

San Francisco Bay Conservation and Development Commission

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State of California | Gavin Newsom – Governor | info@bcdc.ca.gov | www.bcdc.ca.gov

Agenda Item #11

November 27, 2019

Staff Recommendation

Mission Bay Ferry Landing and Water Taxi Landing Project

(For Commission consideration on December 5, 2019)

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| Permit Application Number: | 2017.008.00 |
| Applicant: | Port of San Francisco |
| Project Description: | Construct a new ferry landing and water taxi landing in Mission Bay, San Francisco. |
| Location: | In the Bay and within the 100-foot shoreline band, at 801 Terry A Francois Blvd and at the terminus of 16 th Street, in the City and County of San Francisco. |
| Application Filed Complete: | October 29, 2019 |
| Deadline for Commission Action: | January 27, 2020 |
| Staff Contact: | Sam Stewart (415/352-3612; sam.stewart@bcdc.ca.gov) |
| Staff Recommendation: | APPROVAL WITH CONDITIONS |

Recommendation Summary

The staff recommends approval of the application as conditioned in the recommended resolution below. The project would create a new ferry landing and water taxi landing facility in the southern waterfront of San Francisco, providing a regional ferry service and water taxi access to the Mission Bay neighborhood and surrounding areas. The Port of San Francisco considers the project to be a critical piece of regional transportation infrastructure, providing ferry services for one of the fastest growing neighborhoods in the city. The project would also provide additional transit opportunities to events at the newly opened Chase Center arena located across Terry A Francois Boulevard from the project site.



The proposed ferry landing and water taxi landing would each consist of a single-float, two-berth landing. Public access included with the project would create an approximately 5,800-square-foot plaza at the ferry landing and improve approximately 23,323-square-feet of the existing Agua Vista Park.

To allow safe navigation, the project would involve dredging an approximately 8.4-acre area (7.9-acres for the ferry landing and 0.5-acres for the water taxi). This would involve dredging an approximately 1.67-acre contaminated area, which would be capped with an approximately 2.25-acre cap including a sand layer and marine mattress for erosion protection.

Recommended Resolution and Findings

The staff recommends the Commission adopt the following resolution:

I. Authorization

- A. **Authorized Project.** Subject to the conditions stated below, the permittee, the Port of San Francisco (Port) is hereby granted permission to construct the following at 801 Terry A Francois Blvd and at the terminus of 16th Street, in the City and County of San Francisco.

1. In the Bay:

- a. **Ferry Landing.** Install, use, and maintain a ferry landing to accommodate berthing of up to two ferry boats, consisting of:
- (1) An approximately 44-square-foot portion of an approximately 572-square-foot access ramp;
 - (2) An approximately 2,376-square-foot pile-supported pier; with the pier supported by ten 24-inch diameter octagonal concrete pilings (approximately 33-square-feet and 272-cubic-yards);
 - (3) An approximately 850-square-foot cantilevered gangway; and
 - (4) An approximately 5,670-square-foot float stabilized by six 36-inch-diameter steel pilings and two 36-inch-diameter steel pilings (approximately 56-square-feet and 1,188-cubic-yards) with six-foot donut fenders to protect the float.
- b. **Ferry Landing Dredging.** Conduct new work clamshell dredging of up to 109,209-cubic-yards of sediment to a depth of -15 feet mean-lower-low water (MLLW), plus two feet over dredge depth allowance in an approximately 344,124-square-foot, 7.9-acre area. Place the sediment at the SF-Deep Ocean Disposal Site (SF-DODS), alternative approved upland sites, or beneficially re-use as surface or foundation fill to restore tidal marsh habitat at the Montezuma Wetlands Restoration Project (MWRP).

- (1) Within the new work dredging footprint, within a 2.25-acre area, clamshell dredge up to 9,300-cubic-yards of Polycyclic Aromatic Hydrocarbon contaminated sediment to a maximum depth of -20 feet MLLW, plus one foot over dredge depth allowance from an approximately 72,745-square-foot (1.67-acre) area to accommodate placement of an approximately 2-foot thick cap of clean sand. Dispose of the contaminated sediment at an upland landfill site;
 - (2) Within the cap dredge footprint and perimeter of adjacent area, install, use, and maintain an approximately 2.25-acre marine mattress cap over the contaminated sediment area, consisting of: an approximately one-foot thick, 1.67-acre marine mattress surrounded by an approximately 0.58-acre, eight-inch thick perimeter of articulating block mats; and
 - (3) Following completion of the initial (new) work dredging, conduct one episode of clamshell maintenance dredging of up to 69,700-cubic-yards of sediment per episode to: a depth of -15 feet MLLW plus one-foot over dredge depth allowance within 10 years of permit issuance; and, in the 2.25-acre capped area, a depth of -14 feet MLLW plus one-foot over dredge depth allowance within 10 years of permit issuance. Individual episodes of maintenance dredging and dredge material disposal shall be coordinated through DMMO.
- c. **Water Taxi Landing.** Install, use, and maintain a water taxi landing, consisting of:
- (1) An approximately 53-square-foot portion of a 210-square-foot pile-supported platform; and
 - (2) An approximately 496-square-foot cantilevered steel gangway supported by two 16-inch-diameter steel pilings and approximately 1,040-square-foot float, supported by four 20-inch-diameter square concrete pilings, totaling approximately 15-square-feet and 248-cubic-yards of fill.
- d. **Water Taxi Landing Dredging.** Conduct new work clamshell dredging of up to 3,118-cubic-yards of sediment to a depth of -8-feet MLLW plus one foot over dredge depth allowance in an approximately 21,780-square-foot, 0.5-acre area, and dispose of the sediment at SF-DODS or alternative upland site when beneficial reuse of dredged sediment is not possible.
- (1) Following completion of the initial (new) work clamshell dredging, conduct one episode of maintenance dredging of up to 2,315-cubic-yards of sediment per episode, to a depth of -8 feet MLLW, plus one-foot over-dredge depth allowance, within 10 years of permit issuance. Individual episodes of maintenance dredging and dredge material disposal shall be coordinated through DMMO.

- e. **Agua Vista Park Fishing Pier.** Replace or install, use and maintain worn and damaged sections of the fishing pier above the water line, including signage.
 - f. **Bay Fill Removal.** Extraction of materials, as compensatory mitigation for bay fill, including:
 - (1) Remove approximately 1,899-square-feet, 1,512-cubic-feet of marine debris from the ferry landing's new dredge footprint prior to dredging, including, but not limited to: five full piles with steel caps, remnant timber piles and abandoned pipelines. Dispose of marine debris at appropriate upland location;
 - (2) Remove approximately 65,100-square-feet, 65,100-cubic-feet of collapsed and submerged sections of Pier 64, including, but not limited to: deck and support piles. Dispose of marine debris at an appropriate upland location;
 - (3) Remove approximately 30,700-square-feet, 30,700-cubic-feet of collapsed and submerged debris from Pier 66, including but not limited to deck sections and support piles. Dispose of marine debris at an appropriate upland location;
 - (4) Remove an approximately 330-square-foot, 1,320-cubic-feet submerged sailboat at Pier 64-66. Dispose of marine debris at an appropriate upland location;
 - (5) Remove three full timber piles measuring approximately three-square-feet and 80-cubic-feet. Dispose of marine debris at an appropriate upland location;
 - (6) Remove an approximately 20,512-square-foot overwater deck from Pier 64 and support piles. Dispose of marine debris at an appropriate upland location; and
 - (7) Remove an approximately 90-square-foot, 360-cubic-foot submerged car south of the water taxi landing dredge footprint. Dispose of marine debris at an appropriate upland location.
2. **Within the 100-foot shoreline band:**
- a. Install, use, and maintain an approximately 528-square-foot portion of a 572-square-foot access ramp to the ferry landing, supported by four 24-inch diameter octagonal concrete pilings;
 - b. Replace and repair existing riprap;

- c. Install, use, and maintain an approximately 5,800-square-foot public plaza including approximately 187-feet of seatwall, bench seating, lighting, utilities, signage, planting areas and waste receptacles;
 - d. Repair, use, and maintain an approximately 475-foot-long section of Bay Trail adjacent to Agua Vista Park;
 - e. Install, use, and maintain an approximately 158-square-foot portion of a 210-square-foot pile-supported platform for the water taxi landing;
 - f. Install, use, and maintain a series of public access improvements to Agua Vista Park including approximately 5,652-square-feet of accessible walkways, 7,846-square-feet of new landscaped areas and approximately 1,772-square-feet of shoreline protection, benches, waste receptacles, picnic tables, bike racks, signage, lights and utilities, a seatwall, and repairs to the existing fishing pier;
 - g. Use an approximately 14,000-square-foot area for temporary construction staging, including an approximately 14,000-square-foot area of Agua Vista Park; and
 - h. Restore, use, and maintain public access and landscape improvements at Agua Vista Park, as conditioned in Special Condition II.A. and II.B.3.
- B. **Based on Application Dated.** This authority is generally pursuant to and limited by your application dated November 13, 2017 including its accompanying exhibits and all conditions of this permit.
- C. **Deadlines for Commencing and Completing Authorized Work.** Work authorized herein must commence prior to August 1, 2023, or this permit will lapse and become null and void. Such work must also be diligently pursued to completion and must be completed within five years of commencement, or by August 1, 2028, whichever is earlier, unless an extension of time is granted by amendment of the permit. Maintenance authorized herein may be conducted in perpetuity so long as the development authorized herein remains in place. Maintenance dredging authorized by this permit shall be undertaken within ten years of permit issuance.
- D. **Project Summary.** The project will install a single-float two-berth ferry landing and separate single-float two-berth Water Taxi Landing in Mission Bay, San Francisco. The project involves dredging an approximately 8.4-acre area (7.9-acres for the ferry landing and 0.5-acres for the water taxi). Within the ferry landing dredge footprint, an approximately 2.25-acre marine mattress will be placed as part of a three-layer contaminant cap in an area which has elevated levels of polycyclic aromatic hydrocarbons (PAHs) (consisting of an approximately 1.67-acre marine mattress, with a

0.58-acre perimeter of articulating block mats to minimize potential scour). Public access included with the project would create an approximately 5,800-square-foot plaza at the ferry landing and improve approximately 23,323-square-feet of the existing Agua Vista Park.

