minimize any harmful effects.”

The proposed new fill will be located almost entirely within the footprint of the existing piers structure and will have minimal effect on existing Bay surface area, the circulation of Bay waters, and tidal marsh habitat.

5. **Valid Title.** The City of San Francisco has legal ownership of the area where the proposed work will occur.

For the reasons cited above, the Commission finds that the project is consistent with its law and policies regarding Bay fill.

### C. Public Access

1. **Maximum Feasible Public Access.** Section 66602 of the McAteer-Petris Act states, in part, that "...existing public access to the shoreline and waters of the...[Bay] is inadequate and that maximum feasible public access, consistent with a proposed project, should be provided." In addition, the 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..." and that "access to and along the waterfront should be provided by walkways, trails, or other appropriate means and connect to the nearest public thoroughfare where convenient parking or public transportation may be available." According to the Waterfront SAP public access policies, "for a major development project occupying all or most of a pier(s), a project that provides 35% of the project pier area for public access should be deemed to provide maximum feasible public access" and public access should not include any area dedicated to the Northeast Wharf Plaza required in the SAP. (See also, discussion in "**San Francisco Waterfront Special Area Plan**" section above).

Piers 27-29 occupy considerable frontage along the Embarcadero between Sansome and Battery Streets (cross streets are Lombard and Chestnut) within the Northeast Waterfront neighborhood. The primary uses within Piers 27-29 were previously parking fleet operations for a transportation services company, and storage. The berth at Pier 27 has long been in continuous maritime use for berthing deep-draft vessels. In addition to providing a secondary berth for passenger cruise ships, Pier 27 provides berthing for military, large research vessels and ceremonial ships. There is currently a 400-foot-long by 10-foot-wide required public access pathway along the south apron of Pier 27, pursuant to BCDC Permit No. M09-19, issued for the installation of shoreside power equipment in 2010. This area will be retained for public access use, subject to needed security closures, as explained above and in Special Conditions II-B-3(g) and II-B-5. The Port will provide up to approximately 209,533 square feet (4.81 acres) of public access on-site at all times of the year (depending on how much of the Pier 29 shed is ultimately removed), which will be available when cruise ships or other vessels are berthed at Pier 27. This includes the Northeast Wharf Plaza, the Pier 29 tip (or a portion of the retained Pier 29 shed), the north apron of Pier 29, pathways between Piers 27 and 29 and the GTA area, and the Bayside History Walk within the Pier 29 shed (see Exhibit C). When security requirements are not in place for cruise ships and maritime activity, the Pier 27 apron and the Pier 27 tip will provide an additional 148,825 square feet (3.42 acres) of public access. The gate system between the public access (Pier 29 tip) and provisioning area (Pier 27 tip) will provide transparency in the closed position and when there is no maritime use, will be opened, pursuant to Special Condition II-B-5, to allow access to the tip of Piers 27-29 in its entirety, east of the cruise terminal building. To protect public safety and provide security for the cruise terminal facility, including gangway and shoreside power installation, and as included in Special Condition II-B-9, the Port proposes to close the Piers 27 and 29 aprons and the tip at night, approximately 10 p.m. to 7 a.m. The Northeast Wharf Plaza will remain open at all times. If the Port is able to relocate storage/forklift operations from the end of the Pier 29 shed and move the security fencing separating the Pier

27 and Pier 29 tip further east, an additional 2,000 square feet of year-round public access would be provided in a larger Pier 29 tip and the extension of the walkway between the Pier 29 shed and the GTA.

In addition, as stated above, the Port is developing plans to demolish up to approximately 32,250 square feet (0.74 acres) of the northern end of the Pier 29 pier shed. The public access quantities described in this recommendation are based on the assumption that public access will be provided within any uncovered portion of the Pier 29 shed (up to 32,250 square feet) that would be part of the Pier 29 tip, or within the retained portion of the shed. However, this number and the public access areas to be provided in this area are subject to Design Review Board review, an amendment to this permit, and final plan review approval, as required in Special Conditions II-A, II-B-7 and II-B-8. Therefore, if needed, the public access quantities described in this document will be revised in such future amendment to reflect any change.

