

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

455 Golden Gate Avenue, Suite 10600 • San Francisco, California 94102 (415) 352-3600 • Fax: (415) 352-3606 • www.bcdc.ca.gov

April 25, 2014

TO: Commissioners and Alternates

FROM: Lawrence J. Goldzband, Executive Director (415/352-3653) lgoldzband@bcdc.ca.gov
Michelle Burt Levenson, Coastal Program Analyst (415/352-3618)
michellel@bcdc.ca.gov)

SUBJECT: **Staff Recommendation on BCDC Permit Application No. 2011.002.00; an Application by the Water Emergency Transportation Authority to construct the Vallejo Ferry Maintenance Facility**
(For Commission consideration on May 1, 2014)

Project Background

On November 7, 2013, the Commission held a public hearing on BCDC Permit Application No. 2011.002.00, an application submitted by the Water Emergency Transportation Authority (WETA) to relocate and expand a ferry maintenance facility, bayward of Waterfront Avenue, between 6th Street and 7th Street and Building 165, along the Mare Island Strait, on Mare Island, in the City of Vallejo, Solano County.

The staff application summary prepared and distributed last October for this project is available for viewing and downloading at: <http://www.bcdc.ca.gov/meetings/commission/2013/11-07-AgendaItem8-2011-002-00WETAsummary.pdf>.

A Commission vote on the permit application was originally scheduled for November 7, 2013, however, WETA requested a postponement of the Commission's vote on the application until the US Fish and Wildlife Service (USFWS) further evaluated the potential project effects on the federally-threatened delta smelt. On April 2, 2014, the USFWS issued its Biological Opinion on the effects of the project on the delta smelt. In that Biological Opinion, the USFWS concluded that, through the implementation of conservation measures and mitigation, potential take of the delta smelt would be minimized.

Recommendation Summary

The staff recommends that the Commission approve BCDC Permit Application No. 2011.002.00, an application submitted by the Water Emergency Transportation Authority (WETA) to relocate and expand a ferry maintenance facility, bayward of Waterfront Avenue, between 6th Street and 7th Street and Building 165, along the Mare Island Strait, on Mare Island, in the City of Vallejo, Solano



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County. The project will consist of installing five new floats and relocating two existing floats from Building 477 (approximately 0.5 mile upstream) to the project site. The floats would be fixed in position by approximately 40 steel and plastic piles, ranging in size from 12 to 42 inches-in-diameter. The project will result in the placement of 13,096 square feet of floating fill and 210 square feet of solid fill (from piling placement). Public access will be provided by Lennar and the City of Vallejo which have fee title to the area where public access will be provided. The public access associated with the project has been required in BCDC Permit No. M2006.22.03. This public access consists of extending a public promenade along the existing wharf by installing new surfacing, railings, lighting, seating and trash receptacles. A total of 23,240 square feet (0.53 acres) of the promenade will be provided with the project. In addition, a 1,961-square-foot ferry waiting area and an 862-square-foot "artifact" area will be provided. A total of 26,063 square feet (0.60 acres) of public access will be provided with the project. To mitigate for the impacts of fill placement, a total of 114 existing, creosote-treated pilings, a 1,550-square-foot pile-supported pier and miscellaneous trash and debris covering 36 square feet of the Bay will be removed.

Staff Recommendation

The staff recommends that the Commission adopt the following resolution:

I. Authorization

A. **Authorized Project.** Subject to the conditions stated below, the permittee, the Water Emergency Transportation Authority (WETA), is granted permission to construct the Vallejo Ferry Maintenance Facility bayward of Waterfront Avenue, between 6th and 7th Street(s) and Building 165, along the Mare Island Strait, on Mare Island, in the City of Vallejo, Solano County. Authorized work includes the following:

1. In the Bay:

- a. Install, use, and maintain a total of up to 40 pilings that will range in diameter from 12 to 42 inches, occupying a maximum of 428 cubic yards of Bay volume and covering a maximum of 210 square feet of the Bay floor and supporting a total of seven floats, including two 1,178-square-foot finger floats (a total of 2,356 square feet of Bay fill), one 1,056-square-foot landing float, one 1,900-square-foot maintenance float, and one, 104-square-foot working float; and
- b. Relocate (from the existing maintenance facility located approximately ½ mile upstream of the maintenance facility authorized herein), use, and maintain one 4,080-square-foot service float, and one 3,600-square-foot passenger float.