- E. **Public Access.** The project results in the construction of approximately 5,800-square-foot of new public access (a new ferry plaza) and 23,323-square-feet of improved public access (improvements to the adjacent Bay Trail and Agua Vista Park and Pier), all within the Commission’s 100-foot shoreline band jurisdiction.
- F. **Total Fill.** The project will result in a total of 108,643-square-feet of bay fill, consisting of: 9,029-square-feet for the ferry landing, 1,604-square-feet for the water taxi, and 98,010-square-feet associated with the remediation cap. The project would result in approximately 0.24-acres (10,571-square-feet) of permanent overwater shading fill from floating, pile supported, and cantilevered structures. The mattress caps an area within the dredge footprint that contains high levels of PAH’s; the cap will be approximately three-feet thick, composed of an approximately 1.6-foot deep chemical isolation area of sand, an approximately 1-foot-deep erosion protection layer of engineer-approved grout-filled marine mattress, followed by an approximately 0.5-foot-deep layer of uncontaminated sand. The one-foot thick, 1.67-acre marine mattress would have an additional 0.58-acre perimeter of articulating block mats intended to minimize potential edge scour. The proposed marine mattress, including the articulating mats, would cover a total area of approximately 2.25-acres, or 98,114 square feet. To offset the bay fill, a total of 122,879-square-feet of bay fill will be removed at, and near to, the project site; this includes some fill credit for previous fill removal by the Port.

Table 1 Table illustrating total fill and total proposed compensation in square feet for Mission Bay Ferry landing and Water Taxi landing.

| | Total fill (square feet) | Total proposed compensation (square feet) | Ratio |
|-----------------------|-------------------------------------|--|---------------|
| Ferry landing | 9,029 | 25,141 | 1:2.8 |
| Water taxi landing | 1,604 | 1,593 | 1:0.99 |
| Remediation Cap | 98,010 | 96,145 | 1:0.98 |
| Total | 108,643 | 122,879 | 1:1.13 |

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. Plan Review

1. **Construction Documents.** The development authorized and required herein shall be built generally in conformance with the following documents:
 - a. The plans entitled “Port of San Francisco Mission Bay Ferry Landing and Water Taxi Landing, 16th St and Terry A. Francois Boulevard, San Francisco, CA 94158, Issued for Bid” prepared by COWI and OLMM, dated July 15, 2019;
 - b. The plans entitled “Agua Vista Park improvements project Port of San Francisco”, 95% submittal, dated October 11, 2019, prepared by Public Works City and County of San Francisco Agua Vista Park Trail improvements project, contract # 2819 801 Terry Francois Boulevard, San Francisco, CA 94158 1014B Edgar Lopez - City Architect; and
 - c. The plans entitled “Mission Bay Ferry landing and Water Taxi landing Overall Dredging Plan, Issued for Bid”, prepared by COWI and OLMM, dated July 15, 2019.

The permittee is responsible for assuring that all construction documents accurately and fully reflect the terms and conditions of this permit and any legal instruments submitted pursuant to this authorization. No substantial changes shall be made to these documents without prior review and written approval by or on behalf of the Commission through plan review or a permit amendment.

2. **Construction Documents Review and Approval.** No work whatsoever shall commence pursuant to this permit until final construction documents regarding authorized activities are approved in writing by or on behalf of the Commission. Documents submitted shall be accompanied by a written request for plan approval, identifying the type of plans submitted, the portion of the project involved, and indicating whether the plans are final or preliminary. All documents are reviewed within 60 calendar days of receipt. To save time, preliminary documents may be submitted prior to the submittal of final documents. If final construction document review is not completed by or on behalf of the Commission within the 60-day period, the permittees may carry out the project authorized herein in a manner consistent with the plans referred to in Special Condition II.A.1 of this permit.

No maintenance dredging authorized under condition I.A.1.b.iii, I.A.1.d.i shall commence until plan review of in-built project plans has been reviewed and approved, ensuring that the more precautionary dredge depth of -14-feet MLLW plus 1-foot over-dredge has been incorporated into plans over the 2.25-acre area of marine mattress.

- a. **Document Details.** All construction documents shall be labeled with: the Mean High Water line or the upland extent of marsh vegetation no higher than +5 feet above Mean Sea Level and the tidal datum reference (NAVD88 or, if appropriate, Mean Lower Low Water (MLLW)); the corresponding 100-foot shoreline band; property lines; the location, types, and dimensions of materials, structures, and project phases authorized herein; grading limits; and the boundaries of public access areas and view corridor(s) required herein. Documents for shoreline protection projects must be dated and include the preparer's certification of project safety and contact information. No substantial changes shall be made to these documents without prior review and written approval by or on behalf of the Commission through plan review or a permit amendment.
- b. **Conformity with Final Approved Documents.** All authorized development and uses shall conform to the final documents. Prior to use of the facilities authorized herein, the appropriate professional(s) of record shall certify in writing that the work covered by the authorization has been implemented in accordance with the approved criteria and in substantial conformance with the approved documents. No substantial changes shall be made to these documents without prior review and written approval by or on behalf of the Commission through plan review or a permit amendment.
- c. **Discrepancies between Approved Plans and Special Conditions.** In case of a discrepancy between final approved documents and the special conditions of this permit or legal instruments, the special condition shall prevail.
- d. **Reconsideration of Plan Review.** The permittees may request reconsideration of a plan review action taken pursuant to this special condition within 30 days of a plan review action by submitting a written request for reconsideration to the Commission's Executive Director. Following the Executive Director's receipt of such a request, the Executive Director shall respond to the permittees with a determination on whether the plan review action in question shall remain unchanged or an additional review and/or action shall be performed by or on behalf of the Commission, including, but not limited to, an amendment to the permit and/or consultation with the Commission Design Review Board.

B. Public Access

1. **Area.** The approximately 29,123-square-foot area of shoreline as generally shown on Exhibit A as “Public Access” shall be made available exclusively to the public for unrestricted public access for walking, bicycling, sitting, viewing, picnicking, and related purposes. The public access area includes a 5,800-square-foot area of new public access and a 23,323-square-foot area of improved existing public access required in BCDC Permit Nos. 1971.021.10, M1973.013.00, and M1997.033.02. If the permittee 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. The overall proposal for public access for this project includes:
 - New public access in the shoreline band: 5,800-square-feet.
 - Already dedicated public access within the Commission’s jurisdiction to be improved: 23,323-square-feet (BCDC Permit Nos. 1971.021.10, M1973.013.00, and M1997.033.02).
2. **Improvements Within the Total Public Access Area.** Prior to the use of the ferry landing authorized herein and pursuant to Special Condition II.A of this authorization, the permittee shall install and make available:
 - 1) An approximately 5,800-square-foot paved ferry landing plaza including planting areas;
 - 2) An approximately 5,804-square-foot, 475-foot-long section of the existing Bay Trail along Agua Vista Park from 7 feet to 15 feet wide;
 - 3) Approximately 187 feet of seatwalls;
 - 4) A minimum of six benches; and
 - 5) Appropriate lighting, Bay Trail and public access signs, and waste receptacles.
3. **Agua Vista Park Improvements.** Within three years of the issuance of this permit, the permittee shall improve and make available to the public an approximately 17,519-square-foot area of Agua Vista Park and the associated fishing pier. Final park construction documents shall be submitted prior to construction, pursuant to the plan review required in Special Condition II-A. Agua Vista Park includes the staging area tied to the Phase One ferry landing construction. Improvements to Agua Vista Park shall, at a minimum, consist of approximately 5,652-square-feet of accessible walkways, and 7,846-square-feet of irrigated planting areas, including:
 - 1) Three connecting pathways between sidewalk and waterfront trail;
 - 2) A minimum of three benches;
 - 3) A minimum of three picnic tables with ADA space;

- 4) An appropriate number of waste receptacles;
- 5) An appropriate number of bike racks;
- 6) An appropriate number of signs for the Bay Trail, Agua Vista Pier, and other public access signs;
- 7) An appropriate amount of lighting;
- 8) A minimum of three approximately 18-foot-long waterfront benches made of reused Bay Bridge steel;
- 10) Repairs to Agua Vista Park fishing pier, including new signage, replacement of worn and damaged sections of the pier, and improvements to ensure barrier free access.

Prior to construction, the permittees shall submit one or more construction phasing schedule(s) to install the improvements, as generally shown on the attached Exhibit A.

4. **Maintenance.** The areas and improvements within the total 29,123-square-foot area, as generally shown in Exhibit A, shall be permanently maintained by and at the expense of the permittee or its assignees. Such maintenance shall include, but is not limited to, repairs to all path surfaces; replacement of any trees or other plant materials that die or become unkempt; repairs or replacement as needed of any public access amenities such as signs, benches, drinking fountains, waste containers and lights; periodic cleanup of litter and other materials deposited within the access areas; removal of any encroachments into the access areas; and assurance that the public access signs remain in place and visible. Within 30 days after notification by staff, the permittees shall correct any maintenance deficiency noted in a staff inspection of the site.
5. **Assignment.** The permittee shall transfer maintenance responsibility to a public agency or another party acceptable to the Commission at such time as the property transfers to a new party in interest but only provided that the transferee agrees in writing, acceptable to counsel for the Commission, to be bound by all terms and conditions of this permit.
6. **Reasonable Rules and Restrictions.** The permittee may impose reasonable rules and restrictions for the use of the public access areas to correct particular problems that may arise. Such limitations, rules, and restrictions shall have first been approved by or on behalf of the Commission upon a finding that the proposed rules would not significantly affect the public nature of the area, would not unduly interfere with reasonable public use of the public access areas, and would tend to correct a specific problem that the permittees have both identified and substantiated. Rules may include restricting hours of use and delineating appropriate behavior.