The number of cruise ships and maritime vessel calls vary from year to year in San Francisco but the Port estimates that cruise ship calls have ranged between 40 and 80 each season, a trend that is expected to continue. Depending on arrival and departure times, cruise ships may require use of the secured areas one day before and one day after the cruise call to provision the ships. In addition, the Port expects to host a variety of other visiting vessels at the Pier 27 apron, including tall ships, research vessels, military vessels from other countries and U.S. Navy vessels that may require security closures that could preclude or restrict use of the public access areas. In the past, the Port has estimated that the secured areas would be unavailable for public access approximately half the year. However, this number is likely to fluctuate from year to year. Special Condition II-B-5 requires the Port to use its best efforts to provide public access in these areas to the maximum extent feasible. By December of each year, the Port has a substantially complete (85-90%) schedule of cruise calls, and other ceremonial and visiting vessels, for the upcoming year. The Port will submit to BCDC by December of each year, the vessel call schedule so that both agencies have a consistent understanding of the shared maritime and public access use of the Pier 27 facilities each year.

Although the secured public access/maritime areas of the site will be unavailable for public access for much of the year, with these areas included in public access calculations and excluding the Northeast Wharf Plaza, the project will provide approximately 37% of the project site (Piers 27-29, excluding the Northeast Wharf Plaza) for public access. If these public access/maritime areas are excluded completely from the calculation, the project will provide 14% of the project site for public access. Because these secured areas (Pier 27 apron and Pier 27 tip) are expected to be available for public access certain times of the year when not needed for maritime activity, the percent of on-site public access provided at the site could be reasonably estimated to be between 14% and 37%. In addition, to offset the loss of year-round public access within the maritime areas on-site, off-site public access has been provided, pursuant to the amended Waterfront SAP policies. Approximately 58,254 square feet (1.34 acres) of additional public access will be provided along the north and east aprons of Pier 19, the south and east aprons of Pier 23, the aprons of Piers 19½ and 29½, and connections through the Piers 19½ and 29½ connector buildings, as shown on Exhibit D. These areas have been added to the total public access provided on-site, although not until Phase 3 of the project (within 11 years after a certificate of occupancy is issued for the cruise terminal unless funding becomes available earlier).

2. **Barrier Free Access.** The Bay Plan policies state that public access improvements “should permit barrier free access for the physically handicapped to the maximum extent.”

All proposed public access areas will be accessible, as defined by the Americans with Disabilities Act (ADA). Based on feedback from the Design Review Board, the Northeast Wharf Plaza has been redesigned to ensure a smoother transition from the Embarcadero to the plaza, and up to the plaza from other points on the site. The Northeast Wharf plaza contains several ramps and other features to ensure that the site is barrier-free both in the interim (if funding is not secured to complete the full build-out of the Northeast Wharf Plaza) and upon full build-out. The Port has stated that they will make every effort to remove the proposed stairs into the plaza at the southern entry from Herb Caen Way near Pier 23. When construction of the plaza begins, the Port shall explore ways to create a sloped entry in place of the proposed stairs.

3. **Appearance, Design, and Scenic Views.** The Bay Plan policies on appearance, design, and scenic views state, in part, that “...maximum efforts should be made to provide, enhance, or preserve views of the Bay and shoreline, especially from public areas, from the Bay itself, and from the opposite shore” and that “local government should be encouraged to eliminate inappropriate shoreline uses and poor quality shoreline conditions.”

