

San Francisco Bay Conservation and Development Commission

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January 31, 2025

Staff Recommendation

Treasure Island Marina Expansion

(For Commission consideration on February, 6, 2025)

Permit Application Number:	2023.006.00
Applicants:	Treasure Island Enterprises, LLC
Project Description:	Removal of an existing marina and construction of a new expanded marina, in the City and County of San Francisco.
Application Filed Complete:	January 2, 2025
Deadline for Commission Action:	April 2, 2025
Staff Contact:	Sam Fielding (415/352-3665; sam.fielding@bcdc.ca.gov)
Staff Recommendation:	APPROVAL WITH CONDITIONS

Basis for Staff Recommendation

The staff recommends approval of the application as conditioned in the staff recommendation , below. The project would consist of the removal of an existing marina and construction of a new marina and wave attenuator at Clipper Cove on the eastern side of Treasure Island (1 Clipper Cove Way) in the City and County of San Francisco. The proposed use is not in conflict with any Priority Use Areas established by the San Francisco Bay Plan. Among other things, the staff recommendation includes special conditions to:

- Provide a publicly accessible transient moorage dock at a nominal fee.
- Implement measures to protect natural resources and water quality during construction.

The project itself would result in the removal of 36,895 square feet of existing marina docks and gangways and 100 existing pilings (47.3 cubic yards of solid fill), and the placement of 73,279 square feet of new marina docks and gangways, and 138 new pilings (273 cubic yards solid fill), for a net increase of 36,384 square feet of overwater fill and 225.6 cubic yards of solid fill.



Recommended Resolutions and Findings

The staff recommends the Commission approve the following proposed project, as conditioned:

I. Authorization

A. Authorized Project

Subject to the conditions stated below, the permittee, Treasure Island Enterprises, LLC, is granted permission to do the following in the Bay, in Clipper Cove (1 Clipper Cove Way) at Treasure Island, in the City and County of San Francisco.

In the Bay:

1. Remove the existing 108-slip Treasure Island Marina comprised of 36,895 square-foot wooden docks and 100 12-inch round, creosote-treated wood piles;
2. Construct a new 168-slip marina comprised of 73,279 square-foot concrete docks and gangways, comprised of:
 - a. A floating system of concrete dock sections rafted together with a fiber-reinforced plastic waler system, and equipped with internal utility chase, with the following components:
 - i. One 445-foot by 8-foot walkway connecting the A, B and C Docks;
 - ii. A-Dock: 705-foot by 12-foot walkway with twenty-four 45-foot fingers;
 - iii. B-Dock: 520-foot by 8-foot walkway with twenty-five 45-foot fingers and twenty-four 50-foot fingers;
 - iv. C-Dock: 531-foot by 8-foot walkway with twenty-four 50-foot fingers and twenty-two 60-foot fingers;
 - v. D-Dock: 553-foot by 8-foot walkway with twenty-three 60-foot fingers and nineteen 80-foot fingers; and,
 - vi. Install, use and maintain in-kind various utilities improvements, including electrical, water, and communications systems, a fire suppression system, lighting, and a pump-out facility at the marina dock system.
 - b. Install 108 18-inch round steel piles with 2-inch high-density polyethylene (HDPE) sleeves (20-inch overall diameter);
 - c. Install thirty 24-inch round steel piles with 2-inch HDPE sleeve (26-inch overall diameter); and,
 - d. Install three 80-foot-long by 6-foot-wide grated aluminum gangways, connecting the new dock system to the Clipper Cove Promenade.

3. Construct a new 705-foot-long and 12-foot-wide floating concrete transient and marina dock and wave attenuator/transient dock at the eastern edge of the new marina;
4. Conduct in-kind repair and maintenance of all facilities authorized herein; and
5. Use not more than 16 of the berths in the 168-berth marina for live-aboard vessels to enhance security at the marina.

In the Shoreline Band:

1. Connect the three 6-foot-wide aluminum gangways to the existing rip rap slope/abutments at Clipper Cove Promenade and install three security gates; and
2. Temporarily (for no more than 270 days) use a portion of the adjacent Treasure Island shoreline, specifically the area designated as the contractor staging area except as may be extended as required.

B. Permit Application Date

This authorization is generally pursuant to and limited by the application dated June 2, 2023, including all accompanying and subsequently submitted correspondence and exhibits, subject to the modifications required by conditions herein.

C. Deadlines for Commencing and Completing Authorized Work

Work authorized herein must commence prior to November 30, 2028, or this permit will lapse and become null and void. All work authorized herein must be completed by November 30, 2030, unless an extension of time is granted by amendment of the permit. Maintenance authorized herein may be conducted as long as the development subject to this permit remains in place.

D. Project Summary

The Project site is located within the Bay, in Clipper Cove, on the south shore of Treasure Island, between Treasure Island and Yerba Buena Island. The Project includes the complete removal of the existing marina in Clipper Cove, and replacement with a new marina.

The existing Treasure Island Marina includes three docks, two gangways, and approximately 108 slips ranging from 15 feet to 80 feet long, with overwater fill of 36,895 square feet and 100 12-inch-diameter creosote-treated wooden piles (47.4 cubic yards of solid fill). The Project will replace the existing marina with a new 168-slip marina that will include an overwater fill coverage of 73,279 square feet and 138 new HDPE-wrapped steel guide piles, 20 and 26 inches in diameter (273 cubic yards fill). The replacement marina will result in a total expansion of 36,384 square feet of overwater fill and 225.6 cubic yards of solid fill.

The new marina design includes concrete decking material, equipped with an internal utility chase for electrical and plumbing equipment. The dock system sections will have a six-sided concrete shell with expanded polystyrene foam core fully encapsulated within. The dock system will include electrical service, communication, pump-out service, and potable water in each slip. Three new aluminum gangways will be installed to connect the new dock system to Clipper Cove Promenade on Treasure Island. The new marina includes a 705-foot guest dock (Dock A) that will also function as a floating wave attenuator. Dock A will be reserved as a publicly accessible transient moorage dock that can be accessed for a nominal fee.

The Project is anticipated to be constructed in a single phase, with all in-water work to be completed in one season, although additional time may be needed in which case the Project may be constructed over two construction seasons. Dredging necessary for future navigation safety and ongoing marina operations would be reviewed under a permit amendment application when needed, and not part of the construction process as described in the proposed project. However, construction and immediate/near-term use of the marina authorized under this permit may be conducted prior to and according to the applicant is not dependent upon any dredging work.

The Project site will be accessed via Clipper Cove Way and from the water during demolition and construction, with staging to occur in the parking lot or other immediately adjacent locations across from the existing marina along Clipper Cove Way, and potentially via water access at Pier One at the southeastern corner of Treasure Island. Any treated timber would be disposed of at an upland disposal site outside of BCDC jurisdiction. Installation of new steel guide piles will be primarily by vibratory driver and then completed using an impact pile driver with a cushion block for the remaining three to five feet where necessary. Existing piles will be removed with the use of a vibratory hammer or other non-jetting processes.