7. **Replacement and Restoration of Public Access Areas.** If any existing public access amenities or improvements (e.g., pathways, benches, landscaping, etc.) that are required by another existing Commission permit are adversely impacted by the work authorized in this permit in a way not authorized herein, the permittee must relocate, restore, or replace them to the same condition, quality, and quantity as required by the underlying permit and/or public access or open space instrument.
8. **Construction Staging.** Within six months following completion of the use of public access areas required by existing BCDC permits for temporary construction staging, the permittee shall restore all public access areas required by BCDC Permits to previous condition or better, unless the restoration would interfere with the improvements to Agua Vista Park required in Special Condition II.B.3.

C. Flood Reports

1. If any portion of the project, including the required public access area, is subject to coastal flooding that results in its closure in whole or in part, the permittee shall submit to the Commission a written report within 30 days after the flooding with documentation of: the date and duration of the closure; the location of the affected site; the recorded water levels during the closure period; the source of flooding (e.g., coastal flooding or stormwater backup or overland flow); the resulting damage or cleanup; and illustrative photographs with site details. Coastal flooding is defined as Bay overtopping of the shoreline during tides, storms, or both.

D. Natural Resources. The permittees shall minimize impacts to Bay resources and water quality at the site by implementing the following measures. Minor modifications to the below requirements may be approved by the Executive Director upon a finding that they are no less protective of Bay resources or water quality.

1. **California Department of Fish and Wildlife Incidental Take Permit.** The Applicant shall adhere to the Conditions of Approval in the California Department of Fish and Wildlife Incidental Take Permit No. 2081-2018-062-07 for the following species: Sacramento River Winter-Run Chinook Salmon (*Oncorhynchus tshawytscha*); Central Valley Spring-Run Chinook Salmon (*Oncorhynchus tshawytscha*); and Longfin Smelt (*Spirinchus thaleichthys*).
2. **National Marine Fisheries Service (NMFS) Consultation.** The Applicant shall adhere to the conservation measures, including best management practices, described in the Endangered Species Act Section 7 (a)(2) Concurrence Letter and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Response for the Mission Bay Ferry Landing and Water Taxi Landing, (Corps File No. 2017-00264S), dated August 9, 2019 (Reference No. WCRO-2019-00444) by the National Marine Fisheries Service (NMFS) on potential project impacts on Central California

Coast steelhead distinct population segment (DPS) and North American green sturgeon southern DPS, and essential fish habitat (EFH) for various life stages of fish species managed under the Pacific Groundfish Fishery Management Plan (FMP), the Coastal Pelagic Species (CPS) FMP, and the Pacific Coast Salmon FMP.

3. **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 October 28, 2019.
 4. **Best Management Practices.** Piles shall be pulled with a cable choker or removed with a vibratory hammer if necessary and every effort shall be made to remove the entire pile length below mudline. Marine debris removed during demolition shall be placed on a flat barge, transported to an appropriate facility for sorting, and recycled or disposed of at a permitted disposal facility. Permittee shall install piles with a vibratory pile driver to the maximum extent feasible. All in-water work shall be limited to between June 1 and November 30 of any year.
- E. **Bay Fill Mitigation.** Fill removal, as authorized in Authorization Section I.A.1.f shall occur prior to completion of ferry landing and water taxi landing authorized in this permit. The permittee shall submit notification to the Commission within 60 days upon completion of the mitigation activities required herein
- F. **Dredging and Dredge Disposal**
1. This permit authorizes new work dredging only within areas as shown on Exhibit B to an authorized project depth of the following:
 - a. The new work dredging for the Mission Bay Ferry Landing of approximately 109,209-cubic-yards of sediment to a depth of -15 feet mean-lower-low water (MLLW), plus two foot over dredge depth allowance in an approximately 344,124-square-foot, 7.9-acre area, or less, shall be completed within ten years of the date of issuance of this permit. No further new dredging is authorized.
 - b. The new work dredging for the Mission Bay Ferry Landing Polycyclic Aromatic Hydrocarbon contaminated sediment area of approximately 9,300-cubic-yards of contaminated sediment, to a maximum depth of -20 feet MLLW, plus 1-foot allowable overdredge depth allowance from an approximately 72,745 square foot (1.67 acre) area to accommodate placement of a clean sand cap, shall be completed within ten years of the date of issuance of this permit. No further new dredging is authorized.

- c. The new dredging for the Mission Bay Water Taxi Landing of up to approximately 3,118-cubic-yards of sediment to a depth of 8-feet MLLW plus a 1-foot allowable overdredge depth allowance in an approximately 21,780-square-foot, 0.5-acre area, or less, shall be completed within ten years of the date of issuance of this permit. No further new dredging is authorized.
2. This permit authorizes maintenance dredging only within areas as shown on Exhibit B to an authorized project depth of the following:
 - a. The maintenance dredging for the Mission Bay Ferry Landing dredge footprint of approximately -15 feet MLLW plus a 1-foot overdredge depth allowance, shall be completed within ten years of the date of issuance of this permit. No further maintenance dredging is authorized without an amendment to the permit.
 - b. The maintenance dredging for the Mission Bay Ferry Landing 2.25-acre capped area shall be limited to -14 feet MLLW plus a 1-foot allowable overdredge allowance and shall be completed within ten years of the date of issuance of this permit. No further maintenance dredging is authorized without an amendment to the permit. Plan review shall be required for this component.
 - c. The maintenance dredging for the Mission Bay Water Taxi Landing dredge footprint of approximately 2,315-cubic-yards of sediment per episode, to a depth of -8 feet MLLW, plus one foot allowable overdredge allowance, shall be completed within ten years of the date of issuance of this permit. No further maintenance dredging is authorized without an amendment to the permit.

The individual dredging episodes are bound by all the language contained in the episode approval letter, any additional conditions contained therein, and the conditions of this permit. No dredging in other areas is authorized.

G. Dredging and Disposal Activity Procedures

1. **Pre-Dredging and Disposal Report and Notice.** At least 45 days before the commencement of any dredging and disposal episode authorized herein, the permittee shall submit to the Commission's Executive Director:
 - a. A bathymetric map showing the location of all areas authorized to be dredged, the authorized depth including over-dredge depth based on MLLW, the volume of material proposed to be dredged, and the approximate date of project commencement. At least two (2) weeks prior to any dredging episode, the permittee shall notify the Commission staff of the commencement date by telephone or in writing. If the date of commencement changes, the permittee shall provide an updated schedule as soon as it is available.

2. Post-Dredging Requirements

- a. Within 60 days of completion of each dredging episode authorized by this permit, the permittee shall submit to the Commission a bathymetric map showing the actual area(s) and depths dredged including over-dredge depth based on MLLW, any dredging that occurred outside the area or below the depths authorized herein, and a written statement indicating the total volume of material dredged for each area and each disposal with disposal location information.
- b. If a dredging episode stops for longer than six consecutive months, the permittee must submit, before the dredging episode has resumed, notification to the Commission that dredging will begin again. If a dredging episode is suspended for more than six months, the Commission may require the permittee to complete: (1) new sediment characterization; (2) a re-survey of the dredge area; and/or (3) a revised alternative disposal option analysis.
- c. If the dredging episode continues longer than one year, whether dredging is continual throughout the year or is fragmented within the episode, the permittee must provide the Commission with the following dredging report: (1) the actual areas and the depth dredged based on MLLW, and any dredging that occurred outside the area dredged; (2) the actual volume of the material dredged; and (3) the volume and location of the material disposed. The dredging report must be submitted no later than one year after the commencement of the episode, and must be submitted every six months thereafter throughout the life of the permit or until the episode is complete. The Commission may require additional sediment characterization, bathymetric surveys, and/or alternative disposal analyses at the commencement of the next episode. Within 30 days of the completion of the episode, the permittee must submit a dredging report as described in Special Condition II.G.2.
- d. **Seasonal Limitations.** Except as provided below, all dredging and disposal activities shall be confined to the work window, between June 1 and November 30 of any year, to minimize disturbance to the following endangered and special status species:

Species of Concern Work Window Period Consulting Agency:

- (i) Sacramento River Winter-Run Chinook Salmon (*Oncorhynchus tshawytscha*);
Central Valley Spring-Run Chinook Salmon (*Oncorhynchus tshawytscha*);
Longfin Smelt (*Spirinchus thaleichthys*), June 1 and November 30 of any year according to the CDFW Incidental Take Permit No. 2081-2018-062-07, signed on January 17, 2019 and will expire on November 30, 2020.



- (ii) Central California Coast steelhead (*Oncorhynchus mykiss*) Distinct Population Segments or Evolutionarily Significant Units migration periods for of CCC steelhead would be avoided due to the work window of June 1 to November 30 of any year, Endangered Species Act Section 7(a)(2) Concurrence Letter and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Response for the Mission Bay Ferry Landing and Water Taxi Landing (Corps File No. 2017-00264S; NMFS No: WCRO-2019-00444), dated August 9, 2019.

This work window between June 1 and November 30 is established by Tables F-1 and F-2 of Appendix F, "In-Bay Disposal and Dredging", and Figures 3.2 and 3.3 of the Long-Term Management Strategy (LTMS) Management Plan (2001) as amended by U.S. Fish and Wildlife Service (FWS) on May 28, 2004 and by NOAA Fisheries on July 9, 2015. No work inconsistent with the time and location limits contained in these figures may be conducted without the approval of the Executive Director, provided that such approval may only be issued after (1) consultation with California Department of Fish and Wildlife (CDFW) for impacts to herring and salmonids has occurred; (2) if applicable, a herring waiver has been received and provided to Commission staff; (3) the proposed dredging outside the salmonid work window has been discussed with the LTMS Program Managers and a beneficial reuse disposal site benefitting fish habitat has been identified; and (4) the Executive Director has determined that dredging and disposal outside of the work window is consistent with the Commission's laws and policies.

To protect the herring fishery, no dredging shall occur between December 1 and February 28 of any year without the written approval of the Executive Director, provided that such approval may only be issued: (1) after [Permittee] representative requests from the California Department of Fish and Wildlife (CDFW) that they be allowed to dredge outside of the work window, discussions between the [Permittee] representative and the CDFW has occurred and the outcome of those discussions has been provided to the Commission staff; and (2) the Executive Director has determined that dredging and disposal outside of the work window is consistent with the Commission's laws and policies.

