

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

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TO: Commissioners and Alternates

FROM: Lawrence J. Goldzband, Executive Director (415/352-3653, lgoldzband@bcdc.ca.gov)
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SUBJECT: Staff Recommendation on Consistency Determination No. C2013.004.00; Department of Veterans Affairs, VA Northern California Health Care System; Property Acquisition, Reuse for an Outpatient Clinic, National Cemetery and Conservation Management Office, and Public Access Improvements
(For Commission consideration on January 16, 2014)

Recommendation Summary

The staff recommends that the Commission approve Consistency Determination No. C2013.004.00, which, as conditioned, will result in the following:

1. The Department of Veterans Affairs, VA Northern California Health Care System's (VA) acquisition of a 623.6-acre area of the former Naval Air Station (NAS) Alameda site from the U.S. Department of the Navy (Navy);
2. The construction of a veteran's outpatient clinic and a national cemetery, a public roadway, a Conservation Management Office (CMO) for the federally-listed endangered California least tern, and associated infrastructure, at an 112.4-acre section of the property;
3. The preservation of a 511.2-acre area to remain undeveloped and managed to protect a 9.7-acre California least tern nesting colony;
4. The establishment of public access facilities, including an approximately 44,500-square-foot (1.02-acre) shoreline area, an eight-vehicle public parking area, a public roadway with a sidewalk and a designated bike lane, and public restrooms and a drinking fountain at the CMO, which will also serve an interpretive and public education function; and



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5. The VA's future provision of an easement to an appropriate entity over a two-mile-long, 12- to 25-foot-wide corridor in which a seasonal (from August 16 to March 31 of each calendar year) public trail could be provided, consistent with protection of the California least tern and future site remediation activities.

Staff Recommendation

The staff recommends that the Commission adopt the following resolution:

I. Authorization

- A. Subject to the conditions stated below, the Commission agrees with the Department of Veterans Affairs, VA Northern California Health Care System that the following actions of the VA within the 100-foot shoreline band and within the Commission's federal coastal zone management area, at a 623.6-acre area of the former Naval Air Station Alameda, the majority of which is located in the City of Alameda, Alameda County except for the southwestern corner, which is located in the City and County of San Francisco are consistent with the Commission's Amended Management Program for the San Francisco Bay Segment of the California coastal zone:

1. **Within the Commission's federal coastal zone management area, and within the 100-foot shoreline band:**

- a. Acquisition of a 623.6-acre area of the former NAS Alameda site by the Department of Veterans Affairs from the U.S. Department of the Navy;
- b. Construction, use, and management of an 112.4-acre area of the acquired property for:
 - (1) Placement of approximately 444,000 cubic yards of imported clean fill material to raise elevations to 13.5 feet above Mean Sea Level;
 - (2) Installation, use and in-kind maintenance of construction staging areas, and materials associated with pre-construction activities (such as, geotextile layers, foundation piles, and concrete mats);
 - (3) Site grading;
 - (4) Construction, use, and in-kind maintenance of an 158,000-gross-square-foot two-story outpatient clinic (OPC) not to exceed 40 feet high except for a 54-foot-high section where a penthouse for equipment and roof element will be installed, all within a footprint of approximately 83,000 square feet, a 632-vehicle parking lot, and associated supporting facilities (e.g., an entry roadway, shuttle stop area, and storage facilities);
 - (5) Construction, use, and in-kind maintenance of an initial 20-acre section of a national cemetery (Phase One);
 - (6) Every ten years following the construction of the initial 20-acre section, the construction, use, and in-kind maintenance of eleven, approximately six-acre cemetery sections. Upon completion in 2116, the cemetery will occupy an 80-acre area with a total capacity of 300,000 columbaria niches contained in structures measuring up to 10 feet tall, internment ceremonial shelter areas with structures up to 25 feet tall, and associated facilities, internal roadways, walkways, landscaping and irrigation, parking areas, memorial assembly

areas, seating, perimeter fencing not to exceed six feet high, signage, flag-poles, trash receptacles, and a maintenance garage located north of the OPC building;