To reduce potential underwater noise impacts from pile installation on fish and marine mammals, the permittee will restrict pile driving to the in-water work window for salmonids for San Francisco Bay, install only up to 8 piles per day, use a soft-start technique, and operate only a single diesel hammer at a time. The pile driving completion period is expected to be 18 to 35 days in duration.

E. Related Authorizations

BCDC Permit No. 2016.005.02, issued to the Treasure Island Development Authority (TIDA), Treasure Island Community Development, LLC, and Treasure Island Series 1, LLC, on September 19, 2016, and amended through May 15, 2024, authorized mixed-use development, a ferry terminal, waterfront parks, and associated improvements on Treasure Island. Although both the landside development and an expanded marina were evaluated under the same Environmental Impact Report (EIR) in 2006 for the Transfer and Reuse of Naval Station Treasure Island San Francisco, the marina project authorized

under this permit has been reviewed and assessed as a separate distinct project with separate applicants. In 2018, Treasure Island Enterprises, LLC (TIE) signed a 66-year lease within Clipper Cove, without any landside area, from TIDA for the purpose of this marina replacement project.

II. Special Conditions

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

A. Specific Plans and Plan Review

1. Construction Documents

The development authorized herein shall be built generally in conformance with the preliminary plan set entitled “Treasure Island Marina”, prepared by Bellingham Marine and dated September 1, 2023 (the “Construction Documents”), as submitted as part of the application for this project.

The permittee is responsible for ensuring that the 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. 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. All documents are reviewed within 60 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 permittee may carry out the project authorized herein in a manner substantially consistent with the plans referred to in Special Condition II.A.1 of this permit.

a. Document Details

Final construction documents shall be labeled, as appropriate, 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. Final construction 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 construction 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 construction documents and the special conditions of this permit or legal instruments, the special condition shall prevail.

d. **Reconsideration of Plan Review**

The permittee 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 permittee within 30 days 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

The permittee shall reserve the eastern side of Dock A for use as a publicly accessible dock for transient dock moorage for the duration of this permit.

1. **Area**

Approximately 705 linear feet of the eastern side of Dock A shall be reserved for transient boaters, comprising approximately 10 berths, provided, however, the number of boats accommodated will depend on the size of the boats berthed at any given time.

2. Restrictions

Access to the transient dock will be facilitated by gates controlled by the marina manager and shall be open for transient boaters. Use of the transient boat dock will be based on a half-day basis, to be managed through reservations made with the marina manager through an electronic portal, developed and hosted by the marina operator, with a limit of two (2) consecutive days for any transient boater.

3. Fee

The use of the transient dock shall be provided to boaters at a nominal fee, such that the permittee shall not make profit from the provision of the transient boat dock. Prior to instituting any fee for use of the transient dock, the permittee shall submit a request to impose a fee for review and approval by or on behalf of the Commission. Such a request shall include the proposed fee and a description of how the proposed fee was calculated, including consideration of costs. The review of the fee shall be conducted pursuant to Special Condition II.A.

4. Public Dock Usage Report

One year following commencement of marina operations, the permittee shall provide the Commission with a report on the usage of the transient dock for the purposes of evaluating the restrictions of use as conditioned in Special Condition II.B.2 and II.B.3. This report shall include data on the dock's usage, including frequency of use, duration of use, daily use counts, distinct user counts, and any complaints or feedback received by users. Commission staff will use the report, in conjunction with community feedback, to determine whether there is a need to adjust the duration restriction of the transient dock. Any changes to these permit conditions based upon that report will occur through an amendment to this permit.

5. Construction in Existing Public Access Areas

If construction or staging occurs within existing public access areas, the permittee shall:

- a. Prepare and submit a Construction Detour Plan, to be approved by or on behalf of the Commission, pursuant to Special Condition II.A;
- b. Establish a clearly marked and continuous detour rerouting the public around any portion of a public access pathway that may be occupied by construction;
- c. Post clearly marked signs at and near the construction site to notify the public of any temporarily closed public access areas, the length of time that the access path will be closed, and the location of the temporary detour; and
- d. Following construction, all public access areas shall be restored to their former pre-construction condition.

C. Marina Conditions

1. Construction

Construction standards for marina berths and associated facilities shall be at least equal to those established by the California Department of Boating and Waterways. All construction activity shall be performed to minimize turbidity and to prevent debris from drifting and presenting a pollution or navigation hazard.

2. Waste Discharge

The discharge of any dirty-solid or dirty-liquid wastes, including oily-bilge water, grey water, or sewage, into the Bay within the marina basin is prohibited.

3. Waste Facilities

Prior to the use of any berth, the permittee shall ensure that convenient waste oil disposal is available and install a suitable facility of oily wastes, a facility for pumping out vessel holding tanks and receiving wastes from portable toilets. Such facilities shall be constructed to all applicable codes and standards, shall be connected to onshore waste treatment facilities, and shall be maintained by the permittee in a safe and sanitary manner. Such facilities shall be available to boaters every day of the week and any fees for the use of the facilities shall be limited in amount to cover the cost of the operation of the facilities

4. Marine Toilets

The permittee shall make it a requirement of the use or occupancy of any berth that: (a) any vessel berthed, if equipped with a marine toilet, shall contain an adequate holding tank, incinerator recirculation device, or other equivalent device approved by applicable agencies to preclude discharge of wastes into the waters of the marina, or have the marine toilet rendered inoperable while any such vessel is moored in the marina; and (b) any violation of the waste discharge requirements of this authorization shall be cause for immediate cancellation of the right of such use or occupancy. The permittee shall submit to the Commission a copy of the berthing agreement which shall set forth the requirements included in this condition.

5. Enforcement Responsibility

The permittee shall adequately enforce the requirements herein, and shall submit to the Commission the name, address, and telephone number of the person at the marina responsible for such enforcement.

6. Enforcement Alternatives

The Commission reserves the right, in the event of repeated or serious problems with waste discharges in violation of the requirements herein or in the event of laboratory test results that indicate the presence of materials associated with waste discharges, to require that the permittee remove or cause to be removed

permanently from the marina any vessels from which wastes have been discharged. Failure of the permittee to adequately take appropriate action following Commission intervention shall be deemed a violation of this permit.

7. Live-Aboard Boats

Except as specifically authorized I.A.5 of this permit, no vessels moored in the marina shall become a long-term place of residence. Any violation of this condition shall be grounds for immediate termination of the berthing rights of any such owner or occupant.

8. Sales or Long-Term Rental of Berths

Berths shall be rented to the general public without discrimination and no right to use of an individual berth shall be granted or otherwise transferred that exceeds one year in duration.

9. Existing Berthed Vessels

Vessels berthed at the previously existing marina at Clipper Cove shall be subject to grandfathered rates based on vessel length in linear feet and shall be phased into new slips based on the construction of appropriate-sized new slips.