The proposed project will convert the parking, storage, office, sporting and theatrical uses at Piers 27-29 into the primary cruise terminal facility for San Francisco. Existing facilities associated with tenants on Piers 27-29, including the Teatro Zinzanni tent facility and the soccer field, have been removed as part of this project. In addition, the entire Pier 27 shed, a portion of the Pier 29 shed, and the Pier 27 Annex office building will also be demolished, greatly opening up views of the Bay, both from the Embarcadero and from the Pier tip. Removal of the monolithic Pier 27 shed that currently imposes on the Embarcadero will reveal the new cruise terminal, smaller and set back behind the Northeast Wharf Plaza. The new building will be constructed with corrugated metal panels and glazed windows with a wavy roofline that corresponds to the Bay environment. When a ship is in port, views from the Embarcadero will be of the cruise ships. When ships are not in Port, views will be of the Bay and the adjacent Pier 23 shed from the Embarcadero.

For the reasons stated above and as conditioned, the Commission finds that the project is consistent with the Bay Plan policies regarding public access and appearance, design and scenic views.

#### D. Natural Resources Policies

1. **Fish, Other Aquatic Organisms and Wildlife.** The Bay Plan policies on fish, other aquatic organisms and wildlife state, in part, that “the Commission should consult with the California Department of Fish and Game and the U.S. Fish and Wildlife Service or the National Marine Fisheries Service whenever a proposed project may adversely affect an endangered or threatened plant, fish, other aquatic organism or wildlife species...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.”

The Final Environmental Impact Report (FEIR) for the proposed project, which was certified by the City and County of San Francisco’s Planning Department on December 15, 2011, found that impacts to threatened, endangered or protected species, either directly or through habitat modifications would be less than significant with mitigation. There are no known eelgrass beds or other scarce or biological

cally significant habitats that occur within the project footprint that would be affected by the project, nor is much work proposed in the Bay. Pier 27 has been periodically dredged as part of the Port's maintenance dredging program since the mid-1980s to provide the necessary depth for commercial vessel docking and maneuvering. Based on this dredging activity, sediments in the vicinity of Pier 27 consist of clays and silts. According to the permittee, the predominant seafloor habitat in the project area is unconsolidated soft sediment composed of a combination of mud/silt/clay, sand and pebble/cobble, with varying amounts of intermixed shell fragments. The concrete, wood, and composite pier and wharf pilings provide intertidal and subtidal habitat for marine biota including barnacles, hybrid bay mussel, green algae, and the native Olympia oyster.

Biological Assessments were prepared for the California Department Fish and Game (CDFG), the U.S. Fish and Wildlife Service (USFWS) and NOAA's National Marine Fisheries Service (NMFS), and cover the entire 34<sup>th</sup> America's Cup project and James R. Hermann Cruise Terminal project. The Biological Assessments include the following mitigation measures and BMPs with respect to pile-driving and pile-wrapping activities, all of which are required in Special Condition II-I of the permit. The permittee will use a vibratory hammer rather than an impact hammer to install the proposed steel piles to the maximum extent practicable to minimize the effects associated with elevated under-water sound levels during pile driving. However, it is anticipated that an impact hammer will be needed to drive the last 15 to 25 feet of the steel piles, and an impact hammer will be required to drive the proposed concrete piles. The permittee will limit impact pile driving to between June 1 and November 30 to avoid potential impacts on fish species, particularly those that are sensitive or rare, and will use a wood cushion block between the pile and either a bubble curtain or air barrier to attenuate sound levels. In addition, the permittee will use a "soft start" during pile driving to give marine mammals an opportunity to vacate the area. The permittee will implement a NMFS-approved sound attenuation monitoring plan, to have a NMFS-approved biological monitor present before and during pile driving, to halt pile driving if marine mammals are observed within 500 meters of the project site, and to maintain air sound levels below 90 dBA when seals or sea lions are present.

The Biological Assessment for CDFG concluded that due in large part to the project location in an area generally devoid of sensitive habitat, and with implementation of the identified avoidance and minimization measures, the project would not cause a take of any state listed species.

The Biological Assessment for USFWS which also covers the entire proposed America's Cup event (not just the work proposed at Piers 27-29 for the cruise terminal project), identifies potential effects on longfin smelt from noise related to pile driving. The longfin smelt is a State-listed endangered species and is currently under consideration as a special status species by the USFWS. The BA concluded that with implementation of the pile-driving impact avoidance measures discussed above, the project was not likely to adversely affect the longfin smelt.