- (7) Construction, use, and in-kind maintenance of a one-story, approximately 2,500-square-foot Conservation Management Office not to exceed 25 feet high for managing the California least tern including: up to 26 parking spaces for the public and employees; a bus drop-off area; a one-way roadway; two restrooms open for public use during regular business hours; a minimum of one drinking fountain; interpretive and educational signage; and an Americans with Disabilities Act (ADA) compliant pathway with an elevated viewing area;
 - (8) Construction, use, and in-kind maintenance of North Access Road, an approximately 3,750-foot-long, 39-foot-wide road located along the northern boundary of the site with two 11-foot-wide vehicle travel lanes, one 12-foot-wide bicycle lane along the north roadway edge, one five-foot-wide pedestrian sidewalk along the south roadway edge, and eight vehicle parking spaces at the western terminus;
 - (9) Installation, use, repair, and in-kind maintenance of public access amenities within a 44,500-square-foot area located west of the national cemetery, and within an approximately 14,500-square-foot area within the public access area occupied by concrete revetment, routine repair, cleanup, and safety improvements (i.e., cutting exposed rebar and improving stability) of an existing shoreline protection system;
 - (10) Construction, use, and in-kind maintenance of the Cemetery Access Road located perpendicular to North Access Road and servicing the OPC, the cemetery, and the CMO;
 - (11) Installation, use, and in-kind maintenance of site utilities, potable water, storm drains, street lighting transformer and control cabinets, including along North Access Road; and
 - (12) Installation, use, and in-kind maintenance of water quality management and control facilities, including bioswales and drainage systems.
- c. Use, management, and in-kind maintenance of a 511.2-acre portion of the acquired property primarily for the protection of a 9.7-acre nesting colony of the federally-listed endangered California least tern, and for the future establishment of an approximately two-mile-long, seasonal trail within a 12- to 25-foot wide easement at the western, southern, and eastern site boundaries to be used by the public from August 16 to March 31 of each calendar year.

This authority is generally pursuant to and limited by the request for consistency review and concurrence dated July 1, 2013, including all accompanying and subsequently submitted correspondence, documents, and exhibits, but subject to the modifications required by conditions hereto.

- B. Activities authorized in this consistency determination must commence prior to January 1, 2017 or this consistency concurrence will lapse and become null and void unless an extension of time is granted by amendment of this determination. Such work must also be diligently pursued to completion and completed by January 1, 2116. All public access improvements except the seasonal trail, the establishment and use of which is contingent upon a future executed easement between the VA and an appropriate party, must be installed upon completion and prior to occupancy of the structures associated with Phase One of the VA's development project, by approximately January 1, 2019.

- C. Upon completion of Phase One (approximately 2019), the following facilities will be available for general public use: a 44,500-square-foot shoreline area (approximately 14,500-square-feet of which is occupied by a concrete revetment) located west of the national cemetery with seating, trash receptacles, a viewing area, and signage; the North Access Road with a five-foot-wide sidewalk, a 12-foot-wide bicycle lane, and an eight-vehicle public parking area; and two public restrooms and a drinking fountain at the Conservation Management Office, which will also include public education amenities. At the 511.2-acre undeveloped area, along the western, southern, and eastern boundaries, the VA will also provide at a future date an 12- to 25-foot-wide easement for use of an approximately two-mile-long, trail available to the public from August 16 to March 31 of each calendar year.