- e. **Longfin Smelt.** If, at any time during the life of this permit, any new laws, policies or regulations require measures to protect longfin smelt from potential adverse impacts of dredging, dredged material disposal, and/or beneficial reuse of dredged material, this permit shall become null and void unless the permittee agrees to amend this authorization to comply with the new laws, policies, or regulations in a manner specified by or on behalf of the Commission. For example, if CDFW requires an incidental take permit under the California



Endangered Species Act, the permittee must obtain the CDFW take permit, provide the take permit to the Commission and amend the Commission's permit or the Commission's permit will become null and void.

- f. **Barge Overflow Sampling and Testing.** Results of any effluent water quality or other testing required by the California Regional Water Quality Control Board, San Francisco Bay Region shall be submitted in writing to Commission staff at the same time such testing is submitted to the Regional Board.
 - g. **Monitoring and Enforcement.** The permittee shall allow the Commission staff or representatives of other state or federal agencies to come aboard the dredge or barge associated with any dredging or disposal episode subject to reasonable safety and operational considerations and observe the operation(s) to ensure that these activities are consistent with pre-dredging reports required herein and other terms and conditions of this permit. Further, the Commission reserves the right to have post-dredging reports inspected by a reliable third party familiar with bathymetric mapping in order to verify the contents of these reports. If a third party selected by or on behalf of the Commission indicates that a post-dredging report is inaccurate, the Commission reserves the right to require the permittee to submit a revised report that meets the conditions of this permit. If the Commission determines that the post-dredging report indicates that work has occurred beyond that authorized by this permit such violation may result in the initiation of enforcement action by or on behalf of the Commission.
 - h. **Long-Term Management Strategy Program.** If, at any time during the effective life of this permit, the Commission's laws, Bay Plan policies, or regulations are changed and are in effect regarding dredging, dredged material disposal, and beneficial reuse consistent with the multi-agency Long-Term Management Strategy Program (LTMS), this permit shall become null and void unless the permittee agrees to amend this authorization to meet the new laws, policies, or regulations in a manner specified by or on behalf of the Commission.
 - i. New dredging work, outside of the remediation area, will be disposed of at the SF-DODS disposal site, or it will be beneficially reused as surface or foundation fill to restore tidal marsh habitat at the Montezuma Wetlands Restoration Project (MWRP).
- H. **Contaminated Sediment and Sand Cap.** The permittee shall perform the following activities to remove elevated levels of PAH contaminants from within Mission Bay Ferry Landing dredge footprint where contaminated sediment is being managed in place:
- (a) dredge areas known as "sand cap with uniform mattress" to a depth of minus 20 feet MLLW plus one foot of allowable over dredge, as shown on exhibit DR200 and DR202 of the plans entitled "Mission Bay Ferry landing and Water Taxi landing Overall Dredging

Plan”, prepared by COWI and OLMM, dated July 15, 2019, and dispose at an appropriate upland location; (b) backfill the sand cap uniform mattress area with a 1.6-foot to 2-foot-deep chemical isolation area of sand, and install, use and maintain a 1-foot-deep erosion protection layer of engineer approved grout-filled marine mattress, followed by an approximately 0.5-foot-deep layer of uncontaminated sand; and (c) install, use and maintain a perimeter of articulating block mats followed by an approximately 0.5-foot-deep layer of uncontaminated sand; as shown in exhibits D200, DR202, DR203 and DR204 of “Mission Bay Ferry landing and Water Taxi landing Overall Dredging Plan”, prepared by COWI and OLMM, dated July 15, 2019.

1. **Cap Design.** The sand cap shall be maintained in perpetuity according to the Maintenance and Monitoring Plan approved under Special condition II.H.3, and at an elevation of approximately minus 14-foot MLLW plus 1-foot over-dredge allowance.
2. **Post-Dredge and Cap Construction Completion Report:** The Port shall provide a copy of a post-dredge and cap construction completion report within 60 days of completion of dredging and capping operations. The report shall contain the dates of dredging, maps of the dredging footprint, the calculated final dredging volume, the disposal and beneficial reuse site locations, and the volumes of sediment placed per location. The report shall also contain as-built plans of the 1.67-acre cap and the 0.58-acre articulating block mat, as well as a post-cap-construction baseline bathymetric survey.
3. **Monitoring.** The permittee shall monitor the sand cap area constructed in the area identified as “sand cap with uniform mattress”, as shown on exhibit DR200 and DR202 of the plans entitled, “Mission Bay Ferry landing and Water Taxi landing Overall Dredging Plan”, prepared by COWI and OLMM, dated July 15, 2019. At least 60 days prior to initiation of cap construction the Port shall provide a Post-construction Cap Monitoring and Maintenance Plan to staff. The monitoring and maintenance plan shall, at a minimum, include a detailed description of procedures to monitor the cap via post-construction annual bathymetric surveys to verify the elevation and stability of the backfill material, and shall include an outline of potential issues and solutions to rectify scour issues. The plan shall outline ferry and water taxi landing best management practices to be undertaken to maintain cap integrity and other measures to be implemented in the event of significant redistribution of sediment in the cap area; management practices shall include draft restrictions and other operational controls to minimize the disruption or redistribution of cap material over time. The plan shall detail measures for long-term maintenance of the cap and potential scour near to, or under any portion of the marine mattress or articulating blocks. The first survey shall be undertaken within approximately 12 months of cap construction.

Monitoring shall continue until such time that the monitoring data indicates that the sand cap is stable and Commission staff concurs with this finding. At such time, the permittee shall request approval from the Commission staff to cease the monitoring, or to decrease the frequency of the surveys. The permittee shall continue surveys until the Commission staff provides written approval of monitoring closure.

4. **Reporting.** The permittee shall submit all monitoring reports annually to the Commission within three months of completing the bathymetric surveys.
5. **Cap Integrity.** The permittee and any lessees shall implement the ferry and water taxi landing operation best management practices in the Monitoring and Maintenance Plan, specified in Special Condition II.H.3, such as draft restrictions and other operational controls to minimize the disruption or redistribution of cap material over time. The restrictions and operational controls shall remain in place in perpetuity, or until such time that the sand cap is removed and is replaced, or the underlying contaminated sediment is fully excavated.
6. **Cap Maintenance.** If bathymetric monitoring indicates that the cap is eroding or consolidating in areas, and that additional sandy material is necessary to maintain the cap integrity, the permittee shall notify the Commission regarding the cap integrity and necessary steps to remedy the situation. The permittee shall submit plans indicating areas where the cap has eroded/consolidated, the volume of fill required to restore the cap, identify adaptive management measures, and the location of where any additional fill is required. The permittee shall request and obtain Commission approval via an amendment to this amended permit or other necessary approval to place additional fill or implement adaptive management measures at that time.

If the additional fill is necessary, the fill placement shall occur during the LTMS Programmatic Environmental Work Window described below in Special Condition II.G.2.d. Further, the permittee shall place the fill in a manner that minimizes the potential for resuspension of sediment in adjacent areas.

7. New dredging within the 1.67-acre remediation cap within the ferry landing dredge footprint will be disposed of at an appropriate upland location.
- I. **Shoreline Protection.** Replacement riprap material shall be either quarry rock or specially cast or carefully selected concrete pieces free of reinforcing steel and other extraneous material and conforming to quality requirements for specific gravity, absorption, and durability specified by the California Department of Transportation or the U. S. Army Corps of Engineers. The material shall be generally spheroid-shaped. The overall thickness of the slope protection shall be no more than three feet measured perpendicular to the slope. Use of dirt, small concrete rubble, concrete pieces with exposed rebar, large and odd shaped pieces of concrete, and asphalt concrete as riprap

is prohibited. Riprap material shall be placed so that a permanent shoreline with a minimum amount of fill is established by means of an engineered slope not steeper than two (horizontal) to one (vertical) unless slope is keyed at the toe. The slope shall be created by the placement of a filter layer protected by riprap material of sufficient size to withstand wind and wave generated forces at the site.

III. Findings and Declarations

This authorization is given on the basis of the Commission's findings and declarations that the work authorized herein is consistent with the McAteer-Petris Act, the *San Francisco Bay Plan* (Bay Plan), the *San Francisco Waterfront Special Area Plan* (SAP), and the California Environmental Quality Act (CEQA).

- A. **San Francisco Waterfront Special Area Plan (SAP).** The San Francisco Waterfront SAP provides detailed planning guidelines for the shoreline at this location, including specific policies for permitted uses at the project site. The San Francisco Waterfront SAP policies on Public Access within the Southern Waterfront state that the “Central Basin should continue to be developed for public access and waterfront recreation in accordance with the Recreation and Open Space Plan of the City of San Francisco”. (SAP Geographic-Specific Policies for Central Basin, Public Access Policy No. 1).

The project’s proposal for improvements to Agua Vista Park are consistent with the San Francisco Waterfront SAP, including the Special Area Plan Map 5 which denotes the area as an area for “Public Recreation and Access” to be used for marina, public recreation, open space and maritime uses. The improvements to the existing public access and new public access are permitted uses and thus consistent with the San Francisco Waterfront SAP. The San Francisco Waterfront SAP establishes permitted uses within areas of open water along the Waterfront. Special Area Plan Map 5 of the SAP required removal of Pier 64 by 2013 as part of the 34th America’s Cup Event, of which approximately 14,454 square feet of fill was removed. This project would remove the remaining remnants of Pier 64, not required to be removed as part of the America’s Cup Event. As a result, the project is consistent with the policies of the San Francisco Waterfront Special Area Plan.

B. Bay Fill

1. **Project Overview.** New bay fill resulting from the project is limited to the in-water ferry landing, water taxi landing and marine mattress cap forming part of the remediation cap for elevated contaminants within the ferry landing dredge footprint.