The Biological Assessment for NMFS identified four ESA-listed species and critical habitats that may be affected by the cruise terminal project as well as the entire America's Cup event, including green sturgeon, Central California Coast steelhead, California Central Valley steelhead, and Central Valley Chinook salmon. It also identified critical habitat for green sturgeon, Central California Coast steelhead, California Central Valley steelhead, Central Valley Chinook salmon, and Sacramento River winter-run Chinook salmon and essential fish habitat for 20 species of commercially important fish and sharks managed under three federal fisheries

management plans. The Biological Assessment concludes that the avoidance and minimization measures discussed above for pile driving will ensure that pile-driving noise remains below levels known to result in acute barotraumas and limit the extent of impacts, but that the proposed pile driving activities can be expected to result in minimal, short term loss of access to foraging habitat as fish avoid the affected area during pile driving activities.

The NMFS Biological Assessment also states that no marine mammals listed as endangered or threatened under the federal Endangered Species Act, nor as having depleted populations under the Marine Mammal Protection Act (MMPA), occur within San Francisco Bay and that potential effects of the proposed project on marine mammals will be addressed in an Incidental Harassment Authorization (IHA) permit under the MMPA as discussed below.

On January 19, 2012, the permittee submitted an IHA permit application to NMFS for both the cruise terminal project as well as the entire America's Cup event. The IHA permit application evaluates the potential effects of both the cruise terminal project and the America's Cup on Pacific harbor seals, California sea lions, elephant seals and harbor porpoises. As stated in the IHA permit application, the cruise terminal project is likely to result in temporary disturbance or "Level B" harassment of Pacific harbor seals, California sea lions, elephant seals and harbor porpoises, as a result of acoustic disturbance associated with the pile-driving activities. "Level B" harassment is defined as behavioral harassment and is below the threshold for physical injury ("Level A"). The permittee has requested an authorization from NMFS for incidental take by "Level B" harassment due to pile driving during a maximum of 33 days for: 2 harbor seals per a pile driving day, 1 California sea lion per a pile driving day, 1 harbor porpoise per a pile driving day, and 2 elephant seals (to be extremely conservative the permittee is requesting take for elephant seals based on recent occasional sightings). An incidental harassment authorization would be obtained from NMFS within 60 days of the date that the pile-driving activities would occur.

Special Condition II-L of the permit requires that the permittee submit all required final Biological Opinions from the USFWS and NMFS, any take authorizations, if needed from the CDFG, and a final IHA authorization from NMFS to ensure that the project does not impact sensitive fish species or mammals. If those documents and/or approvals require any additional mitigation measures not reflected in this permit, this authorization requires the permittee to incorporate those mitigation measures into the project and to amend this permit, as needed, to reflect any project changes required to comply with a resource agency's biological opinion.

2. **Water Quality Policies.** The Bay Plan policies on Water Quality state, in part that "Bay water pollution should be prevented to the greatest extent feasible. The Bay's tidal marshes, tidal flats, and water surface area and volume should be conserved and, whenever possible, restored and increased to protect and improve water quality." The policies also state that "[w]ater quality in all parts of the Bay should be maintained at a level that will support and promote the beneficial uses of the Bay as identified in the San Francisco Bay Regional Water Quality Control Board's (RWQCB) Basin Plan and should be protected from all harmful or potentially harmful pollutants." The policies, recommendations, decisions, advice, and authority of the State Water Resources Control Board and the Regional Board should be the basis for carrying out the Commission's water quality responsibilities." Finally, the Bay Plan policies on Water Quality state that "new projects should be sited, designed, constructed, and maintained to prevent or, if prevention is infeasible, to minimize the discharge of pollutants into the Bay by: (a) controlling pollutant

sources at the project site; (b) using construction materials that contain nonpolluting materials; and (c) applying appropriate, accepted, and effective best management practices; especially where water dispersion is poor and near shellfish beds and other significant biotic resources.”