2. Within the 100-foot Shoreline Band:

- a. Install, use, and maintain a 13-foot-tall, 19-foot-wide ferry portal with associated guardrails; and
- b. Install up to seven utility/product lines within an existing conduit duct bank located within the wharf and repair an existing sewer line all located within an approximately 10-foot-wide corridor.

B. **Application Date.** This authority is generally pursuant to and limited by the application filed on September 6, 2013, including all accompanying and subsequently submitted correspondence and exhibits, but subject to the modifications required by conditions hereto.

- C. **Permit Expiration Dates.** Work authorized herein must commence prior to April 1, 2015, or this permit will lapse and become null and void. All work must also be diligently pursued to completion and must be completed within six months of commencement or by October 1, 2015, whichever is earlier, unless an extension of time is granted by amendment of the permit.
- D. **Fill and Public Access Summary.** The project will result in the placement of a total of 13,096 square feet of floating fill and 210 square feet of solid fill in the Bay to relocate and expand a ferry maintenance facility. To mitigate for the placement of fill as a result of construction of the project, 114 creosote-treated pilings, a 1,550-square-foot pile-supported pier and 36 square feet of miscellaneous trash and debris will be removed from the Bay.

II. Special Conditions

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

A. Specific Plans and Plan Review

1. **Construction.** The final plans submitted pursuant to this condition shall generally conform to the plans entitled "Figure 3—Overall Site Plan" and "A-101-Gangway and Entry Portal Plan and Elevation", prepared by GHD, Inc., and dated July 3, 2013. Final plans for the construction of the structures authorized herein shall be prepared and submitted for BCDC review as described below. No changes to the design of the project shall be made without the prior written approval of the BCDC staff.
2. **Plan Review.** Plans for the work authorized herein must be approved by or on behalf of the Commission prior to the commencement of any construction. Such plans shall include final precise site, demolition, engineering, architectural, grading, landscaping, and best management practices plans and any other relevant criteria, specifications, and plan information for the work authorized herein. 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, Demolition, Grading and Public Access Plans.** Site, demolition grading, 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, the boundaries of all areas to be reserved for public access purposes, grading, details showing the location, types, dimensions, and materials to be used for all structures, irrigation, 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 contract 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), property lines, and the line 100-feet inland of the shoreline, and any other criteria required by this authorization;
- (2) consistency of the plans 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 and will consist of appropriate shoreline protection materials as determined by or on behalf of the Commission;
- (6) consistency of the plans with the recommendations, if any, of the Design 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 and minimize impacts to subtidal marsh and wetland habitat, and mitigate for any impacts that cannot be avoided or minimized; and
- (9) assuring that appropriate elevations have been met to prevent overtopping, flooding, and 100-year storm events in all public access areas.

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 authorized 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 is 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.

B. Public Access

1. **Area.** Within six months of the completion of the ferry maintenance facility authorized herein, or by October 1, 2015, whichever is earlier, the following areas, as generally shown on Exhibit A, shall be made available exclusively to the public for unrestricted public access for walking, running, bicycling, sitting, viewing, picnicking, and related purposes. These public access areas are on lands owned by the Lennar Mare Island and the City of Vallejo and have been authorized and required under BCDC Permit No. M2006.022.03:
 - a. An approximately 465-foot-long, 50-foot-wide public access promenade along the wharf;
 - b. An approximately 1,961-square-foot ferry waiting area immediately inland of the 50-foot-wide promenade; and
 - c. An approximately 862-square-foot “artifact” area at the eastern corner of the parking lot.
2. **Installation of Public Access.** The public access required herein will be installed by Lennar Mare Island, LLC. (LMI), and has been required in BCDC Permit No. M2006.022.03. If, within six months of completion of the ferry maintenance facility authorized herein or by October 1, 2015, whichever is earlier, the public access required above has not been installed by LMI, the permittee, WETA, shall either obtain the necessary property rights and install the public access improvements required above, or develop and receive Commission approval of an alternate public access proposal of equal or greater benefit and scope to the improvements authorized herein as soon as possible but no later than April 1, 2016. Any alternative public access area should open a similar length of shoreline, be located as close as possible to the ferry maintenance facility, and connect to existing public access areas.
3. **Improvements Within the Total Public Access Area.** Within six months of completion of the ferry maintenance facility authorized herein or by October 1, 2015, whichever is earlier, the following public access improvements, as generally shown on Exhibit A, shall be completed by Lennar Mare Island pursuant to BCDC Permit No. M2006.022.03:
 - a. An approximately 465-foot-long, 50-foot-wide public access promenade (a total of 23,240 square feet) along the wharf that shall contain a minimum of nine benches, five trash receptacles, lighting, new asphalt paving and railings. All site furnishings within the promenade, the ferry terminal waiting area, and the artifact area shall be of the same material and design as those furnishings used to the east of the site and shall provide a continuation of the existing wharf promenade required in BCDC Permit No. 2009.003;
 - b. An approximately 1,961-square-foot ferry waiting area that shall contain four benches, two bicycle racks, trash receptacles, a shade structure parallel to the promenade and lighting; and
 - c. An approximately 862-square-foot “artifact” area that shall contain a naval artifact, two benches oriented towards the Bay and a trash receptacle.