The project would involve bay fill, consisting of: 9,029-square-feet for the ferry landing, 1,604-square-feet for the water taxi, and 98,010-square-feet associated with the remediation cap. Total Bay fill for the project would be 108,643-square-feet and 180,274-cubic-feet volume, with a comparable amount of compensatory fill

removal amounting to 122,879-square-feet or 198,892-cubic-feet volume. With the required mitigation, the project will result in a net decrease in bay fill of 10,633-square-feet or 18,618-cubic-feet.

2. **Applicable Policies.** The Commission may allow fill only when it meets the requirements identified in Section 66605 of the McAtteer-Petris Act, which states, in part, that: (a) the public benefits of the fill should clearly exceed the public detriment from the loss of water area and the fill should be limited to water-oriented uses (b) fill in the Bay should be approved only when “no alternative upland location” is available; (c) fill should be “the minimum amount necessary to achieve the purpose of the fill”; (d) “the nature, location, and extent of any fill should be such that it will minimize harmful effects to the Bay area, such as, the reduction or impairment of the volume, surface area or circulation of water, water quality, fertility of marshes or fish or wildlife resources, or other conditions impacting the environment...”; (e) “[t]hat public health safety, and welfare require that fill be constructed in accordance with sound safety standards which will afford reasonable protection to persons and property against the hazards of unstable geologic or soil conditions or of flood or storm waters...”; “fill should be authorized when the filling would, to the maximum extent feasible, establish a permanent shoreline”; and (g) “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) **Public Benefit versus Detriment and Water-Oriented Use.** The fill for the ferry landing and water taxi is necessary to accommodate increased demand for water transportation for one of the fastest growing neighborhoods in San Francisco. The fill associated with the cap is necessary to ensure the use of the ferry landing at this location.

The Port commissioned the preparation of a number of studies analyzing alternatives to capping the dredge footprint, which demonstrated elevated levels of PAHs, including “*The Port of San Francisco Mission Bay Ferry Landing Project, Sediment Investigation and Cap Feasibility Study*”, prepared by Boudreau Associates, LLC, and dated June 28, 2018. This report summarized the various options and feasibility to utilize the proposed cap design as a remedial solution. It concluded that a sand and marine mattress cap should be placed at the contaminated areas in the Bay, to ensure that contaminants will not be dispersed into other areas of the bay.

The Port will remove 9,300-cubic-yards of contaminated sediment within an approximately 1.67-acre area. The Port will place a three-layer (sand, grout-filled mattress, followed by sand) cap over the remaining contaminated sediments at the Bay floor.

Further, the project will provide habitat benefits from the remediation of contaminated sediments impacting fish, wildlife and other aquatic organisms. According to National Marine Fisheries Service (NMFS), “Although the dredging process may expose contaminated sediments, the proposed sediment cap placement will occur within approximately seven days, minimizing exposure and release of contaminated sediments during the Project and mitigating future exposure. PAHs are known to cause cancer, reproductive anomalies, and immune dysfunction in fishes. Exposures to embryos can result in a suite of detrimental effects: edema (swelling) of the yolk sack, hemorrhaging, disruption of cardiac function, enzyme induction, mutation of progeny, craniofacial and spinal deformities, neuronal cell death, anemia, reduced growth, and impaired swimming (NMFS 2009). For these reasons, the removal, and capping of PAH contaminated material is expected to benefit critical habitat in the action area for CCC steelhead and green sturgeon”. It is expected that benthic organisms will likely reestablish once the construction of the fill is complete, but there will be a shift in habitat type due to a change in the sediment. During the application process, the permittee included in its project a 15 cm (0.5-feet) layer of sand on top of the 2.25-acre marine mattress in order to speed recolonization of benthic fauna. The project would not result in any impacts to sedimentation in the Bay, water circulation, or wave action. As a result, the public benefits to capping the contaminated area after dredging exceed the public detriments to the loss of contaminated subtidal habitat.

As the mitigation results in a net decrease area and volume of bay fill and the public will benefit from increased infrastructure for regional transport, the Commission finds that the project benefits outweigh the public detriment. Furthermore, although ferry transportation is not specifically listed in the McAtter-Petris Act or Bay Plan as a water-oriented use, ferry transportation, along with water taxi service, requires use of the water to function, and is therefore a water-oriented use.

- 2) **No Alternative Upland Location.** The Commission finds that, by their nature, there is no upland alternative location for the berthing facilities, which must be located over water.
- 3) **Minimum Amount of Fill.** The purpose of the fill is to increase transportation options in Mission Bay, through new ferry and water taxi services. Both elements of the project will be single-float two-berth facilities, and are designed to minimize the fill associated with the structures while accommodating the anticipated ridership and size of Water Emergency Transportation Authority ferry vessels that would use the ferry landing, and anticipated water taxi use for the water taxi facility. To ensure that the project results in an overall net

decrease of Bay fill, Special Condition II.A requires review and approval by or on behalf of the Commission of final project plans, including fill quantities, and Special Condition II.E requires the permittees to remove approximately 122,879 square feet of fill.

As conditioned, the Commission finds that the fill is the minimum necessary to achieve the project's purpose.

C. Minimize Harmful Effects to the Bay

1. Applicable Policies

- a. **Volume, Area, and Circulation of Bay Waters.** Bay Plan policies on Water Surface and Volume state, in part, that “[t]he surface area of the Bay and the total volume of water should be kept as large as possible” (Policy No. 1), and that “[a]ny proposed fills...should be thoroughly evaluated to determine their effects upon water circulation and then modified as necessary to improve circulation or at least to minimize any harmful effects” (Policy No. 2). Likewise, Bay Plan Smog and Weather Policy No. 1 states, “[t]o the greatest extent feasible, the remaining water volume and surface area of the Bay should be maintained.”

As discussed above, the project results in an increase in Bay volume and surface area. Circulation of Bay waters is not anticipated to be adversely impacted by the ferry landing or water taxi facility. In addition, the dredging and contamination cap would not result in a net increase of volume of Bay fill. Special Condition II.E is included to require the removal of an equivalent amount of remnant Bay fill and marine debris at the project site and near to the project site, within the Central basin of San Francisco Bay. With the removal of fill in this amount, there will be a negligible change to the overall surface area of the Bay. As conditioned, the Commission finds the project is consistent with Bay Plan policies on Water Surface and Volume and Smog and Weather.

- b. **Subtidal Habitat and Fish and Wildlife.** Policy No. 1 of the Bay Plan policies on Subtidal Areas states: “Any proposed filling...in a subtidal area should be thoroughly evaluated to determine the local and Bay-wide effects of the project on: (a) the possible introduction or spread of invasive species; (b) tidal hydrology and sediment movement; (c) fish, other aquatic organisms and wildlife; (d) aquatic plants; and (e) the Bay's bathymetry. Projects in subtidal areas should be designed to minimize and, if feasible, avoid any harmful effects.” Policy No. 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 No. 4 states that the Commission should “...[c]onsult with the California Department of Fish and Game and the U.S. Fish and Wildlife

Service or [NMFS] whenever a proposed project may adversely affect an endangered or threatened...species,” “[n]ot authorize projects that would result in the ‘taking’ of any...[listed] species...unless the project applicant has obtained the appropriate ‘take’ authorization...” and “[g]ive 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.”

The project site includes open-water habitat for both federal and state-listed special-status species (i.e., Sacramento River Winter-Run Chinook Salmon (*Oncorhynchus tshawytscha*); Central Valley Spring-Run Chinook Salmon (*Oncorhynchus tshawytscha*); Longfin Smelt (*Spirinchus thaleichthys*), Central California Coast steelhead (*Oncorhynchus mykiss*) and marine mammals protected by the Marine Mammal Protection Act. In-water portions of the project site are also within designated essential fish habitat (EFH) for various federally managed fish species under the Coastal Pelagic and Pacific Coast Groundfish Fishery Management Plans (FMPs).

On January 17, 2019, the California Department of Fish and Wildlife (CDFW), issued an Incidental Take Permit (No. 2081-2018-062-07) which covered the following species Sacramento River Winter-Run Chinook Salmon (*Oncorhynchus tshawytscha*); Central Valley Spring-Run Chinook Salmon (*Oncorhynchus tshawytscha*); Longfin Smelt (*Spirinchus thaleichthys*). Special II.D.1 requires the permittee to conduct the construction consistent with CDFW’s Incidental Take Permit (ITP).

On August 9, 2019, the National Marine Fisheries Service (NMFS) issued an Endangered Species Act (ESA) Section 7(a)(2) Concurrence Letter and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Response for the Mission Bay Ferry Landing and Water Taxi Landing (Corps File No. 2017-00264S; NMFS No: WCRO-2019-00444), for the project. NMFS concurred with the Corps and determined the proposed project may affect, but is not likely to adversely affect, (NLAA) Central California Coast (CCC) steelhead, threatened southern Distinct Population Segment (DPS) of North American green sturgeon and their designated critical habitats (based on the proposed best management practices and minimization measures contained within the concurrence letter). NMFS also determined that the proposed project would adversely affect EFH for various life stages of fish species managed under the Pacific groundfish and Coastal Pelagic FMPs, however that the project proposal

contained adequate measures to avoid, minimize, mitigate, or otherwise offset the adverse effects to EFH. Therefore, no EFH conservation recommendations to avoid or reduce the magnitude of effects was made.

Measures highlighted in both the CDFW ITP and NMFS concurrence letter to reduce potential impacts of underwater sound during pile driving are required by Special Condition II.D.4 as best management practices. Seasonal restrictions to dredging and pile-driving to between June 1 and November 30 of each year are required in Special Conditions II.D.1, II.D.2 and II-G.2.d in order to avoid the migration seasons of ESA-listed fish species in the San Francisco Bay. Other measures listed to further minimize impacts to the listed species including use of a vibratory hammer whenever feasible.

As conditioned, the Commission finds the project is consistent with the above-mentioned Bay Plan policies on subtidal habitat and fish, other aquatic organisms, and wildlife.