II. Special Conditions

The concurrence provided herein shall be subject to the following special conditions:

A. Specific Plans and Plan Review

1. **Plan Review.** No work whatsoever associated with all phases of the VA development authorized herein shall be commenced pursuant to this concurrence until final grading, site, utility, public access, engineering, and any other relevant criteria, specifications, and plan information have been submitted to and reviewed and approved in writing by or on behalf of the Commission. The specific drawings and information required will be determined by the Commission staff. To save time, preliminary drawings should be submitted and reviewed by the Commission staff prior to providing final drawings.
 - a. **Site Plans.** The site plans submitted pursuant to this agreement shall include, but not be limited to, the location and design of all authorized-herein buildings, roadways, infrastructure and utilities, public access amenities, and shoreline protection systems.

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

- (a) completeness and accuracy of the plans in showing the features required above and any other criteria required by this authorization;
- (b) consistency of the plans with the terms and conditions of this authorization;
- (c) the provision of the amount and quality of public access required by this authorization, among other things, to ensuring: (1) the public's use and enjoyment of all access areas; (2) public safety; (3) accessibility for persons with disabilities; (4) sufficient durability and maintenance of materials and structures; (5) adaptability and resilience to sea level rise; and (6) that the access is clear and continuous and encourages public use;
- (d) consistency with any future easements reserving public access areas; and
- (e) consistency of the plans with possible future advice of the Commission's Design Review Board.

For all phases of the development authorized herein, plan review shall be completed by or on behalf of the Commission within 45 days after receipt of the above-referenced plans.

2. **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, lighting, landscaping, signage, parking areas, roadways, or shoreline protection systems without first obtaining written approval of the change(s) by or on behalf of the Commission.
 3. **Discrepancies between Approved Plans and Special Conditions.** In case of any discrepancy between final approved plans and Special Conditions of this authorization approved pursuant to this concurrence, the Special Condition shall prevail. The VA is responsible for assuring that all plans accurately and fully reflect the Special Conditions of this authorization.
 4. **Design Review Board.** Prior to the installation of public amenities within an approximately 30,000-square-foot section of the 44,500-square-foot public shoreline area required in Special Condition II.B of this determination, the VA shall provide the Commission staff with relevant site plans of proposed improvements for review and approval by or on behalf of the Commission. In the event that the Commission staff determines that the site plan warrants review by the Commission's Design Review Board (DRB), the VA shall provide plans for the public access improvements in order to seek the advice of the DRB and, ultimately, incorporate that advice into the project plans.
 5. **Appeals of Plan Review Decisions.** Any plan approval, conditional plan approval or plan denial may be appealed by the VA to the Commission's 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.
- B. Public Access.**
1. **Area.** The approximately 44,500-square-foot area along approximately 450-linear feet of shoreline as generally shown on Exhibit A shall be made available exclusively to the public for unrestricted public access for uses, including walking, bicycling, sitting, viewing, picnicking, and related purposes. If the VA wishes to use the public access area for other than public access purposes, it must obtain prior written approval by or on behalf of the Commission.
 2. **Public Access Improvements.** Upon completion and occupation of any building, roadway, infrastructure, cemetery (Phase One), Conservation Management Office, or other facilities concurred with herein, (estimated to be 2019), the VA shall provide and maintain the following improvements, as generally shown on Exhibit A:
 - a. A minimum of four benches, two picnic tables, two trash containers, a viewing area, and signage within the 44,500-square-foot (1.02-acre) public shoreline area unless a different number is determined by or on behalf of the Commission to be sufficient to accommodate expected use;