The FEIR for the project found that with mitigation measures requiring implementation of best management practices related to equipment fueling and materials storage and handling, and a spill prevention control and countermeasure plan, the impact of the project on water quality would be reduced to less than significant.

The project is required to be undertaken in accordance with the State Water Resources Control Board General Construction Permit, which requires the development and implementation of a Storm Water Pollution Prevention Plan (SWPPP). The SWPPP includes project-specific water quality protection best management practices (BMPs) designed to prevent pollutants from contacting stormwater and to keep all products of erosion from moving offsite into receiving waters. The SWPPP will identify pollutant sources within the construction area and recommend site-specific BMPs regarding control of sediments in runoff and storage and use of hazardous materials to prevent discharge of pollutants into stormwater. Routine inspection of all BMPs is required under the General Construction Permit.

On February 13, 2012, the RWQCB issued a Conditional Water Quality Certification (WQC) for the 34<sup>th</sup> America’s Cup Races and James R. Herman Cruise Terminal projects, in accordance with Section 401 of the federal Clean Water Act. The WQC requires the permittee to prepare several plans including a Spill Prevention Control and Countermeasure Plan (SPCCP) and Materials Management Disposal Plan (MMDP) that include BMPs that address how the project would prevent and clean up accidental discharges of debris into the Bay and handle and dispose of waste materials. The materials management program is required to include measures to prevent any debris from falling into the Bay during construction to the maximum extent practicable. Such measures include mooring barges in a position to capture and contain debris generated during substructure or in-water work, storing all hazardous materials in upland storage trailers, and covering construction materials every night and during any rainfall events. In the event that debris does reach the Bay, personnel in workboats within the work area would be required to immediately retrieve the debris for proper handling and disposal. These measures will be identified in the SWPPP. In addition, the permittee is required to prepare an Invasive Species Control Plan (ISCP) that addresses protocols for preventing the introduction of new invasive species to the Bay.

As mitigation for pollutant loads in post-construction stormwater from replaced impervious surfaces at Piers 27-29, the WQC requires the permittee to implement post-construction stormwater BMPs that include a rainwater harvesting and distribution system, biofiltration planters, impervious surface replacement with pervious landscaping, and media filters containing dual media cartridges designed to remove metals, hydrocarbons, and sediment. The project will also implement a post-construction storm water control plan in accordance with the requirements of the San Francisco Stormwater Management Ordinance and the Port’s Stormwater Design Guidelines. The Stormwater Control Plan will specify how the project will comply with San Francisco’s stormwater design performance measures.

The RWQCB found that because the project is water dependent, the impacts could not be avoided entirely but that the permittee minimized impacts to the maximum extent practicable and impacts will be further minimized with implementation of the required mitigation measures and reporting requirements in the WQC. Special

Condition II-O has been included in the permit to require the permittee to use best management practices and the mitigation measures required by the RWQCB to address water quality issues.

The international, national, and state laws that regulate the cruise ships are complex. Cruise ships are subject to control and oversight from their flag state (the nation with which they are registered), the port states (the nations at which they make port calls), and in the United States, the individual states and localities that the ships visit. The California State Legislature passed several bills that prohibit the discharge of graywater, hazardous waste, sewage, sewage sludge, and oily bilge water into state waters (three miles from shore). EPA recently granted California's request to create a no discharge zone for large vessels that exceed 300 gross tons. These laws are intended to protect water quality in California and the Bay. However, the enforcement of existing laws for cruise ship discharges could be improved. This recommendation includes a number of measures to further reduce or minimize potential impacts to Bay water quality. These include prohibiting all discharges from cruise ships using the proposed terminal into the San Francisco Bay, requiring facilities for the shoreside treatment of sewage, graywater, and ballast water.