D. Live-Aboards

1. Live-Aboard boats authorized to be moored in the marina shall be those boats designed and used for active navigation but are distinguished from other navigable boats in that they are also used as a primary place of residence. No houseboats, as that term is defined by the California Code of Regulations, Title 14, Section 10127, shall be moored in the marina. By no later than January 31, of each year following construction, the permittee shall provide a report of the number and location of live-aboards at the marina.
2. Convenient and adequate restrooms, showers, garbage disposal facilities and sewage pumpout stations shall be provided and maintained for use by occupants of the live-aboard boats.
3. The number of live-aboard boats shall at no time exceed ten percent of the number of authorized berths in the marina.
4. Adequate tidal circulation shall be maintained in the marina.
5. Prior to the lease for live-aboard boat use of any of the 16 berths authorized herein, the permittee shall have received prior written approval by or on behalf of the Commission, and have completed construction of restrooms, showers, and garbage disposal facilities on land adequate to serve authorized resident live-aboard occupants, pursuant to plans submitted as required in Special Condition II.A.

6. Monitoring Live-Aboard Use and Enforcement Responsibility

a. Permittee's Responsibility to Enforce

The permittee shall permanently, continuously and fully enforce, through lease provisions, monitoring, notices, education and other appropriate measures, all requirements imposed by Special Conditions II-C and II-D herein.

7. Termination of Authorized Live-Aboard Use

Subject to other applicable federal, state and local laws and regulations, failure to comply with any of the special conditions at any time after the issuance of this permit, may result in the Executive Director requiring the permittee to terminate a specified or all live-aboard use at the marina authorized herein.

E. Protection of Water Quality

The permittee shall conduct the work authorized herein consistent with the requirements of the San Francisco Bay Regional Water Quality Control Board's (Water Board) Section 401 Water Quality Certification and Order (WQC), issued on June 4, 2024, and any future amendments to the WQC.

F. Installation Restoration Site 27 Remediation Land Use Restrictions

The permittee shall adhere to all conditions and restrictions described in the Covenant to Restrict Use of Property (CRUP) between the Department of the Navy and the Department of Toxic Substance Control, as recorded on September 20, 2016, which applies to the current owner or lessee of the area referred to as Installation Restoration (IR) Site 27, an approximately 20-acre arc of submerged land located offshore of Treasure Island (Exhibit B). These restrictions include, but are not limited to:

1. Activities, including dredging, that will result in disturbance of the sediment or installed protective rock armor layer and result in less than two feet of cover of sediment are prohibited.
2. A "No Wake" zone limiting vessel speeds shall be maintained at the remediated area IR Site 27.
3. The permittee shall inspect and conduct bathymetric surveys every five years of the remediated area following construction. The bathymetric surveys and findings memo shall be provided to the Commission by December 31 of each year that the survey was conducted.
4. In the event that the remediation area was affected such that there is less than two feet of cover over the rock armor layer, the permittee shall work with the Commission to remedy the situation, and if necessary, apply for an amendment to this permit to authorize work necessary to address the issue.

G. Fish and Wildlife Protection

The permittee shall take all precautions to avoid adverse impacts native and special-status species including Chinook salmon, steelhead, green sturgeon, and longfin smelt, and associated habitats.

1. Biological Opinions

The permittee shall implement all conservation measures described in the U.S. Fish and Wildlife Service (USFWS) Informal Consultation, dated February 6, 2024, and the National Marine Fisheries Service (NMFS) Letter of Concurrence, dated December 31, 2024. Such measures shall include, but are not limited to, the following, and are further detailed in the USFWS and NMFS authorizations:

a. In Water Construction

All pile-driving activities and other in-water construction activities shall be limited to the established work windows for salmonids of June 1 to November 30 of any year;

b. Pile Removal and Installation

Removal of existing piles and new pile driving shall be conducted with a vibratory hammer and “proofing” each pile for the final five feet to reduce harm to wildlife from sound waves. In the event that the vibratory hammer hits refusal and an impact hammer is necessary to complete installation, a wood cushion block will be used with the impact hammer for the final three to five feet.

c. Debris Removal

Floating booms shall be used around the project site during demolition to capture floating debris. Divers shall recover any non-buoyant debris no later than two weeks after loss.

d. Light Availability

Gangways and triangle frames shall incorporate open grating or adequate spacing to facilitate light transmission and minimize shading impacts to benthic habitats. Gangways and triangle frames shall incorporate open grating or adequate spacing to facilitate light transmission and minimize shading impacts to benthic habitats.

H. Dredging

Dredging of any part of Clipper Cove prior to or following construction is not authorized in this original permit authorization and must be requested through the standard Dredged Material Management Office (DMMO) process for approval via a separate BCDC permit amendment. The permittee shall, in addition to all other necessary permit application or amendment request requirements, submit a sampling and analysis plan

for review and approval, preferable through the Dredged Material Management Office, and similarly, the test results with the proposed disposal or beneficial reuse site based on the findings of the sampling and analysis.

I. Creosote Treated Wood

No pilings or other wood structures that have been pressure treated with creosote shall be used in any area subject to tidal action in the Bay as part of the project authorized herein.

J. Eelgrass Protection

The permittee shall reduce impacts to existing and potential future eelgrass habitat at the site by implementing measures recommended by the California Eelgrass Mitigation Policy and Implementing Guidelines (CEMP), including but not limited to the following:

- a. The permittee shall conduct an eelgrass survey prior to construction during the months of April through October (the active growth period for eelgrass in San Francisco Bay) and provide the Commission with the results of the survey. The survey will be valid for 60 days (if the construction does not begin within those 60 days, that survey will become invalid and a new survey will be required before the start of work). A map of the results of the survey indicating the locations of eelgrass, if present, shall be provided to any personnel conducting activities in relation to the authorized work.
- b. If eel grass is found in the Project area during the pre-construction survey, the permittee shall conduct three, annual post-construction eelgrass surveys during the months of April through October.
- c. The pre-construction survey results will be used to determine if construction activities have damaged eelgrass beds. If impacts do occur, the impacts may need to be mitigated according to a mitigation plan prepared in compliance with the CEMP and through implementation and restoration of eelgrass onsite or at another site.
- d. All eelgrass annual reports shall be submitted to the Commission by January 31st of each year following the monitoring.

K. Notice to Contractor

The permittee shall provide a copy of this permit to any contractor or person working in concert with the permittee to carry out the activities authorized herein and shall point out the special conditions contained herein.

L. Recording

The permittee shall record this permit on all parcels affected by this permit with the City and County of San Francisco within 30 days after execution of the permit issued pursuant to this authorization and shall, within 30 days after recordation, provide the original recordation to the Commission.

M. In-Kind Repairs and Maintenance

Any in-kind repairs and maintenance of the floating docks, gangway, and associated infrastructure shall only utilize construction material that is approved for use in San Francisco Bay and shall only occur during current approved months during the year to avoid potential impacts to fish and wildlife. BCDC staff should be contacted to confirm current restrictions. Repair and maintenance shall be confined to newly constructed structural footprints authorized herein and shall not result in the enlargement of the newly installed pier, gangway, wave attenuator, or dock structures.