- b. Two public restrooms and, at a minimum, one public drinking fountain at the Conservation Management Office, to be made available to the general public on a daily basis during CMO regular operational hours, approximately 8:00 a.m. to 5:00 p.m.;
 - c. A public road (North Access Road) with a separated 12-foot-wide bicycle pathway on the north side of the road, a five-foot-wide pedestrian sidewalk on the south side of the road, and dedicated public parking spaces for a minimum of eight vehicles at the terminus, including two designated ADA spaces; and
 - d. A minimum of six directional and public shore signs to help locate and identify public access areas.
3. **Maintenance and Repair.** The 44,500-square-foot (1.02-acre) public shoreline area and all improvements cited in Special Condition II.B.2 shall be permanently maintained and repaired by and at the expense of the VA or its assignees. Such maintenance shall include, but is not limited to, repairs and upgrades to all path surfaces including those related to tidal inundation or damage resulting from future sea level rise and flooding; replacement of any plant materials that die or become unkempt; repairs or replacement as needed of any public access amenities such as signs, benches, drinking fountains, trash containers and lights; periodic cleanup of litter and other materials deposited within the access areas; removal of any encroachments into the access areas; and assuring that the public access signs remain in place and visible. After notification by staff, within 30 days or such other time period granted by or on behalf of the Commission, the VA or its assignees shall correct any maintenance deficiency noted in a staff inspection of the site.
 4. **Assignment.** The VA 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 consistency determination.
 5. **Reasonable Rules and Restrictions.** The VA 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 in writing by or on behalf of the Commission upon a finding that the proposed rules would not significantly affect the public nature of the area, would not unduly interfere with reasonable public use of the public access areas, and would tend to correct a specific problem that the VA has both identified and substantiated. Rules may include restricting hours of use and delineating appropriate behavior.
 6. **Seasonal Trail Easement.** The VA shall provide an easement over an approximately two-mile-long, 12- to 25- foot wide corridor, primarily along the shoreline, for a seasonal trail located at the western, southern, and eastern boundaries of the 511.2-acre undeveloped area of the project site to an appropriate designee (e.g., the City of Alameda), approved by or on behalf of the Commission, for the future development and management of a trail to be available for public use from approximately August 16 to March 31 of each calendar year consistent with protection of the least tern required by the USFWS and ongoing maintenance of remediated areas. Any future improvements to the seasonal trail within the Commission's jurisdiction shall require either an amendment to this consistency determination and/or a separate permit action by the Commission and the review and advice of the Commission's Design Review Board.

- C. **Other Government Approvals and Future Amendments to Consistency Determination.** All required permissions from federal, state, and local bodies must be obtained before commencement of work authorized herein. These bodies include, but are not limited to, the San Francisco Bay Regional Water Quality Control Board. This consistency determination does not relieve the subject federal entity of any obligations imposed by federal, state, or local law, either statutory or otherwise. Prior to the installation of out-falls or storm drainage systems or any other improvements located within the Commission's jurisdiction and not specifically authorized herein, the VA shall obtain an amendment to this consistency determination or a separate authorization regarding such work.
- D. **Notice to Contractor.** The VA shall provide a copy of this consistency determination to any contractor or person working in concert with the VA to carry out the activities authorized herein and shall point out the special conditions contained herein.
- E. **Life of Authorization.** Unless otherwise provided in this determination, all the terms and conditions of this determination shall remain effective for so long as the determination remains in effect or for so long as any use or construction authorized by this determination exists, whichever is longer.
- F. **Violation of Consistency Determination May Lead to Determination Revocation.** Except as otherwise noted, violation of any of the terms of this determination shall be grounds for revocation. The Commission may revoke any determination for such violation after a public hearing held on reasonable notice to the subject federal entity if the determination has been effectively assigned. If the determination is revoked, the Commission may determine, if it deems appropriate, that all or part of any fill or structure placed pursuant to this determination shall be removed by the subject federal entity.
- G. **Should Consistency Determination Conditions Be Found to be Illegal or Unenforceable.** Unless the Commission directs otherwise, this determination shall become null and void if any term or special condition of this determination shall be found illegal or unenforceable through the application of statute, administrative ruling, or court determination. If this determination becomes null and void, any structures placed in reliance on this determination shall be subject to removal by the subject federal entity 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.
- H. **Permission to Conduct Site Visit.** The determination 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 and with 48-hours notice.
- I. **Riprap Repair**
1. **Material.** Any riprap material subject to repair located within the 44,500-square-foot public access area required in Special Condition II.B shall be either quarry rock or specially cast or carefully selected concrete pieces free of reinforcing steel and other extraneous material and conforming to quality requirements for specific gravity, absorption, and durability specified by the California Department of Transportation or the U. S. Army Corps of Engineers. The material shall be generally spheroid-shaped. The overall thickness of the slope protection shall be no more than three feet measured perpendicular to the slope unless a coastal engineer can substantiate that larger pieces are warranted. Use of dirt, small concrete rubble, concrete pieces with