- c. **Mitigation.** Bay Plan Mitigation Policy 1 states, in part: “[p]rojects should be designed to avoid adverse environmental impacts to Bay natural resources such as to water surface area, volume, or circulation and to plants, fish, other aquatic organisms and wildlife habitat, subtidal areas, or tidal marshes or tidal flats. Whenever adverse impacts cannot be avoided, they should be minimized to the greatest extent practicable. Finally, measures to compensate for unavoidable adverse impacts to the natural resources of the Bay should be required.” Mitigation Policy 2 states: “[i]ndividual compensatory mitigation projects should be sited and designed within a Bay-wide ecological context, as close to the impact site as practicable.” Mitigation Policy 6 provides that “[m]itigation should, to the extent practicable, be provided prior to, or concurrently with those parts of the project causing adverse impacts.”

To mitigate for impacts to the volume and water surface area of the Bay, along with the impacts to subtidal habitat and fish, wildlife, and other aquatic organisms from the contamination cap, Special Condition II.E required fill removal throughout the Central Basin along the San Francisco Waterfront. Some of the mitigation includes fill previously removed by the Port, including fill removal credit of 2,730-square-feet of fill for the removal of an overwater structure and deck at Pier 70, Building 64 (removed in August 2017); fill removal credit of 15-square-feet of solid fill for the removal of Pier 70, Building 64 timber piles removed in 2017; and, 3) fill removal credit of 1,500-square-feet of for the removal of Pier 70, Wharf 5, authorized in ANOI2001.016.00, issued July 11, 2002. Special Condition II.E requires compensatory mitigation with additional

removal along the Central Basin, including removal of remnants of Pier 64 and 66, pipes, a sunken sailboat, piles, and other marine debris, totaling 118,634-square-feet of fill removal.

As conditioned, the project is consistent with the Bay Plan policies on Mitigation.

- d. **Water Quality.** The Bay Plan policies on Water Quality state, in part, that “Bay water pollution should be prevented to the greatest extent feasible. The Bay’s tidal marshes, tidal flats, and water surface area and volume should be conserved and, whenever possible, restored and increased to protect and improve water quality.” The policies also state that “[w]ater quality in all parts of the Bay should be maintained at a level that will support and promote the beneficial uses of the Bay as identified in the San Francisco Bay Regional Water Quality Control Board’s (RWQCB) Basin Plan and should be protected from all harmful or potentially harmful pollutants.” The policies, recommendations, decisions, advice, and authority of the State Water Resources Control Board and the Regional Board should be the basis for carrying out the Commission’s water quality responsibilities.” Finally, the Bay Plan policies on Water Quality state that “[n]ew projects should be sited, designed, constructed, and maintained to prevent or, if prevention is infeasible, to minimize the discharge of pollutants into the Bay by: (a) controlling pollutant sources at the project site; (b) using construction materials that contain nonpolluting materials; and (c) applying appropriate, accepted, and effective best management practices; especially where water dispersion is poor and near shellfish beds and other significant biotic resources.”

On October 28, 2019, the Regional Water Quality Control Board issued a Water Certification for the project. Construction of the in-water infrastructure associated with the project has the potential to result in short-term impacts to water quality, particularly in relation to the removal of contaminants, dredging, and pile driving activities as discussed above. Special Condition II.D.3 requires the permittee to construct the project using measures to minimize harmful effects on water quality consistent with the approval of the Water Board, and consistent with the Port’s standard best management practices for debris and stormwater management.

As conditioned, the Commission finds that the project is consistent with the Bay Plan policies on Water Quality.

- e. **Sound Safety Standards.** Bay Plan Safety of Fills Policy No. 2 states, in part, that “[e]ven if the Bay Plan indicates that a fill may be permissible, no fill or building should be constructed if hazards cannot be overcome adequately for the intended use....” Bay Plan Safety of Fills Policy No. 4 states, in part, “[n]ew



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...”

The remediation cap will ensure that contaminants are not dispersed into the bay, in order to ensure that the cap remains in place a post-construction Cap Monitoring and Maintenance Plan will be produced by the report and agreed through plan review, as conditioned in Special Condition II.H.3. The cap will be monitored annually to monitor and verify the stability and conditions of the cap.

Bay Plan Safety of Fills Policy No. 4 also states that new fill and shoreline projects should be built taking “future sea level rise into account for the expected life of the project, [and that projects should] be specifically designed to tolerate periodic flooding, or employ other effective means of addressing the impacts of future sea level rise and storm activity.”

Climate Change Policy 7 identifies specific types of projects that are deemed to have regional benefits, advance regional goals, and that should be encouraged, if their regional benefits and their advancement of regional goals outweigh the risk from flooding. Further, Policy 7 identifies one of those types of projects as a “transportation facility or other critical infrastructure that is necessary...to serve planned development.” The Bay Plan Climate Change Policy 6 identifies several regional goals including, “[a]dvanc[ing] regional public safety and economic prosperity by protecting... infrastructure that is crucial to public health or the region’s economy....”

In analyzing a project’s risk of flooding as a result of sea level rise, the Commission currently relies on the sea level rise estimates provided in the 2018 California Sea Level Rise Guidance from the Ocean Protection Council and Natural Resources Agency (“2018 State Guidance”), which represents the best available science. The Guidance recommends use of probabilistic projections to understand and address potential sea level rise impacts, which associate a likelihood of occurrence with sea level increases and rates tied to a range of emission scenarios. The analysis for this permit relies on the State’s projections for projects where a “medium to high” level of risk aversion is called for. The 2018 State Guidance states that the medium to high risk aversion projections are appropriate to provide “[a] precautionary protection that can be used for less adaptive, more vulnerable projects or populations that will experience medium to high consequences as a result of underestimating sea-level rise....” The medium to high risk aversion scenario is appropriate in analyzing this project as

the ferry landing and water taxi landing, while having a relatively short project life until 2070, are important regional transportation facilities that could be disrupted by sea level rise.

The project is a transportation facility and will serve as a critical infrastructure project with a service life to 2070. However, given its small size and limited design life, the project does not constitute a larger shoreline project. As a result, a formal risk assessment was not prepared for the project. According to the Federal Emergency Management Agency (FEMA), the current Base Flood Elevation (BFE) for the project site is +9 feet NAVD88, or 3 feet below the elevation of the wharf deck. BFE is the elevation to which flood waters are anticipated to rise during a 100-year flood event, which has a 1 percent chance of occurrence in any given year. Therefore, the site is not currently at risk of flooding even during a fairly extreme tide or storm event.

The permittees designed the project to be resilient to 1.9-feet of sea level rise projection at 2050 mean higher high water levels and 3.5-feet of sea level rise projection at 2070 at mean higher high water levels (MHHW). However, the ferry landing could experience temporary flooding from wave runup during a 100-year storm event (which has a 1% chance of reoccurring every year) beginning at 2050.

The water taxi landing's expected project life is until 2050. The water taxi pier is designed to be resilient to 1.9-feet of sea level rise projection at 2050 mean higher high water levels. However, the water taxi landing could experience temporary flooding from wave runup during a 100-year storm event (which has a 1% chance of reoccurring every year) beginning at 2050. The project is designed to be resilient to mid-century sea level rise. Since the project is not a larger shoreline project, not designed to function to end-of-century, and is generally resilient to sea level rise impacts for the project life, the permittees did not include an adaptive management plan to accommodate end-of-century projections of sea level rise.

The contamination cap is constructed to ensure the containment of contaminated material in the Bay. The perimeter articulated block mats will provide erosion protection for the cap to ensure that there is no exposure of harmful material and the cap retains its integrity over time. Special Condition II.H requires perpetual monitoring and maintenance of the cap to ensure the cap safely achieves its purpose over time.

As conditioned, the Commission therefore finds that the project is consistent with the relevant Bay Plan and McAtteer-Petris Act policies related to safety standards.

D. **Valid Title of Project Site.** McAteer-Petris Act Section 66605(e) states, “[t]hat 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.” The fill would occur in waters under the jurisdiction of the Port. The title to Port property, including the project site, is held by the City and County of San Francisco and administered through its Port Commission. Under the Burton Act, the Port has the power to use, manage, operate, and regulate Port lands consistent with public trust restrictions. As a result, the Port has valid title over the property consistent with the requirements of the McAteer-Petris Act.

As conditioned, the Commission therefore finds that the project is consistent with the relevant Bay Plan and McAteer-Petris Act policies related to fill in the Bay.

E. **Maximum Feasible Public Access.** Section 66602 of the McAteer-Petris Act states that “...maximum feasible public access, consistent with a proposed project, should be provided.” Bay Plan policies on Public Access state, in part, that “[a] proposed fill project should increase public access to the Bay to the maximum extent feasible” (Policy No. 1), that “maximum feasible access to and along the waterfront and on any permitted fills should be provided in and through every new development in the Bay or on the shoreline” (Policy No. 2). Bay Plan Transportation Policy No. 5 states that “[Ferry] landings should be located near higher density, mixed-use development served by public transit” .).

1. **Public Access Impacts and Benefits.** In assessing whether a proposed project increases public access to the Bay and its shoreline, the Commission considers existing conditions at the project site, the proposed public access improvements provided by a project, and the existing and future demand for public access facilities. The McAteer-Petris Act and Bay Plan policies must be read in light of court decisions that have established: 1) that a public agency must show a nexus, or essential connection, between any requirements included as a condition of a permit and the public burden created by a private development project; and 2) that the condition must be roughly proportional to the burden.

In this case, the Commission must evaluate the demand for public access that the Mission Bay Ferry Landing project will generate and its anticipated impact on the existing and proposed public access at and near the project site.