III. Findings

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), and the California Environmental Quality Act (CEQA), and the Commission's amended coastal zone management program for San Francisco Bay under the Coastal Zone Management Act for the following reasons:

A. Use

Project Site and Existing Conditions

The Project is located at 1 Clipper Cove Way in the City and County of San Francisco, between Treasure Island and Yerba Buena Island. The new marina would be located on the northern shore of Clipper Cove, with access provided via gangways to the newly constructed Clipper Cove Promenade, on Treasure Island.

The project site has been highly altered from historical conditions, with Treasure Island being created by placing fill in the Bay by the U.S. Army of Corps of Engineers in 1936 to 1937. Treasure Island and Yerba Buena Island are the sites of the former Naval Station Treasure Island, which was closed in September 1997 as part of the Base Realignment and Closure Program.

The Project is being developed concurrently with the ongoing master developer project on Treasure Island, involving the larger Transfer and Reuse of Naval Station Treasure Island Project. The landside project entails redevelopment to provide a broad mix of residential uses and publicly oriented attractions at Treasure Island and Yerba Buena Island. The shoreline to the north of the project site is composed of urban commercial developments. Although both the landside development project and the expanded marina project were evaluated under the same Environmental Impact Report, certified in 2006, the landside master development project is being conducted by a separate

entity, the Treasure Island Development Authority (TIDA), from the permittee of this marina project. The permittee has no property interest or control of any property landward of the proposed marina replacement project site. TIDA is the property owner for all of Clipper Cove, and in 2019 approved the 66-year lease of the marina area to the permittee (expiring on December 31, 2088), finding that the “marina redevelopment in Clipper Cove should not diminish the character of existing public recreation and public education on Clipper Cove”.

A recreational swimming beach is located to the south of the project site. Clipper Cove consists of open water with existing depths of 3 to 18 feet at mean lower low water (MLLW). Eelgrass is located on western and southern shores, adjacent to and outside the project area, in generally shallow areas less than depths of 12 feet MLLW.

San Francisco Bay Plan Map No. 4 indicates there is no designated priority use area at the project site. Bay Plan Policy 25 of this Map, corresponding to “Yerba Buena and Treasure Islands - Clipper Cove” and which is an enforceable policy and has the same authority as policies in the text of the Bay Plan, states, “Expand marina and other water-oriented recreation uses, provide water access for small watercraft, such as kayaks, and for swimming. Preserve beaches and eelgrass beds.”

The demolition of an existing marina and replacement with a larger marina at this site is thus in accordance with the San Francisco Bay Plan Map No. 4, policy 25.

B. Bay Fill

Applicable Policies:

The placement of fill in the Bay may be authorized when it meets the fill requirements identified in Section 66605 of the McAteer-Petris Act which states, in part, that: (1) the public benefits from the fill must clearly exceed the public detriment from the loss of water areas; (2) the fill should be limited to water-oriented uses, such as ports, water-related industry, and bridges, or minor fill to improve shoreline appearance or public access; (3) there should be no alternative upland location; (4) the fill should be the minimum amount necessary; (5) the fill should minimize harmful effects to the bay, such as the reduction or impairment of the volume surface area or circulation of water, water quality, fertility of marshes or fish and wildlife resources; and (6) that the fill should, to the maximum extent feasible, establish a permanent shoreline.

Analysis:

Public Benefit and Minimum Amount Necessary. The project authorized under this permit will result in a net increase of 36,384 square feet of overwater fill and 225.6 cubic yards of solid fill, through the removal of the existing 36,895 square-foot marina (with 47.3 cubic yards of solid fill), and construction of the 73,279 square-foot replacement marina, with 273 cubic yards of solid fill. The increase in overwater and solid fill is the result of the expansion of the marina from a 108-slip marina to the new 168-slip marina, and replacement of 100 12-inch-diameter creosote-treated wooden piles with 30 24-inch-diameter steel piles and 108 18-inch-diameter steel piles.

The marina proposal in its current design is the result of a planning process which first began in 1998. An expanded marina proposal was included as part of the master development plan for Treasure Island, for which an Environmental Impact Report was prepared and certified in 2006 (“The Transfer and Reuse of Naval Station Treasure Island Final Environmental Impact Report”, State Clearinghouse No. 1996092073). In 2019 as part of the San Francisco Board of Supervisors’ approval of the permittee’s 66-year lease, the Board affirmed the Planning Department’s determination that no additional environmental impacts would occur as a result of the project beyond those included in the certified Transfer and Reuse of Naval Station Treasure Island Final Environmental Impact Report in 2006, and thus no additional CEQA review was required at that time. During this approval process, and as a result of negotiations with existing users of Clipper Cove and other interested parties, the marina design was reduced from an initially proposed 410-slip marina with a breakwater/pier totaling approximately 119,650 square feet of overwater fill, impacts associated with covering the surface of the Bay to its current footprint—a reduction of approximately one third in size. The impacts of an expanded marina on existing use of the Bay are discussed further in Sections III.C and III.D below. Further, the addition of 60 new berths and transient docking will provide additional recreational access for boaters, a public benefit given the high demand for and limited supply of marina facilities in the Bay.

Upland Alternative Location and Water-Oriented Use. No upland alternative location exists to accommodate the improvements and expansion of the existing boating and water-oriented recreational facilities provided by a marina because a marina inherently must be located in water.

Effects on Bay Resources. In addition to Section 66605(d) of the McAteer-Petris Act regarding the impacts of fill on Bay resources, the Bay Plan contains related policies, cited below.

Subtidal Areas

Applicable Policies:

Bay Plan Subtidal Areas Policy 1 states that, “Any proposed filling or dredging project 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”. Subtidal Areas Policy 2 states that “Subtidal areas that are scarce in the Bay or have an abundance and diversity of fish, other aquatic organisms and wildlife (e.g., eelgrass beds, sandy deep water or underwater pinnacles) should be conserved. Filling, changes in use; and dredging projects in these areas should therefore be allowed only if: (a) there is no feasible alternative; and (b) the project provides substantial public benefits.”

Analysis:

Although eelgrass (*Zostera marina*) has not been recorded within the project area, a 2019 survey performed by AECOM found it to occur along the southern edges of Clipper Cove. That report concluded that, “The area where the proposed marina and dredged channel will be sited is far too deep to support eelgrass, so the project will not directly affect the future extent of eelgrass in Clipper Cove.” However, it did raise the possibility of indirect impacts to eelgrass resulting from propeller wash from increased vessel traffic in the vicinity. Special Condition II.K requires the permittee to perform pre- and post-construction eelgrass surveys, as well as follow all guidance as specified in the California Eelgrass Mitigation Policy (NOAA, 2014). Clipper Cove has not been dredged since at least 1997, and current water depths at Clipper Cove are sufficient to allow for vessel use of the marina; a 2019 study conducted by AECOM found the area to experience low rates of sedimentation. In addition, future dredging to facilitate the long-term operation of and access to the marina must be reviewed for authorization under a separate amendment application to this permit, so the aspects of Subtidal Areas Policies 1 and 2 pertaining to dredging activities and impacts are not directly relevant to this project at this time.