A water quality advisory group was established in 2003 to advise and make recommendations to the Port Commission on the existing cruise terminal at Pier 35, and for mitigating the water quality impacts of cruise ships using the new James R. Herman International Cruise Terminal that had been proposed at Pier 30-32. The Advisory Group representatives included individuals from the cruise industry, the Port, the permittee, the San Francisco Bay Regional Water Quality Control Board (RWQCB), the San Francisco Bar Pilots, the U.S. Coast Guard, the cruise terminal operator, the Rincon Point-South Beach Citizen Advisory Committee, Bluewater Network, Oceana, the San Francisco Department of the Environment, the Delancey Street Foundation, and the State Lands Commission. Although the cruise ship terminal at Piers 30-32 was never constructed, the recommendations of the Advisory Group were adopted by the Port Commission on August 18, 2005 (Resolution No. 05-56). The recommendations include requiring all cruise ships visiting the terminal to sign berthing agreements agreeing to prohibit the discharge into the Bay of treated or untreated solid or liquid wastes, treated or untreated oily bilge water, gray water, sewage, and unauthorized releases of ballast water, and making the failure to comply with the discharge prohibition result in the possible denial of future berthing rights. This provision is included in Special Condition II-N. Finally, the McAteer-Petris Act and the San Francisco Bay Plan include policies requiring that "Bay water pollution should be prevented to the greatest extent feasible," and that "the Commission should support the efforts of federal, state, and local agencies in developing nonpoint source pollution control programs." This authorization (Special Condition II-F) requires that the permittee develop an active litter control program, including recycling, plastic use reduction, an adequate number of covered trash receptacles, and regular emptying of such receptacles to minimize litter from the site from entering the Bay.

3. **Air Quality Impacts from Vehicles and Cruise Ships.** The operation of a cruise ship terminal in San Francisco will have regional air quality impacts from operational emissions from cruise ships and from increased vehicle trips to the terminal. To address the air quality impacts of the proposed Justin Herman Cruise Terminal in 2003, the Port established an Advisory Group to make recommendations to the Port Commission to reduce air emissions. Group representatives include individuals from the cruise industry, the Port, the Bay Area Air Quality Management District (BAAQMD), the permittee, the San Francisco Bar Pilots, the U.S. Coast Guard, the

Public Utilities Commission, the cruise terminal operator, the Rincon Point-South Beach Citizen Advisory Committee, Bluewater Network, Oceana, the San Francisco Department of the Environment, and the Delancey Street Foundation. The Group's recommendations were adopted by the Port Commission on September 27, 2005, and included a recommendation for a study on the feasibility of using shoreside power for cruise ships berthing at the terminal.

Since that time, the Port secured a grant under the Carl Moyer Program from the Air District to construct a shoreside power facility at the cruise ship terminal, and shoreside power was installed at Pier 27 on October 6, 2010. It was the first shoreside power facility in the State – only the fourth in the world – and will substantially reduce air pollution from cruise ships at the terminal. The Port estimates that during a 10-hour call, shoreside power will reduce emissions of 140 pounds of diesel particulates, 1.3 tons of nitrogen oxides, 0.87 tons of sulfur oxides and 19.7 tons of carbon dioxide. However, shoreside power will be shut down temporarily between 2012-2014 during the time Pier 27 is used for the America's Cup event. Estimates on the amount of the various air pollutants that will be discharged during the period that shoreside power will be unavailable for use by cruise ships visiting San Francisco vary from 20 – 97 tons per year. In any case the amount of air pollutants is substantial. The City and Port will mitigate this impact by installing a new shore power facility to provide electricity to the Port's drydock facilities at Pier 70. According to the Final EIR, the Pier 70 shoreside power facility will offset cruise vessel emissions during the Pier 27 shore power shutdown. On February 28, 2012, the Port Commission approved Resolution 12-19 to fund and implement the Pier 70 shoreside power facility in 2012.