exposed rebar, large and odd shaped pieces of concrete, and asphalt concrete as riprap is prohibited. Professionals knowledgeable of the Commission's concerns, such as civil engineers experienced in coastal processes, should participate in the design of the shoreline protection repair. The specific drawings and information required will be determined by the Commission staff. To save time, preliminary drawings should be submitted and reviewed by the Commission staff prior to providing final drawings, pursuant to Special Condition II.A.

2. **Maintenance.** The maintenance of the existing shoreline protection system located at the western shoreline within the 44,500-square-foot public access area shall include collecting riprap pieces that become dislodged and repositioning them in appropriate locations within the riprap covered area, replacing in-kind riprap material that is lost, cutting off exposed rebar, repositioning loose pieces, and removing debris that collects on top of the riprap.

III. Findings and Declarations

This consistency determination 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), and the Commission's amended coastal zone management program for San Francisco Bay for the following reasons:

- A. **Natural Resources.** The Bay Plan policies on Fish, Other Aquatic Organisms and Wildlife state, in part, "[t]o assure the benefits of fish, other aquatic organisms and wildlife for future generations, to the greatest extent feasible, the Bay's tidal marshes, tidal flats, and subtidal habitat should be conserved, restored and increased." In addition, the policies state, "[s]pecific habitats that are needed to conserve, increase or prevent the extinction of any native species, species threatened or endangered, species that the California Department of Fish and Game has determined are candidates for listing as endangered or threatened under the California Endangered Species Act, or any species that provides substantial public benefits, should be protected, whether in the Bay or behind dikes." Further, the policies direct the Commission to consult with, among others, the USFWS whenever a proposed project may adversely affect an endangered or threatened... species, and the policies direct the Commission to not authorize projects that would result in the "taking" of any listed species unless the project applicant has obtained the appropriate "take" authorization from the appropriate resource agencies. Bay Plan Map No. 5 contains a policy note for an area immediately south of the project site stating, in part, that "Projects [should be] allowed only if protective of harbor seals and other sensitive wildlife."

At the project site, 511.2 acres will remain undeveloped, and, except for on-going site operations and any necessary remediation activities related to Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), be managed to protect a 9.7-acre nesting colony of the federally-listed endangered California least tern. Within this area, a two-mile-long seasonal public trail will become available pending execution of an easement between the VA and an appropriate entity. The seasonal trail will be available for public use during the least tern's non-nesting season, i.e., August 16 to March 31 of each calendar year and, thus, be operated in a manner consistent with the USFWS's biological opinion for the entire 623.6-acre site issued in August 2013.

Because the VA has designed the project in accord with USFWS's Biological Opinion issued for this project to protect the endangered California Least tern, and has set aside nearly 82% of the project site as open space and habitat for the least tern, the Commission concurs with the VA that the proposed project is consistent with the Commission's coastal management policies protecting natural resources.

- B. **Public Access.** Section 66602 of the McAteer-Petris Act states, in part, “public access to the shoreline and waters of San Francisco Bay is inadequate and that maximum feasible public access, consistent with a proposed project, should be provided.” To that end, the Bay Plan contains policies directing that all projects authorized by the Commission increase public access (Public Access Policy No. 1) and provide (Public Access Policy No. 2) maximum feasible public access to the Bay and its shoreline. Supporting findings of these policies provide, in part, that access “usually consists of pedestrian and other non-motorized access to and along the shoreline of San Francisco Bay” and “may include certain improvements, such as paving, landscaping, and street furniture; and it may allow for additional uses, such as bicycling, fishing, picnicking, nature education, etc.”