The area of Clipper Cove alongside the western shore of Treasure Island, and overlapping with the project site, was the site of a former skeet range used by the Navy (Exhibit B). As part of the Base Realignment and Closure effort, this area was remediated by the U.S. Navy to address remnant lead contamination (referred to as the Installation Restoration (IR) Site 27 remediation). The Navy’s remediation involved shallow dredging and placement of armor stone in 2013, with the result of any remaining lead shot buried under at least two feet of sediment. As part of the property transfer process, certain land-use controls and restrictions to protect the remediated area, including an

enforceable commitment to not dredge or otherwise disturb sediment such that the area will result in less than two feet of cover, and to conduct bathymetric surveys every five years, were set forth under a Covenant to Restrict Use of Property (CRUP), recorded on September 20, 2016 between the Department of the Navy and the Department of Toxic Substances Control (DTSC), and applying to any current or future owner or lessee of the property. Further land use restrictions include limiting vessel speeds and restricting certain vessels within the remediated area. Special Condition II.E ensures that the permittee, as lessee of property subject to these land-use controls and restrictions, adheres to the conditions of this agreement. Although some piles will be driven through the Navy's backfill, the backfill placed by the Navy was designed to allow for pile-driving, and the permittee coordinated with the US Navy during the project design to ensure that this was acceptable. The existing marina does not overlie the Navy's backfill, and therefore no piles will be removed from the backfill.

Impacts to Fish, Aquatic Organisms, and Wildlife

Applicable Policies:

The Bay Plan Fish, Other Aquatic Organisms and Wildlife Policy No. 1 states that "to assure the benefits of fish, other aquatic organisms and wildlife for future generations, to the greatest extent feasible, the Bay's tidal marshes, tidal flats, and subtidal habitat should be conserved, restored and increased." Policy No. 2 states, in part, that, "native species, including candidate, threatened, and endangered species...as well as specific habitats that are needed to conserve, increase, or prevent the extinction of these species..., should be protected. Protection of fish, other aquatic organisms, and wildlife and their habitats may entail placement of fill to enhance the Bay's ecological function in the near-term and to ensure that they persist into the future with sea level rise." Additionally, Policy No. 4 states, in part, that "the Commission should consult with the [CDFW] and [USFWS] or [NMFS] whenever a proposed project may adversely affect an endangered or threatened plant, fish, other aquatic organism or wildlife species...and give appropriate consideration of [their] recommendations...to avoid possible adverse impacts of a proposed project on fish, other aquatic organisms and wildlife habitat."

Analysis:

The project involves the removal of 100 existing pilings and the driving of 138 new pilings. Pile driving may temporarily disturb benthic sediments and increase turbidity and suspended sediment levels in the immediate vicinity of the project area during construction. Additionally, the expanded marina footprint will increase the underwater shading of the benthic environment.

On February 6, 2024, the USFWS issued an informal consultation for the project, evaluating potential impacts on the San Francisco Bay-Delta distinct population segment (DPS) of the longfin smelt (*Spirinchus thaleichthys*). The USFWS concluded that with best management practices implemented, including limiting pile-driving to June 1 to November 30 and using soft-start construction techniques for pile driving, the project may affect, but is not likely to adversely affect longfin smelt.

On December 31, 2024, NMFS issued its informal consultation for the project, evaluating potential impacts on steelhead, Chinook salmon, and green sturgeon, and their critical habitat. By limiting construction to the salmonid work window of June 1 to November 30, the primary migration period of juvenile and adult salmonids is avoided, and the presence of these species in the project area is very unlikely. For green sturgeon that may be present during construction, elevated underwater sound levels will be mitigated by the use of vibratory hammers, and only using impact hammers to proof piles if necessary. While sturgeon may be startled, there is sufficient area for dispersal, and thus the project's pile driving activities on green sturgeon are expected to be insignificant. Chinook salmon, steelhead, and green sturgeon are wide-ranging migratory fish, and, with large areas of San Francisco Bay available for foraging and migration, impacts to their designated critical habitat resulting from the marina replacement are expected to be insignificant. NMFS determined that the proposed Project may affect, but is not likely to adversely affect these listed species and their critical habitat. The Project may also impact essential fish habitat for various life stages of fish species managed under the Pacific Coast Groundfish fishery management plan (FMP), Coastal Pelagic Species FMP, and the Pacific Coast Salmon FMP. In part to offset these impacts, NMFS's consultation further stipulates that the permittee will provide \$20,000 in funding to Ducks Unlimited for the Mountain View Pond A2W Restoration Project, a tidal wetland habitat restoration project of the South Bay Salt Pond Restoration Project, equivalent to 18,470 square feet of restored tidal wetland habitat.

Staff reached out to the California Department of Fish and Wildlife on project impacts, and were notified of the adjacent eelgrass beds and potential impacts. As described above, Special Condition II.I requires the permittee to adhere to the guidance described in the California Eelgrass Mitigation Policy. While the applicants did not apply for an incidental take permit (ITP) from CDFW for potential impacts to longfin smelt, the USFWS's evaluation of project impacts on the species should be considered sufficient to address concerns for that species.

Special Condition II.F requires the permittee to implement a range of avoidance and minimization measures to protect sensitive habitats, animal and plant species, including conducting work in accordance with the requirements of relevant NMFS and USFWS approvals.

Water Quality

Applicable Policies:

Bay Plan Water Quality Policy No. 1 states, 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.” Policy No. 2 states, in part, that “water quality in all parts of the Bay should be maintained at a level that will support and promote the beneficial uses of the Bay...” and “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.” Additionally, Policy No. 3 states, in part, that “new projects should be sited, designed, constructed and maintained to prevent or, if prevention is infeasible, to minimize the discharge of pollutants into the Bay.”

Analysis:

The Water Board issued a 401 Water Quality Certification and Order (WQC) for the Project on June 4, 2024. The WQC stated that the Project’s fill and discharge impacts are not anticipated to adversely affect waters of the State. Further, removing and replacing the existing marina is anticipated to have a net environmental benefit by removing pressure-treated wood that poses a water quality threat through creosote contamination.

Special Condition II.D requires the permittee to conduct work consistent with the conditions provided in the WQC, including a prohibition on unauthorized construction-related materials or wastes from entering the Bay and no fueling, cleaning, or maintenance of vehicles or equipment to occur in the Bay.

As described above, Special Conditions II.F and II.E further require the permittee to, respectively, adhere to species conservation measures, including the use of a debris boom during marina demolition, and land use restrictions to ensure contaminated sediment is not disturbed, which further ensure the project is aligned with Bay Plan Water Quality Policies.