2. **Anticipated Public Access Demand.** The project will provide ferry and water taxi service to Mission Bay, one of the fastest growing neighborhoods in the City of San Francisco, along with the adjacent neighborhoods. The proposed landings will be within a short walking distance to the UCSF Mission Bay hospital and campus, and the Golden State Warriors Chase Center. Ferry and taxi service would provide commuter service, but also provide transportation to and from events at the Chase Center. The ferry landing would provide a minimum of 23 daily commuter services with approximately 80 special event services per year associated with the Chase

Center, located across Terry Francois Boulevard from the ferry landing. The taxi landing would likely receive 10-15 boats per day with a maximum of 45 passengers each. The water taxi landing may be constructed at a later date than the ferry landing, depending on demand for water taxi use at the site. The project would be south of Bayfront Park, required by the permit for the Mission Bay Redevelopment Project, BCDC Permit No. 2000.005.06, and north of Agua Vista Park, which is subject to a number of BCDC permits. Queueing and transiting from the ferry landing and water taxi dock will impact circulation along the waterfront between these parks and public use of these docks. As a result, increased ferry and water taxi service will impose increased burdens on existing required public access areas.

3. **Existing and Nearby Public Access.** The site currently supports public access along the shoreline from the Bay Trail and open, undeveloped areas adjacent to the rip-rap covered shoreline. The project would be located at the south end of the planned Bay Front Park and north end of Agua Vista Park. The site also supports generally unobstructed views to the Bay and to the industrial maritime uses nearby, including the drydocks at Pier 70.
4. **Public Access Areas.** The project provides approximately 5,800-square-feet of new unrestricted public access, in the form of a new ferry plaza designed as a welcoming environment for departures and arrivals to the ferry landing, while accommodating circulation along the waterfront and connecting Bayfront Park to a refurbished Agua Vista Park. The project will make improvements to a further 23,323-square-feet of existing public access (improvements to the adjacent Bay Trail and Agua Vista Park and Pier), all within the Commission's 100-foot shoreline band jurisdiction. The plaza and refurbished Agua Vista Park would provide amenities, including seating, an improved ADA accessible fishing pier, trash receptacles, lighting, signage, and new landscaped and paved areas. In order to ensure the project provides maximum feasible public access consistent with the project, the public access and improvements to existing public access are required in Special Condition II.B. Maintenance of the public access is required by Special Condition II.B.4 to ensure the project continues to maximize public access through the project life.
 - a. **Ferry Plaza.** The ferry landing plaza would provide space for daily commuter and event queuing, while connecting to Bayfront Park 16th Street Plaza to the north as well as Agua Vista Park to the south. The ferry landing plaza is designed to seamlessly integrate with Bayfront Park, which is a required public access area of BCDC Permit No. 2000.003.04 for the Mission Bay Redevelopment Project. In the ferry landing plaza, a series of concrete benches would define the edge of the plaza and create spaces for gathering and celebrating views of the waterfront. The benches will provide a buffer between queuing for the ferry landing and the Bay Trail circulation which connects the Southern Waterfront through Agua Vista and along Bayfront Park. The proposed project would provide seamless

connections between the two adjacent parks by providing a continuous Bay Trail within the Bayfront Park area and promenade within Agua Vista Park along Terry Francois Boulevard.

The ferry landing plaza would be designed to provide the 200-feet of queuing space required to accommodate the expected 90 people per departure during commute times while maintaining Bay Trail and public access to the west of the queuing zone. Before and after an event at the Chase Center, queuing would be accommodated through Bayfront Park and Agua Vista Park to provide space for up to 200 people to queue for ferry service. Use of the public access areas and the Bay Trail would be impacted before and after events at the Chase Center due to the increased congestion from ferry passenger embarkation and queuing. The project proponents state that police officers or other public safety personnel would be used for traffic management in both plazas before and after events at the Chase Center.

- b. **Agua Vista Park.** Agua Vista Park and its existing amenities are required by BCDC Permits Nos. 1971.021.10, M1973.013.00, and M1997.033.02. To provide maximum feasible public access consistent with the project, including the increased burden on the existing access from the new ferry landing and water taxi use, Special Condition II.B.3. requires the permittee to refurbish the park within three years of issuance of this permit. Improvements to the popular fishing pier at Agua Vista Park will include replacement of dilapidated and worn wooden boards, both making the fishing pier ADA accessible and improving the overall appearance of the pier.

The refurbished Agua Vista Park will include new pathways, seating and picnicking amenities, and a refurbished Bay Trail.

A portion of the existing Agua Vista Park will be used as staging to construct Bayfront Park and the ferry landing and water taxi. In addition, construction plans for the park have not yet been finalized at the time of issuance of this permit. Special Condition II.B.8 requires restoration of the staging area at Agua Vista in the event the construction of the refurbished park is delayed.

5. **Appearance, Design, and Scenic Views.** Bay Plan policies on Appearance, Design and Scenic Views state, in part, “[a]ll bayfront development should be designed to enhance the pleasure of the user or viewer of the Bay. Maximum efforts should be made to provide, enhance, or preserve views of the Bay and shoreline, especially from public areas” (Policy No. 2); and that “[s]tructures and facilities that do not take advantage of or visually complement the Bay should be located and designed so as not to impact visually on the Bay and shoreline” (Policy No. 4).

The ferry landing canopy design could impact some views to the Bay and the existing dry dock. The distinctive design is intended to reference maritime vessels and industrial buildings consistent with Mission Bay's history, with translucent materials. The height of the ferry landing canopy was modified and lowered during the application process to reduce impacts to views. Special Condition II.A provides for plan review to ensure the ferry landing is constructed consistent with the design provided with the application. As conditioned, the project is consistent with the Bay Plan policies on Appearance, Design, and Scenic Views.

6. **Sea Level Rise and Flooding.** Bay Plan Public Access Policies 5 and 6 state that “[p]ublic access should be sited, designed, managed, and maintained to avoid significant adverse impacts from sea level rise and shoreline flooding” and that “[a]ny public access provided as a condition of development should either be required to remain viable in the event of future sea level rise, or equivalent access consistent with the project should be provided nearby.”

The ferry landing's expected project life is until 2070, while the water taxi landing is designed to operate until 2050. Using the methodology outlined in the 2018 California Sea Level Rise Guidance from the Ocean Protection Council and Natural Resources Agency (“2018 State Guidance”), the ferry plaza is designed to be resilient to 1.9-foot of sea level rise projection at 2050 mean higher high water levels and 3.5-foot of sea level rise projection at 2070 at mean higher high water levels. However, the ferry plaza could experience temporary flooding from wave runup during a 100-year storm event (which has a 1% chance of reoccurring every year) beginning at 2050. Adjacent Agua Vista Park are designed to be resilient to 1.9-foot of sea level rise projection at 2050 mean higher high water levels, and could experience temporary flooding from wave runup during a 100-year storm event (which has a 1% chance of reoccurring every year) beginning at 2050. Flooding from storm events in the public access area would only temporarily impact public use of the shoreline. Special Condition II.C has been included to require reporting on flood events in the public access area, to ensure the area is not closed for an extended period of time and ensure flooding does not cause permanent impacts to the access. Special Condition II.B.4 requires maintenance of the public access area, including from impacts to flooding. Therefore, the public access required by Special Condition II.B is viable in the event of future sea level rise and storms. As conditioned, the project is consistent with the Public Access policies of the Bay Plan related to sea level rise and flooding.

7. **Comparable Projects Approved by the Commission.** The Commission considers its previous actions on comparable projects to help partially inform a decision about whether public access proposed as part of a project represents the maximum feasible scope and type consistent with the project. The Commission has approved several other ferry landings of relatively similar scale to the Mission Bay Ferry Landing project.
- The Commission issued a permit to the Water Emergency Transportation Authority and San Mateo County Harbor District for the South San Francisco Ferry Landing (BCDC Permit No. 2008.001.01), which authorized an approximately 14,000-square-foot fill project, which is similar in size to the fill associated with the Mission Bay Ferry Landing. The South San Francisco Ferry Landing project included a 3,000-square-foot public access viewing terrace along the shoreline and a 2,300-square-foot area on the ferry pier intended to remain open for public access during ferry operational hours.
 - The Commission issued a permit to the Water Emergency Transportation Authority and the Port of San Francisco to construct a new ferry landing facility at the Ferry Building (BCDC Permit No. 2016.001.02). The project involved approximately 30,800 square feet of new public access along the shoreline.

As conditioned, the Commission finds the project provides maximum feasible public access consistent with the project, as required by the Public Access policies of the Bay Plan.

- F. **Dredging.** Bay Plan Dredging Policy No. One states, in part, that dredging and dredged material disposal should be conducted in an environmentally and economically sound manner. Bay Plan Dredging Policy No. Two states that “dredging [should] be authorized when the Commission can find: (a) the applicant has demonstrated that the dredging is needed to serve a water-oriented use or other important public purpose, such as navigational safety; (b) the materials to be dredged meet the water quality requirements of the San Francisco Regional Water Quality Control Board; (c) important fisheries and Bay natural resources would be protected through seasonal restrictions established by the California Department of Fish and Wildlife (CDFW), the U.S. Fish and Wildlife Service (USFWS), and/or the National Marine Fisheries Service (NOAA Fisheries), or through other appropriate measures; (d) the siting and design of the project will result in the minimum dredging volume necessary for the project; and (e) the material will be disposed of in accordance with Policy 3.”
1. **Water Oriented Use.** Section 66605 of the McAtter-Petris Act identifies water-related industry as a water-oriented use. Section 66663 of the McAtter-Petris Act further states that “...because of the shallowness and high rate of sedimentation of the San Francisco Bay, dredging is essential to establish and maintain navigational

channels for maritime commerce, which contributes substantially to the local, regional, and state economies, as well as for military navigation, flood control, recreational boating and other public purposes.”

Pursuant to Special Condition II.G.2.i., new dredging work, outside of the remediation area, will be disposed of at the SF-DODS disposal site, or it will be beneficially reused as surface or foundation fill to restore tidal marsh habitat at the Montezuma Wetlands Restoration Project (MWRP). New dredging within the 1.67-acre remediation cap within the ferry landing dredge footprint will be disposed of at an appropriate upland location.

The sediment that would be removed in the initial new dredging work was tested and reviewed by the Dredged Materials Management Office (DMMO). Through the DMMO review, specific areas at the ferry landing were found to contain elevated levels of polycyclic aromatic hydrocarbons (PAHs). Sediment from these areas was determined unsuitable for in-Bay disposal. The DMMO recommendation and the Water Board’s water quality certification state that the sediments from the areas with elevated PAHs must be disposed at an appropriate upland location outside of the Bay. This would prevent adverse effects from unsuitable dredged sediment disposal to the water quality of the Bay.