The Bay Plan Public Access Policies Nos. 3 and 4 recognize that public access can conflict with sensitive resources and provide, in part, that such areas “be carefully evaluated in consultation with appropriate agencies to determine the appropriate location and type of access” and design, management, and monitoring be used to “avoid or minimize adverse effects on wildlife. Policy No. 7 provides that access areas be safe and convenient and designed to “encourage diverse Bay-related activities and movement to and along the shoreline” and allow “barrier free access for persons with disabilities to the maximum feasible extent.” Policy No. 9 states, in part, that waterfront access “be provided by walkways, trails, or other appropriate means and connect to the nearest public thoroughfare where convenient parking...may be available.” Policy No. 10 states, in part, that roads near the water should “provide for safe, separated, and improved physical access to and along the shore.” Lastly, Bay Plan Public Access Policy No. 5 states that “public access should be sited, designed, managed and maintained to avoid significant adverse impacts from sea level rise and flooding...” and, further, Policy No. 6 states partly that “public access provided as a condition of development should either be required to remain viable in the event of future sea level rise or flooding, or equivalent access consistent with the project should be provided nearby.”

The VA’s consistency determination states that the project will employ up to approximately 260 staff each weekday and 50 staff each weekend day, and receive approximately 730 OPC and cemetery visitors each weekday and 250 visitors each weekend day. The facilities will serve U.S. veterans throughout the Bay Area and other visitors.

The VA will construct, install, and maintain various amenities serving the general public. The VA will permanently provide, operate, and maintain a 44,500-square-foot shoreline area, (required in Special Condition II.B.1) approximately 30,000 square feet of which is relatively flat and intended for use by pedestrians and other non-motorized access. The VA has stated that wheelchair users at the site will have visual access over the riprap and to the Bay. The remaining 35% of this area is occupied by existing unengineered riprap containing irregular pieces of concrete and rebar. Although the riprap is difficult to cross, the public will be able to access a sandy beach proving a unique shoreline experience and a spectacular unobstructed view of the Bay.

At a yet-to-be-determined future date, the 44,500-square-foot public area will likely be connected to a much larger adjacent park located to the north, which is envisioned for development by the City of Alameda and/or the East Bay Regional Park District. The VA intends to install limited public improvements within the shoreline access area, including benches, trash containers, a viewing area, and signage as required in Special Condition II.B.2.a., because such amenities will likely be replaced and/or altered when the area is integrated into the larger adjoining park system. Pursuant to Special Condition II.A, prior to the installation of amenities within the 44,500-square-foot public area, the VA will prepare a site plan for staff review and approval by or on behalf of the

Commission and, if the design warrants the consideration and advice of the Design Review Board, the VA will seek and incorporate the DRB's advice prior to the installation of public amenities at the site (Special Condition II.A.4). In the event that the existing rip-rap system located within the 44,500-square-foot area requires routine repair, Special Conditions II.A and II.I require that, prior to undertaking such activities, the VA provide the Commission staff with relevant engineering and design plans for review and approval by or on behalf of the Commission.

The Conservation Management Office, which will focus on protection of the California least tern, will also serve a public education and interpretation role. In addition, at the CMO, the VA will construct and provide two restrooms and a drinking fountain, which will be available to the public on a daily basis likely from 8:00 am to 5:00 pm, as required in Special Condition II.B.2. The VA will also construct a main public road (the North Access Road) to access its facilities and to travel to and from the shoreline, which will include a separated 12-foot-wide bicycle pathway, a five-foot pedestrian sidewalk, and dedicated public parking for eight vehicles at its terminus, also required in Special Condition II.B.2.