Therefore, as conditioned, the project impacts of an additional 36,384 square feet of overwater fill and 225.6 cubic yards of solid fill can be found consistent with the requirements of Government Code section 66605 and relevant Bay Plan policies.

Live-Aboards

Applicable Policies:

The San Francisco Bay Plan Recreation Policy 3.c on live-aboard boats set out five requirements that a marina must meet-before the Commission can authorize live-aboards as ancillary to a water-oriented use: (a) the number must not exceed ten

percent of the total authorized berths unless the applicant can demonstrate clearly that a greater number of live-aboard boats is necessary to provide security for a water oriented use; they are incidental to a water-oriented use; (b) the boats must promote and further the recreational boating use of the marina (for example, provide a degree of security), and must be located within the marina consistent with such purpose; (c) the marina must provide, on land, sufficient and conveniently located restrooms, shower, garbage disposal facilities, and parking adequate to serve live-aboard occupants and guests; (d) the marina must provide and maintain an adequate number of vessel sewage pump-out facilities in locations that are convenient in location and time of operation to all boats in the marina, particularly live-aboard boats, and must provide the service free of charge or at a reasonable fee; and (e) there must be adequate tidal circulation in the marina to mix, dilute and carry away any possible waste-water discharge. Existing live-aboards which exceed ten percent of the authorized berths in the marina may remain until the number of live-aboards decreases to below ten percent. Additional live-aboards may then be approved only if the applicant demonstrates that the live-aboards meet the above requirements.

Analysis:

The McAteer-Petris Act limits fill in the Bay to certain water-oriented uses, such as marinas. In addition, any use the Commission approves in the Bay must be consistent with the uses that are permissible under the public trust. Live-aboard boats are distinguished from other navigable boats in that they are also used as a primary place of residence. Residential use is neither a water-oriented use nor a public trust use. Live-aboard boats can be permitted, however, if their use is ancillary to a water-oriented use such as a marina, in accordance with the above policy. The new expanded marina at Clipper Cove will be located across from the rapidly developing Treasure Island community, encompassing approximately 300 acres of park space and 8,000 new residential units. Adjacent to the marina is the Clipper Cove Promenade, a required public access component of the Treasure Island development project, which includes landscaping, pathways, and a bicycle path. The approximately 16 live-aboards at the Treasure Island Marina will provide security for this promenade and for the marina, and are therefore ancillary to the marina use. The 16 live-aboards also conform to the 10% of total berths limit set forth in the San Francisco Bay Plan. The permittee will be required to submit an annual Live-Aboard Berthing Plan subject to the Commission's review and approval per Special Condition II-D of this permit, to ensure that live-aboards be distributed in a manner consistent with their security purpose.

In addition to setting limits on the numbers of live-aboard berths that can be authorized in a marina and requiring that the live-aboard proposal actually promote and further a security purpose, the Bay Plan also requires that certain facilities necessary to support live-aboard use be available at the marina. Special Condition II-D.1 of this permit

requires that convenient and adequate restrooms, showers, garbage disposal facilities and sewage pumpout stations are provided and maintained for use by occupants of the live-aboard boats.

The Bay Plan requires adequate tidal circulation in a marina to mix, dilute, and carry away any possible wastewater discharge. The permittee has submitted an analysis by a Civil Engineer who concludes that adequate tidal circulation exists at the new marina in Clipper Cove. On that basis the Commission finds that the marina conforms to the Bay Plan policies on tidal circulation.

C. Public Access

The Commission finds that the project, as conditioned, is consistent with McAteer-Petris Act and San Francisco Bay Plan policies related to public access for the following reasons:

Applicable Policies:

Section 66602 of the McAteer-Petris Act states, in part, 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), and 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,...except in cases where public access would be clearly inconsistent with the project because of public safety considerations or significant use conflicts, including unavoidable, significant adverse effects on Bay natural resources. In these cases, in lieu access at another location preferably near the project should be provided” (Policy No. 2).

In addition, Public Access Policy No. 8 states, in part, that “...improvements provided as a condition of any approval...” should, among other things: “be consistent with...the physical environment, including protection of Bay natural resources,...provide for the public’s safety and convenience,...be designed and built to encourage diverse Bay-related activities and movement to and along the shoreline,...provide barrier free access for persons with disabilities, for people of all incomes...to the maximum feasible extent,...include an ongoing maintenance program,...and...be identified with appropriate signs.”

Further, Recreation Policy No. 3.b states, in part, that “...marinas should include public amenities, such as viewing areas, restrooms, public mooring docks or floats and moorages for transient recreational boaters, non-motorized small boat launching facilities, public parking; substantial physical and visual access; and maintenance for all facilities”

Analysis:

In assessing whether public access requirements should be included as a condition of approving any proposed project, the demand for future public access that would be generated by the proposed project relative to existing demand and provision should be evaluated. The expanded marina, increasing the number of berths by 60 and increasing the average berth size from 32 feet to 55 feet, is expected to attract more people to the Treasure Island shoreline and increase demand for recreational boating in Clipper Cove.

Opportunities for new public access improvements were limited for the project due to the project site being circumscribed by its leased area and lack of shoreline component within that leased area. Previous BCDC permitted marina projects have provided new public access opportunities primarily through shoreline amenities. A previously proposed pedestrian access pier, under the initial significantly larger marina expansion project evaluated in the 2006 EIR, was deemed infeasible due to the current limited available leased area of the project site. Public access to the currently proposed marina docks will also be infeasible due to security concerns for the private marina occupants. Potential public access improvements that were proposed and discussed during this project's application phase included a public kayak launch, transient boat moorage, and in-lieu funding for off-site public access amenities. After discussing the feasibility of each of these proposals with the permittee, a publicly accessible transient boat dock providing moorage at a nominal fee, as set forth under Special Condition II.B.3, was best determined to achieve maximum feasible public access consistent with the project. This feature will allow for a various number of boats to be moored at a time along the eastern, external, side of Dock A, providing greater access to Clipper Cove to the general public boating community.

Most marinas permitted by BCDC include required public access, located within the shoreline band. Transient or guest docks are identified in a small number of marina permits, with even fewer included as a required public access improvement. The conditioned restrictions on transient or guest docks have included providing moorage free of charge, or at a small fee. Similarly, some marinas allow for overnight docking at their transient/guest dock, while others do not allow for overnight berthing. However, the majority of transient/guest docks found at marinas through the Bay are not a required public access condition of their BCDC permit, as presented in this Project. This is because, again, most permitted marinas are part of larger developments along the shoreline, with their required public access occurring landside. Other permitted marinas have included a pedestrian pier, accessible viewing platform, or non-motorized small boat launch, all of which were deemed infeasible at this location due to the limited area that was leased by the permittee from TIDA.