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 and the plans entitled “Waterfront Promenade Continuation-Phase II”, prepared by SDG Architecture and Engineering, and dated October 22, 2013 and required in BCDC Permit No. M2006.022.03.

4. **Maintenance.** The areas and improvements within the 26,063-square-foot public access areas described above shall be permanently maintained by and at the expense of the Lennar Mare Island and the City of Vallejo as required in BCDC Permit No. M2006.022.03. Such maintenance shall include, but is not limited to: repairs to all path surfaces; replacement of any trees or other plant materials that die or become unkempt; repairs or replacement as needed of any public access amenities such as signs, benches, 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. Such repairs include 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.
 5. **Reasonable Rules and Restrictions.** The permittee, in coordination with Lennar Mare Island and the City of Vallejo, 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 based on evidence that a problem exists and 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 has both identified and substantiated. Rules may include restricting hours of use and delineating appropriate behavior.
- C. **Valid Title of Water Area of Project Site.** The submerged lands associated with this project are owned by the United States Navy (Navy). The Navy has stated that it will issue a lease to the permittee once BCDC has granted approval of the project. A signed copy of the lease between the permittee and the Navy shall be provided to BCDC prior to the commencement of any in-Bay construction authorized herein. Until the lease is executed by the Navy and provided to the Commission staff, the authorization for the placement of fill in the Bay contained herein is null and void.
 - D. **Property Right to Perform Utility Work.** Prior to the commencement of the work authorized herein, the permittee shall provide evidence from Lennar Mare Island that the installation of utilities as authorized under I-A-2-b, above, is consistent with its lease for the land-side portion of the project site.
 - E. **Minimizing Impacts to Special Status Species.** In accord with the Biological Opinions and the Streambed Alteration Agreement issued for the project authorized herein, the permittee shall comply with the following measures to minimize impacts to special-status species:
 1. All in-Bay work shall occur between August 1st through October 31st of any given year to minimize disturbance to special-status species;
 2. Any pile driving accomplished through the use of an impact hammer shall employ the "soft start" technique
 3. Unconfined bubble curtains shall be used during the installation of all steel piles to reduce resultant noise levels;
 4. The permittee shall develop and receive approval from National Marine Fisheries Services (NMFS) of a hydro-acoustic monitoring plan that shall provide details on the sound attenuation system that will be used and the methods employed to monitor and verify sound levels during pile driving activities;

5. The permittee shall manage soil and groundwater in accordance with the "Soil and Groundwater Management Plan for Mare Island", which includes preparation of a site specific work plan to be approved by the California Department of Toxic Substances Control;
 6. The permittee shall manage all project-related storm-water run-off in accord with an approved Stormwater Pollution Prevention Program; and
 7. An Industrial Stormwater Prevention Pollution Plan shall be implemented during ferry facility operation.
- F. **Fill Mitigation.** Prior to the commencement of construction of the project authorized herein, the permittee shall submit evidence that the following fill mitigation has been completed: (1) removal of 114 creosote-treated pilings from three locations along the Mare Island Strait; (2) removal of a 1,550-square-foot pile-supported pier from the Pier Site; and (3) removal of 36 square feet of miscellaneous trash and debris from various locations near the project site. The permittee shall submit a report documenting fill mitigation activities that shall contain photographs of the fill removal area prior to and following removal activities.
- G. **Water Quality Protection.** The permittee shall ensure that project construction and operations are in compliance with the RWQCB Water Quality Certification issued for the project on August 20, 2013.
1. **Waste Discharge.** There shall be no discharge of any solid or liquid wastes, including grey water, bilge water or sewage into the Bay.
 2. **Waste Facilities.** At any time during the operation of the ferry service, the Executive Director may, by or on behalf of the Commission, require the permittee to install suitable facilities for receiving and disposing of bilge water, oily waste, and sewage from the ferry boats at the ferry maintenance facility if he/she determines that the existing pumpout facilities at the site are not being used or do not have adequate capacity to serve the facility.
- H. **Creosote Treated Wood.** No pilings or other wood structures that have been pressure treated with creosote shall be used in any area that either is or will be subject to tidal action 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.
- I. **Notifying NOAA to Update Nautical Charts.** Within 30 days of the completion of the project authorized by this permit, the permittee shall provide written verification to the Commission that it has submitted to the Nautical Data Branch of the National Oceanic and Atmospheric Administration (NOAA) the following: (1) (a) as-built drawings, construction drawings or other plans that correctly depict the completed development or, if the project involves the removal of an existing development; (b) a list of the existing development(s) that have been removed and a statement from a qualified engineer or professional salvage company certifying which portions of the development have been removed; (2) the geographic coordinates of the project using a differential geographic positioning system (DGPS) unit or other comparable equipment suitable for providing location on a Nautical Chart; and (3) the permittee's name and contact information (such as a mailing address, telephone number, fax number and/or e-mail address).
- J. **Hold Harmless Agreement.** The permittee agrees to indemnify, defend, and hold harmless the Commission, its agencies, departments, officers, agents, and employees from any and all claims, demands, losses, or judgments accruing to or in favor of any person, firm, corporation, or entity who or whose property may be injured or damaged by work performed in accordance with the terms and conditions of this permit.