At the 511.2-acre undeveloped area along the western, southern, and eastern boundaries and primarily along the Bay edge, the VA will provide an easement over an approximately two-mile-long area ranging from 12-25 feet wide, in which the City of Alameda (or other designee) will develop a seasonal trail for public use from August 16 to March 31 of each calendar year consistent with protection of the least tern and any necessary maintenance of remediated areas. The final easement is not yet in place, however the VA is working with the City of Alameda to complete the easement. Therefore, the schedule for opening and operating the trail, and, if necessary, improving the trail, is unknown at this time. Special Condition II.B.6 requires the VA to provide the easement to be approved by or on behalf of the Commission.

The consistency determination states, "[t]he current shoreline area [at the 511.2-acre portion of the acquired site] includes an existing trail. The VA anticipates the City or designee would utilize this existing trail without upgrades, or the VA will allow the City or designee to enhance the existing trail in the future." The VA's consistency determination states that "the City or designee would construct a fence or other barrier to prevent people from leaving the shoreline easement area and existing trail. The VA would also require the City or designee to provide security, safety, environmental, biological and access signage with requirements and instructions. Signage would be placed along the trail and/or fence/barrier. In addition, the City or designee would provide security personnel to protect CLT and VA interests and obligations. Written USFWS concurrence of the shoreline trail concept would be required in order for VA to issue an easement for the trail. The fence or other barrier would need to be constructed in accordance with requirements of VA and USFWS."

According to the VA's consistency determination, the USFWS's Biological Opinion (August 2012) for the project states that "use of a proposed future [seasonal] trail would be restricted to keep the public outside a protected buffer zone for the [California least tern], with additional restrictions during the breeding season (April 1 through August 15). The BO measures include reducing human presence by enacting controlled access to a trail with closure to the public during the [least tern] breeding season and fencing to keep users out of the [least tern] setback area at all times. Signage would be provided along the pathway and fence line or other barrier, directing visitors to stay on the trail. Fencing or barriers would be provided along the distance of the trail to keep people out of the remainder of the undeveloped portion of the VA Transfer Parcel. VA would provide security fencing, or other type of barrier, to prevent pedestrian access to the VA's Development Area." Further, the consistency determination states "[t]he VA

would ensure that the seasonal trail is managed securely, safely, environmentally and biologically compliant according to a United States Fish and Wildlife Service (USFWS) 2012 Biological Opinion, other environmental regulatory requirements, security requirements, and Federal directives, restrictions and agreements.”

The VA’s consistency determination recognizes that trail enhancements undertaken by the City or other designee will require a separate Commission authorization and will likely be subject to the review and advice of the Commission’s Design Review Board, as required in Special Condition II.B.6 of this consistency determination.

The VA conducted an analysis to determine the required elevation for the entire project considering the potential for future tidal inundation. Approximately 444,000 cubic yards of fill material will be used to prepare for Phase 1 construction at the site, and raise the ground elevation of the OPC and cemetery (Phase I) to approximately 13.5 feet above Mean Sea Level (MSL). Most of the fill material will be placed at the locations of the outpatient clinic and first phase of the national cemetery. Based on sea level rise predictions of 5-24 inches by 2050 and 17-66 inches by 2100 (2012 NAS projections), this development area will be at a higher elevation than the sea level rise prediction for 2100.

According to the VA, the riprap at the western shoreline will protect the adjacent area from erosion and tidal inundation. Further, the U.S. Army Corps of Engineers (USACE) has stated that the riprap is necessary and should not be altered except if approved enhancements are determined necessary to meet Federal Emergency Management Agency (FEMA) standards and to protect the site in the future.

The North Access Road and the 44,500-square-foot public access area will occupy areas where the former air station runways will remain largely unaltered and where fill material will not be used to raise ground elevations. Consequently, it is possible that portions of these required public areas will be impacted by future sea level rise or flooding. The VA asserts these areas will likely withstand temporary inundation without damage. Additionally, as required pursuant to Special Condition II.B3, the VA will maintain or upgrade these public areas and amenities if impacts related to future sea level rise and flooding occurs.