Staff were only able to locate a small number of permitted marinas which include a guest dock, or transient berthing, as an explicit public access requirement. These include the Jack London Square marina (BCDC Permit No. 1985.019.24A), Alameda Landing marina (BCDC Permit No. 2018.004.00), the South Beach Harbor (BCDC Permit No. 1984.002.22), and the San Francisco Marina - West Harbor (BCDC Permit No. 2007.003.12). Of these permits, none stipulate the rates that the marina operators may charge for their use, and only the South Beach Harbor conditions the maximum length of stay for transient-berthing, at 14 consecutive days.

Jack London Square in Oakland requires a 2,127-square-foot boat dock which "may be used for occasional kayak launching and boat removal, transient tour boat and dining yacht tie-up, and a temporary water shuttle pilot project", and that the "commercial use of this public access facility shall not unduly limit the public's use and enjoyment of the small boat launching facilities" (Special Condition II.B.2.b). Findings of this permit do not speak to the use of the transient moorage as component of the new and enhanced public access of the project.

The Alameda Landing development includes a 4,594-square-foot public dock, "including a public dock, kayak launch, and water shuttle landing" (Special condition II.B.4.d). Although the findings of this permit state that "the dock system will provide water-oriented recreational opportunities for a variety of users in a location where no water access currently exists", they do not provide further details explicitly about guest or transient berthing as contributing to the project's public access.

The South Beach Harbor marina permit includes two guest docks to be "available for short term berthing (not to exceed 14 consecutive days)" (Special condition II.B.2.a.4, II.B. 11.a). While the project summary of this permit states that the "two guest docks will provide the public with opportunities to access the water", the findings do not provide any additional justification for the fourteen day limit on guest berthing. The required short-term berthing docks for this project is in addition to a suite of landside and water-oriented recreation public access components, including a park, play area, parking, promenade, kayak launch, human hoist, and appropriate furnishings.

Finally, the West Point Harbor Marina (BCDC Permit No. 2007.003.12) did initially include a required public access guest dock, which was later removed; that permit does, however, also include a boat launch as part of its public access improvements, which must be provided at a "reasonable, low-cost fee", which is further described as, "for example, ten dollars is a reasonable, low-cost fee for use of the public boat launch."

Therefore, in determining that the provision of a publicly accessible transient boat dock should be included for this Project as its public access component, staff did not have many existing examples to draw from. However, as outlined above, requiring this provision does have some precedent among BCDC permitted marinas, along with the requirement that any fee charged should be nominal in nature, such that the permittee should not receive profit from the public access provision. Similarly, overnight moorage has been limited at two nights for transient docking to encourage greater access to the facility by a greater number of people, while remaining consistent with existing marina requirements. Special Condition II.B.4 requires the permittee to submit a Public Dock Usage Report after the first year of marina operations, at which time the restrictions placed on the transient dock's fee (Special Condition II.B.3) and overnight limit of two nights (Special Condition II.B.2) may be evaluated. Changes to these conditions based upon that report will require the request for an amendment to this permit.

The project should also be evaluated both in the context of the broader Treasure Island Development Project and the process by which that current marina project proposal design was arrived upon. BCDC Permit No. 2016.005.00 (TIDA and TICD) for the redevelopment of Treasure Island includes a finding stating that: "The expansion of Clipper Cove Marina is not authorized in this permit. Any redevelopment or expansion of the marina will come to the Commission under a separate permit application submitted by different applicants along with TIDA, including a proposal for additional public access. Although any future expanded Clipper Cove Marina application will require an additional public access program, the required public access facilities along Clipper Cove Promenade constructed by TICD and maintained by TIDA can contribute to that program."

Therefore, although the marina expansion is being developed in coordination with the broader Treasure Island Development Project (and was evaluated together under the 2006 EIR), including the adjacent shoreline Clipper Cove Promenade, it is still expected for the marina project to provide additional public access separate from those landside developments. Framed another way, while staff acknowledges that the permittee's lease does not cover any landside area for purposes of determining a maximum feasible public access package consistent with the project, by the same token the Clipper Cove Promenade cannot, in and of itself, satisfy the requirement that the current project proposal provide maximum feasible public access consistent with the project.

Given the site constraints for available public access improvements at the project site, off-site in-lieu funding for public access was also considered. However, Bay Plan Public Access Policy 2 states that in-lieu funding should only be used "where public access would be clearly inconsistent with the project because of public safety considerations or significant use conflicts, including unavoidable, significant adverse effects on Bay natural

resources.” These considerations are not present for this project. Further, provided that Treasure Island is currently being developed under a separate permit by a separate permittee (2016.005.00; TIDA), complete with its own comprehensive public access improvements package, staff did not identify any nearby projects or other current opportunities in need of additional funding for the purpose of public access provided as in-lieu funding from this project

Further, an expanded marina footprint and increased vessel traffic will impact existing uses of and future demand at Clipper Cove. Although the replacement marina will be approximately twice the size of the existing marina, this design is still only approximately one third the footprint of the initially proposed marina, evaluated under the 2006 EIR. The marina’s size was scaled back—from 410 berths to 168 berths—in response to opposition from the Treasure Island Sailing Center, the Sierra Club, and other environmental and recreational boating organizations. The approval of the revised design and signing of the permittee’s lease in 2019 by the City and County of San Francisco Board of Supervisors thus represented a compromise between the permittee and those organizations. The revised marina design was also modified to ensure that access to the beach south of the project site remained unimpeded, as the beach is an important public access amenity supported by Bay Plan policies (i.e., Bay Plan Map 4 and Recreation Policy 3.g).

Finally, the permittee proposes to conduct maintenance dredging of an access channel to Clipper Cove as a planned future project amendment (with all proposed dredging details to be evaluated in a future amendment application). While a larger marina will result in more and larger vessel traffic in Clipper Cove, the dredged access channel would be expected to benefit all recreational boaters that enter Clipper Cove. Representatives from the Treasure Island Sailing Center (TISC) have stated that current sedimentation conditions at this entrance make access difficult, therefore this future project proposal is expected to benefit public access to the Bay.

As conditioned, the project authorized under this permit will provide maximum feasible public access to the Bay and shoreline consistent with the project and is, therefore, consistent with Section 66602 of the McAtter-Petris Act and the *San Francisco Bay Plan* policies on public access and recreation.

D. Environmental Justice and Social Equity

Applicable Policies:

Bay Plan policies on Environmental Justice and Social Equity state, in part: “Equitable, culturally-relevant community outreach and engagement should be conducted by local governments and project applicants to meaningfully involve potentially impacted communities for major projects and appropriate minor projects in underrepresented

and/or identified vulnerable and/or disadvantaged communities, and such outreach and engagement should continue throughout the Commission review and permitting processes. Evidence of how community concerns were addressed should be provided. If such previous outreach and engagement did not occur, further outreach and engagement should be conducted prior to Commission action.” (Policy No. 3) “If a project is proposed within an underrepresented and/or identified vulnerable and/or disadvantaged community, potential disproportionate impacts should be identified in collaboration with the potentially impacted communities. Local governments and the Commission should take measures through environmental review and permitting processes, within the scope of their respective authorities, to require mitigation for disproportionate adverse project impacts on the identified vulnerable or disadvantaged communities in which the project is proposed.” (Policy No. 4).