Special Condition II-M addresses mitigation for the impacts of air pollution generated by cruise ships visiting the Port, including the time that shoreside power will be unavailable. It requires the Port to re-install shoreside power equipment and conduct necessary upgrades before Pier 27 can be used as a cruise ship terminal, but no later than April 1, 2014, and requires shoreside power-equipped cruise ships to be assigned to Pier 27 and utilize the shoreside power equipment to reduce air emissions while at berth. It also requires incentives to encourage additional calls by shoreside power-equipped vessels to berth at the terminal, and requires emission reductions from non-shoreside power equipped vessels. Finally, it requires the Port to provide confirmation that the new Pier 70 shoreside power facility is installed and operational, to offset emissions from cruise ships that are precluded from using the Pier 27 shoreside power facility while it is decommissioned and document that the installation is reducing emissions.

For these reasons, and as conditioned, the Commission finds that the project is consistent with its laws and policies regarding water quality and natural resources.

#### **E. Review Boards**

1. **Design Review Board.** The Commission's Design Review Board (Board) and the Port's Waterfront Design Advisory Committee (Committee) jointly reviewed the proposed Cruise Terminal and NE Wharf Plaza at three meetings which occurred on May 9, 2011, October 17, 2011, and January 9, 2012.

At the first meeting on May 9, 2011, the Board and Committee members expressed high regard for the design of the terminal building while also stating that the plaza design and public spaces needed to be more fully developed. Specifically, they felt that the complex grade changes should be further refined and simplified, that more attention should be given to the fence proposed along the apron, that a stronger link should be made between the plaza and pier tip (through the GTA and past the

proposed sallyport), and that the proposed commercial gatehouse buildings near Pier 23 should be removed. The Board and Committee also expressed concern about the use of the GTA as a parking lot on non-cruise days.

Prior to the second review, the permittee made several changes to the proposed design. The Port prepared two alternative ramp designs for accessing the lawn area (one zig-zagging up from the Embarcadero and one through a long, curved ramp). The Port revised the apron fence design to maximize transparency and provided more information on how the sallyport would function. The commercial gatehouse buildings were removed from the plan. A public restroom and a large piece of climbable art were added. The Port also proposed that the tip of the pier be closed for public access for approximately half of the year.

Also, during this time a design team called Hyphae Design was selected to explore uses and designs for public access at the tip of Pier 27 for the Good Design Competition sponsored through San Francisco's AIA Chapter. The ideas developed included lifting up the pier deck to expose the Bay below and to create a sloped vegetated amphitheater above. Hyphae Design also suggested tucking the truck provisioning area and sallyport against the side of the cruise terminal in order to open up more of the tip for public access. Other ideas for public use of the tip have included an observation tower, wind shades with seating, a bandstand, a skateboard facility, and a climbing wall.

At the second meeting on October 17, 2011, the Board and Committee members stated that the location of the sallyport and the space needed for provisioning should be re-evaluated in order to make a portion of the tip available for public access at all times. By moving the sallyport closer to the terminal and limiting the provisioning area, the public would be able to access the tip to enjoy the expansive Bay views and the opportunity to observe a working waterfront. They again stated that the design of the plaza and public spaces needed further development. Specifically, universal access (access for those with physical disabilities) should be addressed on all sides of the plaza and the steps at the southern entry from the Embarcadero should be removed. They preferred the arcing path option to access the lawn area and they were satisfied with the revised design of the folding gates and fencing along the apron. They also asked that the seating along the Embarcadero sidewalk be further explored and that the planter dividing the plaza and the GTA should provide a bold division while also allowing for intimate spaces within. They generally liked the use of lawn, the specimen trees and the climbable art piece. They stated that pavement markings to make the GTA function smoothly should be employed while keeping in mind that pavement colors/textures/treatments should consider the use of the space as a plaza when not in use for parking needs.