- K. **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.

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*, the California Environmental Quality Act, and the Commission's amended coastal zone management program for San Francisco Bay for the following reasons:

- A. **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: (1) fill "should be limited to water-oriented uses" or "minor fill for improving shoreline appearance and public access"; (2) fill in the Bay should be approved only when "no alternative upland location" is available; (3) fill should be "the minimum amount necessary to achieve the purpose of the fill"; (4) "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 (5) "fill should be authorized when the applicant has such valid title to the properties in question that he or she may fill them in the manner and for the uses to be approved."
1. **Fill for a Water-Oriented Use.** The project will involve installing pilings and floats to build a ferry maintenance facility, the first facility of this nature to be authorized by the Commission. Ferry facilities are a water oriented use. In addition, the San Francisco Bay Plan contains findings promoting ferry use around the Bay. The Bay Plan findings on Transportation state, "[t]he Bay represents an important resource for ferry transportation...." Ferry service contributes beneficially to the public welfare of the Bay Area by reducing the environmental impacts associated with single-occupant vehicle use. A new maintenance facility is necessary to increase efficiency and accommodate future demand for ferry service at the Vallejo Ferry Terminal.
 2. **Alternative Upland Location.** Ongoing maintenance of ferries requires facilities in the water to berth and service the vessels. All facilities that could be located on land have been located on land, hence there is no alternative upland location for the maintenance facility.
 3. **Minimum Amount Necessary.** The project will result in the placement of 13,096 square feet of floating fill and 210 square feet of solid fill. The fill footprint for the project has been reduced since the permittee's original proposal. When the original application was submitted, a larger, 12-berth facility was envisioned, resulting in approximately 34,000 square feet of fill. Since the original submittal, the permittee has further evaluated the needs of the project. Refinement of the project has reduced the amount of floating fill by 20,904 square feet and the number of pilings from 54 to 40. The fill that will be placed with the project is the minimum necessary to service the current Vallejo fleet safely and efficiently.
 4. **Effects on Bay Resources** As discussed more fully in the "Natural Resources Policies" section below, best management practices will be employed during project construction to minimize the impacts of construction and the proposed new fill on Bay resources. On April 10, 2012, the NOAA's National Marine Fisheries Service (NMFS) determined that, with mitigation measures incorporated into the project, the project was "not likely to jeopardize the continued existence" of the threatened Central Coast steelhead, the threatened Central Valley steelhead, the threatened Central Valley spring-run Chinook salmon, the endangered Sacramento River winter-run Chinook salmon, the threatened

southern distinct population segment of North American green sturgeon, and would not adversely modify the designated critical habitat for green sturgeon, Central Coast steelhead and winter-run Chinook Salmon. However, NMFS stated that take of the green sturgeon was anticipated with the pile-driving activities associated with the project. Specific measures to reduce impacts to the green sturgeon and other special-status aquatic species are described in more detail below.

On April 2, 2014, the USFWS issued its Biological Opinion on the potential for the project to effect the federally-threatened delta smelt. The USFWS determined that by implementing minimization measures during construction and mitigation, the level of take anticipated with the project was “not likely to result in jeopardy to the delta smelt” (see discussion below on Natural Resources).