Special Condition II.H. requires that the permittee provide a post-dredge report, to agree on a maintenance and monitoring plan for the cap, and to undertake annual cap monitoring until it has been shown to be safe and stable.

On December 13, 2017, the Dredged Material Management Office (DMMO) approved new dredge disposal for uncontaminated materials at the San Francisco Deep Ocean Disposal Site (SF-DODS), or it will be beneficially reused as surface or foundation fill to restore tidal marsh habitat at the Montezuma Wetlands Restoration Project.

2. **Seasonal Restrictions.** The USFWS’ and NOAA Fisheries’ programmatic biological opinion for the LTMS Management Plan issued in 2000 included seasonal restrictions for maintenance dredging projects to protect threatened and endangered species. Both CDFW and NMFS concurred with the seasonal restriction from June 1st through November 30th to protect threatened and endangered species. Therefore, dredging at the Mission Bay ferry landing and water taxi landing would require adherence to the environmental work windows for dredging or additional consultation with these agencies. As required in Special Condition II.G.2.d the environmental work window for this project is from June 1st through November 30th of any year.
3. **Minimize Dredging Volume.** Through the application process, the permittee has demonstrated that a minimal amount of dredged material is being removed, consistent with the size and depth required for the ferries and boats which will be utilizing the ferry and water taxi landings. Furthermore, the dredge volume for the

contaminated area is sufficient to remove a layer of contaminated sediment and cap that area; that area would otherwise remain as a contaminated area in the bay, impacting water quality.

4. **Disposal in Accordance with Policy No. Three.** The Bay Plan Dredging Policy No. Three states in part, “dredged material should, if feasible, be reused or disposed outside the Bay and certain waterways.” In addition, it states, “...dredged material should not be disposed of in the Bay and certain waterways unless disposal outside these areas is infeasible and the Commission finds: (a) the volume to be disposed is consistent with the applicable dredger disposal allocations and disposal site limits adopted by the Commission by regulation;(b) disposal would be at a site designated by the Commission; (c) the quality of the material disposed is consistent with the advice of the Water Board and the inter-agency DMMO; and (d) the period of disposal is consistent with the advice of the CDFW, USFWS and the NOAA Fisheries.”

According to the LTMS Management Plan a small dredging project is defined as a project that dredges less than or equal to an average of 50,000 cy annually, and has a maximum project depth of minus 12 feet MLLW. Neither the new dredging or maintenance dredging for the ferry and water taxi landing project will qualify as a small dredging project due to its depth and volume. Approximately 80% of the new dredge material has been approved by the Dredged Material Management Office (DMMO) for disposal at the San Francisco Deep Ocean Disposal Site (SF-DODS) site and/or beneficially reused as surface or foundation fill to restore tidal marsh habitat at the Montezuma Wetlands Restoration Project (MWRP). The remaining 20% has been approved for disposal at approved upland disposal site.” Special Condition II.D.3 is included to ensure that the quality of the material disposed is consistent with the advice of the Water Board and inter-agency DMMO. In addition, Special Condition II.A.2 requires any episode of Maintenance dredging shall require the submittal of in-built plans, and plan review to ensure that the dredging over the cap will be limited to -14-feet MLLW plus -1-foot overdredge allowance, which were not included in the overall dredging plan set conditioned under Special Condition II.A.1.c.

As conditioned, the project authorized by this permit is consistent with the Dredging Policies in the San Francisco Bay Plan.

- G. **Design Review Board.** The Design Review Board (DRB) first reviewed the project on December 11, 2017. The Board previously reviewed a design in the same area for the Mission Rock Mixed-use development, and Mission Bay P22 Bayfront Park Project; BCDC Permit No. 2000.005.04, on December 5, 2016. The DRB recommended a number of refinements to the project design, such as: considerations for the ferry landing canopy design; consideration of special events (confirmed 80 game days and 80 additional special events); public access to the piers (subsequently removed from the public access



design plan); and, joint programming and management of Bayfront Park, Agua Vista Park and the Ferry Plaza to ensure the success of the waterfront public access. The port agreed to consider and improve public access design based upon the Boards recommendations.

- H. **Public Trust.** The project authorized herein is a transportation facility, a water-oriented use and navigational use, consistent with trust uses, which will serve a regional and statewide need. Therefore, the Commission finds the project is consistent with the public trust needs and the terms of the Burton Act.
- I. **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.
- J. **Environmental Review.** The City and County of San Francisco, the lead agency for the project, adopted a Mitigated Negative Determination for the project on July 6, 2018.
- K. **Enforcement Program and Civil Penalties.** The Commission has an enforcement program that reviews its permits for compliance. The Commission may issue cease and desist and civil penalty orders if violations are discovered. The McAteer-Petris Act provides for the imposition of administrative civil penalties ranging from \$10 to \$2,000 per day up to a maximum of \$30,000 per violation. The Act also provides for the imposition of court-imposed civil penalties of up to \$30,000 in addition to any other penalties, penalties for negligent violations of between \$50 and \$5,000 per day, knowing and intentional penalties of between \$100 and \$10,000 per day, and exemplary penalties, which are supplemental penalties, in an amount necessary to deter future violations. In addition, anyone who places fill, extracts materials, or makes any substantial change in use of any water, land or structure within the area of the Commission's jurisdiction without securing a permit from the Commission is guilty of a misdemeanor.
- L. **Conclusion.** For all the above reasons, the Commission finds, declares, and certifies that, subject to the Special Conditions stated herein, the project authorized herein is consistent with the McAteer-Petris Act, the *San Francisco Bay Plan*, the *San Francisco Waterfront Special Area Plan*, the Commission's Regulations, and the California Environmental Quality Act.

IV. Standard Conditions

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



- B. **Notice of Completion.** The attached Notice of Completion and Declaration of Compliance form shall be returned to the Commission within 30 days following completion of the work.
- C. **Permit Assignment.** The rights, duties, and obligations contained in this permit are assignable. When the permittees transfer any interest in any property either on which the activity is authorized to occur or which is necessary to achieve full compliance of one or more conditions to this permit, the permittees/transferors and the transferees shall execute and submit to the Commission a permit assignment form acceptable to the Executive Director. An assignment shall not be effective until the assignees execute and the Executive Director receives an acknowledgment that the assignees have read and understand the permit and agree to be bound by the terms and conditions of the permit, and the assignees are accepted by the Executive Director as being reasonably capable of complying with the terms and conditions of the permit.
- D. **Permit Runs With the Land.** Unless otherwise provided in this permit, the terms and conditions of this permit shall bind all future owners and future possessors of any legal interest in the land and shall run with the land.
- E. **Other Government Approvals.** All required permissions from governmental bodies must be obtained before the commencement of work; these bodies include, but are not limited to, the U. S. Army Corps of Engineers, the State Lands Commission, the Regional Water Quality Control Board, and the city or county in which the work is to be performed, whenever any of these may be required. This permit does not relieve the permittees of any obligations imposed by State or Federal law, either statutory or otherwise.
- F. **Built Project must be Consistent with Application.** Work must be performed in the precise manner and at the precise locations indicated in your application, as such may have been modified by the terms of the permit and any plans approved in writing by or on behalf of the Commission.
- G. **Life of Authorization.** Unless otherwise provided in this permit, all the terms and conditions of this permit shall remain effective for so long as the permit remains in effect or for so long as any use or construction authorized by this permit exists, whichever is longer.
- H. **Commission Jurisdiction.** Any area subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission under either the McAteer-Petris Act or the Suisun Marsh Preservation Act at the time the permit is granted or thereafter shall remain subject to that jurisdiction notwithstanding the placement of any fill or the implementation of any substantial change in use authorized by this permit. Any area not

subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission that becomes, as a result of any work or project authorized in this permit, subject to tidal action shall become subject to the Commission's "bay" jurisdiction.

- I. **Changes to the Commission's Jurisdiction as a Result of Natural Processes.** This permit reflects the location of the shoreline of San Francisco Bay when the permit was issued. Over time, erosion, avulsion, accretion, subsidence, relative sea level change, and other factors may change the location of the shoreline, which may, in turn, change the extent of the Commission's regulatory jurisdiction. Therefore, the issuance of this permit does not guarantee that the Commission's jurisdiction will not change in the future.
- J. **Violation of Permit May Lead to Permit Revocation.** Except as otherwise noted, violation of any of the terms of this permit shall be grounds for revocation. The Commission may revoke any permit for such violation after a public hearing held on reasonable notice to the permittees or their assignees if the permit has been effectively assigned. If the permit is revoked, the Commission may determine, if it deems appropriate, that all or part of any fill or structure placed pursuant to this permit shall be removed by the permittees or their assignees if the permit has been assigned.
- K. **Should Permit Conditions Be Found to be Illegal or Unenforceable.** Unless the Commission directs otherwise, this permit shall become null and void if any term, standard condition, or special condition of this permit shall be found illegal or unenforceable through the application of statute, administrative ruling, or court determination. If this permit becomes null and void, any fill or structures placed in reliance on this permit shall be subject to removal by the permittees or their assignees if the permit has been assigned to the extent that the Commission determines that such removal is appropriate. Any uses authorized shall be terminated to the extent that the Commission determines that such uses should be terminated.
- L. **Permission to Conduct Site Visit.** The permittees shall grant permission to any member of the Commission's staff to conduct a site visit at the subject property during and after construction to verify that the project is being and has been constructed in compliance with the authorization and conditions contained herein. Site visits may occur during business hours without prior notice and after business hours with 24-hour notice.
- M. **Abandonment.** If, at any time, the Commission determines that the improvements in the Bay authorized herein have been abandoned for a period of two years or more, or have deteriorated to the point that public health, safety or welfare is adversely affected, the Commission may require that the improvements be removed by the permittees, their assignees or successors in interest, or by the owner of the improvements, within 60 days or such other reasonable time as the Commission may direct.

N. Best Management Practices

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