Following the second review, the permittee re-evaluated the sallyport and provisioning space. The Port determined that the sallyport structure could be eliminated and that the area devoted for truck provisioning could be further reduced. This reduction in provisioning space allowed for an area along the western edge of the pier tip to be allotted for public access which would be accessed through a corridor at the end of Pier 29 when the provisioning space is in use and closed to public access. The permittee addressed universal design further and provided alternatives for the planter dividing the GTA and the plaza and also seating alternatives along the Embarcadero.

At their final project review on January 9, 2012, the Board and Committee members expressed appreciation to the permittee for taking a closer look at the provisioning needs in order to provide an area that would be accessible to the public at all times.

They also stated that it is important that the landscape elements work closely with the building and that plaza materials and patterns should match or blend with the building. Concern was expressed regarding the wall height along the Embarcadero sidewalk and also the steps at the southern entry into the plaza which will serve as a barrier to some users. They stated that once construction begins, efforts to lower the wall height and remove the steps should be explored. There was also general agreement that the large planter between the plaza and GTA should be designed as a unified element, although broken up into smaller elements in order to create more intimate spaces for people to cluster. They also provided comments regarding seating along the Embarcadero, lighting, plant materials, signage and site furniture.

In response to the Board and Committee comments, the permittee has worked with and will continue to work with Commission staff to develop a final design with improvements that provide the most attractive, accessible, and usable public space. The final design is subject to plan review approval pursuant to a BCDC permit.

2. **Engineering Criteria Review Board.** Based on the minor amount of Bay fill and substructure repairs proposed, the work was not reviewed by the Commission's Engineering Criteria Review Board (ECRB). According to the permittee, in 1994, following the Loma Prieta earthquake, the Pier 27 substructure was seismically retrofitted and repaired. The work included batter-pile connection repair/retrofit, and installation of shear plates connecting Piers 27 and 29 to enable these two structures to respond as a single unit, thereby eliminating the need for seismic retrofit of the Pier 29 substructure. The Port proposes to do minor substructure repairs under Piers 27 and 29, in order to prevent further deterioration of damaged substructure components in selected areas.

F. **Environmental Review.** The City and County of San Francisco, the lead agency for the 34<sup>th</sup> America's Cup project, prepared, circulated, and, on December 15, 2011, certified a Final Environmental Impact Report (FEIR) pursuant to the California Environmental Quality Act (CEQA) for the both the 34<sup>th</sup> America's Cup and the James R. Herman Cruise Terminal projects. The FEIR was appealed to the Board of Supervisors of the City and County of San Francisco, and on January 24, 2012, the certification was upheld.

G. **Conclusion.** For all the above reasons, the Commission finds, declares, and certifies that, subject to the Special Conditions stated herein, the project authorized herein is consistent with the McAteer-Petris Act, the *San Francisco Bay Plan*, the *San Francisco Waterfront Special Area Plan*, the Commission's Regulations, the California Environmental Quality Act, and the Commission's Amended Management Program for the San Francisco Bay segment of the California coastal zone.

#### IV. Standard Conditions

- A. **Permit Execution.** This permit shall not take effect unless the permittee 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 permittee 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 permittee/transferrors 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 assignee executes and the Executive Director receives an acknowledgment that the assignee has read and understands the permit and agrees to be bound by the terms and conditions of the permit, and the assignee is accepted by the Executive Director as being reasonably capable of complying with the terms and conditions of the 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 permittee of any obligations imposed by State or Federal law, either statutory or otherwise.
- F. **Built Project must be Consistent with Application.** Work must be performed in the precise manner and at the precise locations indicated in your application, as such may have been modified by the terms of the permit and any plans approved in writing by or on behalf of the Commission.
- G. **Life of Authorization.** Unless otherwise provided in this permit, all the terms and conditions of this permit shall remain effective for so long as the 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 permittee or its assignee 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 permittee or its assignee 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 permittee or its assignee 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 permittee shall grant permission to any member of the Commission's staff to conduct a site visit at the subject property during and after construction to verify that the project is being and has been constructed in compliance with the authorization and conditions contained herein. Site visits may occur during business hours without prior notice and after business hours with 24-hour notice.