On August 20, 2013, the Regional Water Quality Control Board (RWQCB) issued a water quality certification for the project.

5. **Valid Title.** The water area associated with the project site is currently owned by the Department of the Navy. The Navy has stated that it will issue a lease to the permittee once BCDC has granted approval of the project. Special Condition II-C has been included in this authorization to ensure that the executed Navy lease for the portion of the project site located in the Bay is submitted to the Commission prior to the commencement of construction activities.

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

- B. **Safety of Fills / Climate Change / Sea Level Rise.** Policy 4 of the Bay Plan policies on Safety of Fills states, in part, that “adequate measures should be provided to prevent damage from sea level rise and storm activity that may occur on fill or near the shoreline over the expected life of a project,” that “new projects on fill or near the shoreline should either be set back from the edge of the shore so that the project will not be subject to dynamic wave energy, be built so the bottom floor level of structures will be above a 100-year flood elevation that takes future sea level rise into account for the expected life of the project, be specifically designed to tolerate periodic flooding, or employ other effective means of addressing the impacts of future sea level rise and storm activity.”

Policy 3 of the Bay Plan policies on Climate Change requires all projects, “other than repairs of existing facilities, small projects that do not increase risks to public safety, interim projects and infill projects within existing urbanized areas,” to be “designed to be resilient to a mid-century sea level rise projection”.

The permittee provided a letter, dated September 5, 2013, prepared by Coast and Harbor Engineering, that analyzed design water levels and projected sea level rise and its impacts on the proposed floats and public access.

The project structure has a design life of approximately 50 years or until 2064.

The following table includes the tidal elevations for the site based on the U.S. Army Corps of Engineers (Corps) 1984 study that accounted for the contributions of astronomical tides and meteorological effects on measured water levels at the Presidio of San Francisco tidal station. Based on an extreme event analysis and allowing for appropriate tidal elevation differences from the Golden Gate to the project site, the Corps’ report estimated the 100-year flood elevation at the site to be 9.0 feet MLLW.

Table 1. Tidal Elevations (feet)

Tidal Height	Elevation Based on MLLW datum (feet)
Mean High Water (MHW)	5.30
Mean Higher High Water (MHHW)	5.86
100-Year Flood Elevation	9.0

In addition to the 100-year flood elevation, the contribution of Napa River flows to the projected water levels at the site were analyzed. Based on a literature review, (Neary, et. al. 2001), Napa River discharge was estimated at 29,325 cubic feet per second (cfs) for a 55-year event. The contribution of river flows at the project site was determined using numerical modeling over a two-week period that included the highest tides during the present tidal epoch, both with and without the 55-year Napa River flows. The maximum contribution of river flow at the site was calculated to be 0.37 feet.

According to Coast and Harbor Engineering, sea level rise is expected to reach 16 inches by 2050 and 64 inches by 2100. This is consistent with the estimates contained in the 2010 "State of California Sea Level Rise Interim Guidance Document".

Table 2. Contributions to Tidal Elevations (feet)

Contributing Factors to Projected Tidal Elevations	Elevation (feet)
100-year Flood (MLLW)	9.0
Napa River Discharge	0.37
CA Interim SLR Guidance	1.4
TOTAL	10.77

The quay wall elevation at the site is +12.0 feet (MLLW). The recommended extreme water level design criterion for the project site which includes a 100 year flood, 55-year storm flood flows in the Napa River, and sea level rise of 16 inches is estimated at approximately 10.77 feet (MLLW). This water level is more than one foot below the top of the quay wall elevation.

The berths are floating and will therefore rise and fall with the tide. The pilings placed with the project will be cut at an elevation based on the above sea level rise projections and will have cut off elevations that are 6 to 9 feet higher than the quay wall. Thus, factoring in sea level rise projections and other contributing factors for future tidal elevations at the site, the elevation of the existing wharf and the cut-off elevations of the existing and proposed pilings, it is expected that the project will not be impacted by sea level rise for the life of the project.

The Commission finds that the project is consistent with its law and policies regarding safety of fills, climate change and sea level rise.