In evaluating whether federal projects provide maximum feasible public access, the Commission applies several variables to evaluate the adequacy of a proposed project’s public access program. These variables include site constraints and opportunities, the expected level of use of the access areas, existing access in the project vicinity, total project cost, and possible impacts to adjoining wildlife and habitat. Over the years, Commission concurrence with federal projects and associated public access has typically involved the U.S. National Park Service (NPS) and USFWS—federal agencies where providing public access is part of their mandate. These projects also typically include a significant development within the Commission’s state jurisdiction as opposed to the subject VA project, which is largely located outside of this area.

For comparison, Consistency Determination No. CN5-04, the Commission concurred with the USFWS’s determination that the Cullinan Ranch marsh restoration project (near the City of Vallejo, Solano County) involving restoration of 1,549 acres of marshland and 26 acres of upland habitat provided maximum feasible public access, including two kayak launches, an overlook and a viewing platform, a fishing pier, an ADA-accessible trail, and interpretive signs. In the National Park Service’s Consistency Determination No. 11-04, the Commission concurred with the NPS that implementation of the Fort Baker Reuse Plan, which involved converting former military facilities into a hotel and conference center, provided maximum feasible public access consistent with the project in the form of an enhanced 40-acre habitat area, a public fishing pier, and museum space. In Consistency Determination No. CN2-08 (processed administratively), the

Commission concurred that the California Department of Transportation's and the San Francisco County Transportation Authority's reconstruction of the Doyle Drive/Highway 101 structure (City and County of San Francisco) provided maximum feasible public access because, as proposed, "at project completion, all public access trails [at the Presidio area] existing as of the date of this consistency shall be maintained, replaced, or enhanced to conditions that are equal to or better than those existing at the time of issuance." Consistency Determination No. CN2-08 also required that the "Department of Transportation shall make every effort to minimize closures and impacts to existing public access areas adjacent to Doyle Drive during project construction." The Doyle Drive/Highway 101 improvement project incorporated a number of design improvements aimed to significantly enhance public access within the immediate vicinity of the highway and within the national park area and Consistency Determination No. CN2-08 did not require any new or additional public access improvements at the site. It is important to note that that Doyle Drive/Highway 101 project is similar to the subject VA project in that a majority of the development was designed to occur outside of the area under the Commission's state jurisdiction and authority.

Because the VA has provided a number and variety of public access areas and improvements that are designed to promote the public's ability to access and enjoy San Francisco Bay and shoreline, the Commission concurs with the VA that the proposed project is consistent with the Commission's coastal management policies requiring that projects provide the maximum feasible public access consistent with the proposed project.

- C. **Review Boards.** As the project will not involve fill in the Bay, review by the Engineering Criteria Review Board was not required. As the public access improvements within the 44,500-square-foot area will be limited and relatively basic, the project was not reviewed by the Design Review Board. However, when the VA develops a site plan regarding public access improvements for this area, and if the Commission staff determines DRB review and advice is warranted, the VA will seek and incorporate DRB review prior to implementation of access improvements, as required in Special Condition II.A.4 of this determination.
- D. **Environmental Review.** Pursuant to the National Environmental Policy Act (NEPA), a final Environmental Assessment (EA) evaluating the potential environmental consequences of these actions was issued in November 2013. A joint and coordinated VA and Navy EA was prepared in compliance with NEPA that evaluates the potential environmental impacts on the natural and human environment that could result from the joint and coordinated actions: (1) the Navy transfer of excess Federal property at the former NAS located at Alameda Point in Alameda, California; and (2) subsequent reuse of the property by the VA for construction and operation of the VA facilities including an outpatient clinic and national cemetery to serve Bay Area veterans.
- E. **Conclusion.** For all of 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 *San Francisco Bay Plan*, the McAteer-Petris Act, the Commission's Regulations, and the Commission's Amended Management Program for the San Francisco Bay segment of the California coastal zone.