- C. **Public Access.** Section 66602 of the McAteer-Petris Act states, "...maximum feasible public access, consistent with a proposed project, should be provided." Policy 1 and Policy 7 of the Bay Plan policies on Public Access state, "a proposed fill project should increase public access to the Bay to the maximum extent feasible" and that the public access improvements "should be designed and built to encourage diverse Bay-related activities and movement to and along the shoreline, should permit barrier free access for persons with disabilities to the

maximum feasible extent, should include an ongoing maintenance program, and should be identified with appropriate signs.” Policy 9 states, “access to and along the waterfront should be provided by walkways, trails, or other appropriate means to connect the nearest public thoroughfare where convenient parking or public transportation may be available.” In addition, Policy 5 states, “[p]ublic access should be sited, designed, managed and maintained to avoid significant adverse impacts from sea level rise and shoreline flooding.”

WETA, the permittee for this project, has leased the water area that will be occupied by the ferry floats, a building (Building 165) and an apron area located in front of the building. The area along the wharf and the parking lot adjacent to the building are owned by Lennar Mare Island and the City of Vallejo. In BCDC Permit No. M2006.022.003 Lennar Mare Island and the City of Vallejo were authorized to install underground conduits and fuel lines between the WETA building and the ferry berths. In the latest amendment to that permit, Lennar and Vallejo sought authorization to construct the planned public access improvements along the wharf and in the parking lot. This public access was proposed as part of future development along this section of the waterfront, such as the WETA project. As such, this public access was required as part of this project. The required public access along this section of the wharf consists of extending public access improvements for approximately 465 feet. This extension will connect existing access required under BCDC Permit No. 2009.003.00 and will provide a connection to future development along Mare Island. The Mare Island Reuse Plan, approved in 1996, envisions the construction of a public promenade extending from the Vallejo causeway south to the Mare Island Historic Core Plaza. Construction of the public access will complete an important segment of this promenade. Promenade improvements will consist of applying new asphalt to the wharf surface, installing a wharf railing consistent with the existing railing along the waterside edge, lights, trash receptacles and seating. In addition, an approximately 1,961-square-foot ferry waiting area will be provided adjacent to Building 165 and the maintenance facility parking lot. This area will contain seating, two bicycle racks and trash receptacles. An additional 862-square-foot public access area will also be provided at the eastern end of the site. This area may contain an artifact from the Naval shipyard as well as lights, benches and trash receptacles. In total, the project will provide 23,240 square feet of public access promenade improvements and 2,823 square feet of public access within the two other public access areas.

As noted above, the permittee, WETA, does not possess property rights to the area on which the public access improvements will be constructed. In order to provide the public access improvements required with the project, WETA has entered into an agreement with Lennar Mare Island (LMI), the property owner. On March 5, 2014, LMI and the City of Vallejo received approval to construct the public access improvements under a non-material amendment to BCDC Permit No. M2006.022. To ensure that the project authorized under the permit provides maximum feasible public access to the Bay, Special Condition II-B-2 has been included herein. This special condition requires the permittee to either install the required public access if LMI does not complete installation of the improvements, or develop, receive Commission approval, and install and maintain comparable public access improvements as to those required under the permit.

The Commission finds that the public access improvements provided with the project, as conditioned above, are consistent with its policies on Public Access.

- D. **Natural Resources Policies.** Policy 1 of the Bay Plan policies on Water Surface Area and Volume state, in part: “the surface area of the Bay and the total volume of water should be kept as large as possible in order to maximize active oxygen interchange, vigorous circulation, and effective tidal action.” Policy 2 of the Bay Plan policies on Fish, Other Aquatic Organisms, and Wildlife states, in part: “specific habitats that are needed to conserve, increase, or prevent the extinction of any native species, species threatened or endangered...should be protected....” Policy 4 states that the Commission should “...consult with the California Department of Fish and Wildlife [CDFW] and the U.S. Fish and Wildlife Service or [NMFS] whenever a proposed project may adversely affect an endangered or

threatened...species" and "...give appropriate consideration to the recommendations of the [state and federal resource agencies] in order to avoid possible adverse effects of a proposed project on fish, other aquatic organisms and wildlife habitat." Policy 1 of the Bay Plan policies on Water Quality states, "bay water pollution should be prevented to the greatest extent feasible..." and policy 2 states that, "...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." Policy 2 of the Bay Plan Policies on Tidal Marsh and Tidal Flats states, "any proposed filling...should be thoroughly evaluated to determine the effect of the project on tidal marshes and tidal flats, and designed to minimize, and if feasible, avoid any harmful effects...."

On April 10, 2012, the U.S. Army Corps of Engineers requested consultation with NOAA's National Marine Fisheries Service (NMFS) pursuant to section 7 of the Endangered Species Act of 1973 (as amended), and the Essential Fish Habitat (EFH) provisions of the Magnuson Stevens Fishery Conservation and Management Act for the project. Special-status species potentially affected by the project consist of the threatened Central Coast (CCC) steelhead, the threatened Central Valley steelhead, the threatened Central Valley spring-run Chinook salmon, the endangered Sacramento River winter-run Chinook salmon, and the threatened southern distinct population segment (DPS) of the North American green sturgeon. In addition, the project site is designated as critical habitat for the green sturgeon, Central Coast steelhead and winter-run Chinook salmon.

The Biological Opinion (BO) issued by NMFS for the project states that the underwater noise during pile-driving activities and the degradation of water quality due to construction will temporarily affect the threatened green sturgeon. The BO further states that operation of the facility will affect listed anadromous salmonids and green sturgeon due to the noise and turbidity associated with the operation of ferry vessels. In addition, the BO states that critical habitat for CCC steelhead, Sacramento River winter-run Chinook salmon and the southern DPS of the green sturgeon will potentially be impacted due to shading from the floats and turbidity of ferry vessel activities.

The NMFS BO concluded that the impacts of shading from the floats will be insignificant because the new berths would be located 50 feet from the quay wall, where depths range from -15 to -40 feet MLLW. At these depths, it is unlikely that aquatic vegetation that is particularly valuable to fish, such as eelgrass, would occur. Other species of submerged aquatic vegetation are also limited by high baseline turbidity levels and frequent boat traffic that is unrelated to ferry operations. Additionally, the NMFS BO states that the project footprint (approximately 13,000 square feet (0.30 acre)) is small in proportion to the 57,600 acres of estuarine habitat that is available in the adjacent San Pablo Bay.

On November 6, 2013, the U.S. Army Corps of Engineers requested consultation with the U.S. Fish and Wildlife Service regarding potential effects on the project on federally-threatened delta smelt. On April 2, 2014, the USFWS issued its Biological Opinion which states that the project has the potential to effect the delta smelt by generating sound and turbidity during construction activities. In addition, the BO states that the project will increase shading of potential delta smelt habitat through the installation of floats and gangways. The Biological Opinion concludes that take of the delta smelt as a result of the project will be "incidental" and that direct mortality or harm to the species will be low because construction activities will be conducted within the work window for the species and mitigation measures will be implemented during construction. Thus, the BO concludes that the anticipated level of take of the delta smelt as a result of the project is "not likely to result in jeopardy to the delta smelt."

Several special conditions have been required to ensure that the potential impacts of the project on special-status species will be minimized. Special Condition II-D-1 limits in-water pile-driving activities to August 1 through October 30. Special Condition II-D-3 requires the use of a bubble curtain during pile-hammering activities and Special Condition II-D-4 requires the preparation of a hydroacoustic monitoring program in accord with the requirements of the NMFS.

As described above, the project will result in the placement of 13,096 square feet of floating fill and 210 square feet of solid fill (from piling placement). In addition to the mitigation measures discussed above, the permittee will mitigate for fill placement by removing 114 creosote-treated piles, a 1,550-square-foot pile-supported pier located within the Mare Island Strait and 36 square feet of solid fill associated with the removal of miscellaneous debris and trash found in a nearby intertidal area. Most of the fill associated with the project will consist of floating fill. However, the mitigation will result in the removal of solid fill (in the form of piles, trash and debris) and pile-supported fill. The pile and debris removal will provide additional Bay surface area as well as an increase in Bay volume. In addition, there are water quality benefits to removing the creosote-treated pilings as creosote is known to have deleterious effects on Bay fish and wildlife. All of the fill removal activities are located near the project site.

In assessing whether the fill mitigation provided with the project adequately off-sets the impacts of its placement, the Commission and its staff looks to similar projects with comparable amounts and types of fill. Two similar projects are discussed below.

1. BCDC Permit No. 1994.013.08, Bay Ship and Yacht Company and Alameda Gateway, Ltd. The Bay Ship and Yacht project resulted in the mooring and operation of a 32,770-square-foot dry dock in the City of Alameda, Alameda County. The fill mitigation proposed with this project consisted of the contribution of \$75,000 to CalRecycle for the removal of an old abandoned dock, two vessels and marine debris within the Oakland Estuary. Approximately 6,100 square feet of solid, floating and pile-supported fill was removed as a result of fill mitigation efforts proposed with the Bay Ship and Yacht project.
2. BCDC Permit No. 2008.001.00, San Francisco Bay Area Water Transportation Authority (WETA) and San Mateo County Harbor District. As discussed above, this project involved the installation of improvements associated with a ferry terminal in the City of South San Francisco, San Mateo County. The project resulted in the placement of 13,980 square feet of a combination of solid, floating, pile-supported and cantilevered fill. Fill mitigation for the project consisted of the removal of a total 18,880 square feet of fill, much of which needed to be removed to accommodate build-out of the project.

While the most of the project will result in the placement of floating fill, the mitigation proposal will result in the removal of solid fill (in the form of piles and trash and debris) and pile-supported fill. The pile and debris removal will provide additional Bay area as well as an increase in the volume of the Bay. In addition, there are water quality benefits to removing the creosote treated pilings as creosote is known to have deleterious effects on Bay fish and wildlife. All of the fill removal activities are located in close proximity to the project site, in the Mare Island Strait.

Special Condition II-E of this authorization requires the permittee to submit evidence that the fill mitigation has been completed prior to commencing any construction associated with installing the ferry berths.

The Commission finds that the project, as mitigated, is consistent with the Bay Plan policies on fish, other aquatic organisms, and wildlife, and water quality. The Commission also finds that the fill mitigation will adequately offset impacts to Bay resources.

- E. **Review Boards.** The project was not reviewed by the Design Review Board or the Engineering Criteria Review Board. However, pursuant to BCDC Permit No. M2006.022.03, the public access component of this project may, at the staff's discretion, be brought before the Design Review Board prior to implementation of the public access improvements required herein.
- F. **Environmental Review.** The City of Vallejo, the California Environmental Quality Act (CEQA) Lead Agency for the project, prepared and distributed an Initial Study/Mitigated Negative Declaration for the project. On May 24, 2011, the City of Vallejo City Council adopted the Initial Study/Mitigated Negative Declaration for the project, which determined that the project would not have a significant effect on the environment due to the project design and implementation of mitigation measures.
- G. **Coastal Zone Management Act.** The Commission further finds, declares, and certifies that the activity or activities authorized herein are consistent with the Commission's Amended Management Program for San Francisco Bay, as approved by the Department of Commerce under the Federal Coastal Zone Management Act of 1972, as amended.
- H. **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 *San Francisco Bay Plan*, the McAteer-Petris Act, 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 executes the original of this permit and returns 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 transfers any interest in any property either on which the activity is authorized to occur or which is necessary to achieve full compliance of one or more conditions to this permit, the permittee/transferor and the transferee shall execute and submit to the Commission a permit assignment form acceptable to the Executive Director. An assignment shall not be effective until the assignees execute and the Executive Director receives an acknowledgment that the assignees have read and understand the permit and agree to be bound by the terms and conditions of the permit, and the assignees are accepted by the Executive Director as being reasonably capable of complying with the terms and conditions of the permit.
- D. **Permit Runs With the Land.** Unless otherwise provided in this permit, the terms and conditions of this permit shall bind all future owners and future possessors of any legal interest in the land and shall run with the land.
- E. **Other Government Approvals.** All required permissions from governmental bodies must be obtained before the commencement of work; these bodies include, but are not limited to, the U. S. Army Corps of Engineers, the State Lands Commission, the Regional Water Quality Control Board, and the city or county in which the work is to be performed, whenever any of these may be required. This permit does not relieve the 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.
- M. **Abandonment.** If, at any time, the Commission determines that the improvements in the Bay authorized herein have been abandoned for a period of two years or more, or have deteriorated to the point that public health, safety or welfare is adversely affected, the Commission may require that the improvements be removed by the permittee, its assignee or successors in interest, or by the owner of the improvements, within 60 days or such other reasonable time as the Commission may direct.

N. Best Management Practices

1. **Debris Removal.** All construction debris shall be removed to an authorized location outside the jurisdiction of the Commission. In the event that any such material is placed in any area within the Commission's jurisdiction, the permittee, its assigns, or successors in interest, or the owner of the improvements, shall remove such material, at its expense, within ten days after they have been notified by the Executive Director of such placement.
 2. **Construction Operations.** All construction operations shall be performed to prevent construction materials from falling, washing or blowing into the Bay. In the event that such material escapes or is placed in an area subject to tidal action of the Bay, the permittee shall immediately retrieve and remove such material at its expense.
- O. **In-Kind Repairs and Maintenance.** Any in-kind repair and maintenance work authorized herein shall not result in an enlargement of the authorized structural footprint and shall only involve construction materials approved for use in San Francisco Bay. Work shall occur during periods designated to avoid impacts to fish and wildlife. The permittee shall contact Commission staff to confirm current restricted periods for construction.