Analysis:

Treasure Island is considered to be a socially vulnerable community, as identified through BCDC’s Community Vulnerability Mapping Tool. However, the project site itself is located offshore within the Bay and is not expected to result in direct impacts to the landside community of Treasure Island. Project impacts, however, will result from the expansion of the marina footprint in Clipper Cove, a calmer area used frequently by the recreational boating community and youth sailing, and the expansion of berth sizes to accommodate larger vessels (from an average slip length of approximately 32 feet in the existing marina to approximately 55 feet in the new marina design). Regarding slip size, BCDC has not previously conditioned berth sizes of marinas, however, the permittee has committed to allow existing occupants of the marina to maintain berths at the new marina, charged at rates based upon the linear length of their vessel and not the slip size. This stipulation is captured in this permit under Special Condition II.C.9.

The encroachment of the marina on existing recreational uses of Clipper Cove has been a more contentious issue. During the project’s CEQA process, resulting in its approval by the San Francisco Board of Supervisors and approved lease in 2019, the permittee engaged with and was the recipient of significant public input on its design. Specifically, the Save Clipper Cove organization, spearheaded by TISC and the Sierra Club, objected to a private marina negatively impacting existing uses of a unique well-protected open-water cove, including educational sailing programs and competitive sailing events held in Clipper Cove. As a result of these publicly voiced concerns, the permittee modified the project proposal in response to voiced community concerns by reducing the project footprint of the new marina to approximately one third, compared to the original proposal: 168 slips and 73,279 square-foot of overwater coverage. During the application process for this permit, BCDC staff reached out to representatives of TISC who told staff that dialogues have continued with the permittee in limited capacity, and that although the new marina design will ultimately impact sailing programs,

the organization no longer objected to the project generally. Staff also inquired as to the current levels of recreational use of Clipper Cove, but were unable to locate data to quantify current usage rates.

During the City's approval process, which resulted in an 11-0 Supervisors' approval, the Project received support from: One Treasure Island (formerly TIHDI), the Treasure Island Sailing Center, The Sierra Club, former SF Supervisor John Avalos (Supervisor who negotiated the 2019 compromise/reduction of marina size), Treasure Island residents and merchants, Bay Area Labor Unions and Bobby Winston/Bay Crossings.

Given the unique concerns raised by the marina project at its location in the Bay, project impacts are unavoidable to a certain extent, and equity issues have been mitigated in part through Special Condition II.C.9 allowing for grandfathered rates for smaller vessels of the existing marina, and Special Condition II.B requiring the provision of a publicly accessible transient moorage dock, allowing for increased access to the recreational facilities provided by the marina. Therefore, as conditioned, and together with the reduced marina footprint, the project is considered to be consistent with the above Bay Plan Policies on Environmental Justice and Social Equity.

E. Flooding and Sea Level Rise

Applicable Policies

The Bay Plan Climate Change policies state, in part: "When planning shoreline areas or designing larger shoreline projects, a risk assessment should be prepared by a qualified engineer and should be based on the estimated 100-year flood elevation that takes into account the best estimates of future sea level rise and current flood protection and planned flood protection that will be funded and constructed when needed to provide protection for the proposed project or shoreline area. A range of sea level rise projections for mid-century and end of century based on the best scientific data available should be used in the risk assessment. Inundation maps used for the risk assessment should be prepared under the direction of a qualified engineer. The risk assessment should identify all types of potential flooding, degrees of uncertainty, consequences of defense failure, and risks to existing habitat from proposed flood protection devices." (Policy No. 2) The policies also state: "To protect public safety and ecosystem services, within areas that a risk assessment determines are vulnerable to future shoreline flooding that threatens public safety, all projects—other than repairs of existing facilities, small projects that do not increase risks to public safety, interim projects and infill projects within existing urbanized areas—should be designed to be resilient to a mid-century sea level rise projection. If it is likely the project will remain in place longer than mid-century, an adaptive management plan should be developed to address the long-term impacts that will arise based on a risk assessment using the best available science-based projection for sea level rise at the end of the century." (Policy No. 3). The Commission's Safety of Fills policies also state, in part: New projects on fill or

near the shoreline should either be set back from the edge of the shore [and] be built so the bottom floor level of structures will be above a 100-year flood elevation that takes future sea level rise into account for the expected life of the project, be specifically designed to tolerate periodic flooding, or employ other effective means of addressing the impacts of future sea level rise and storm activity.” (Policy No. 4).

Analysis:

The marina project authorized under this permit is located entirely within the Bay, with no shoreline protection component. The Bay Plan Climate Change Policies are not relevant to fill from the marina because all docks are floating. The piles will be of adequate height to anticipate future sea level rise. Therefore, the project is consistent with Bay Plan Policies on Climate Change.

F. Public Trust Uses

The 36,384 square feet of overwater fill is for expanding and improving existing recreational boating facilities at Clipper Cove. Water-related navigation is a traditional public trust consistent use. Thus, the fill associated with the project is consistent with the public trust.

G. Coastal Zone Management Act

The Commission further finds, declares, and certifies that the activity or activities authorized herein are consistent with the Commission's Amended Management Program for San Francisco Bay, as approved by the Department of Commerce under the Federal Coastal Zone Management Act of 1972, as amended.

H. Environmental Review

The Project was described at a project-specific level in the certified California Environmental Quality Act (CEQA) Environmental Impact Report (EIR) for the Transfer and Reuse of Naval Station Treasure Island San Francisco, California, and on May 5, 2005, the Treasure Island Development Authority (TIDA) and the San Francisco Planning Commission as co-lead agencies certified the EIR with mitigation measures (State Clearinghouse No. 1996092073; TIDA EIR Certification approval, May 5, 2005, Resolution Number 05-017-5105 and the May 5, 2005, San Francisco Planning Commission Motion No. 17020). That certification was reiterated and adopted again in the City and County of San Francisco's 2011 EIR approval for the larger master development EIR certification (Resolution Number 246-11, File Number M11-0092) and during the City and County of San Francisco's Board of Supervisors' approval of the project as revised, on March 20, 2019 (Resolution Number 153-10, File Number 181225).

I. 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.

IV. Standard Conditions

A. Permit Execution

This permit shall not take effect unless the permittee(s) 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, interests, and obligations contained in this permit are assignable in full or in part. This permit shall be assigned within thirty (30) days whenever: (a) the permittee transfers any interest in any real property on which an activity is authorized by a permit to occur; or (b) reassignment is necessary to achieve full compliance with one or more conditions of a permit. To assign this permit, the permittee-assignor and the assignee shall execute and submit for review and approval by Commission counsel a permit assignment document executed and dated by the assignor and assignee or their authorized representatives that contains all of the information specified in section 10830(a) of the Commission's regulations (14 C.C.R. § 10830(a)) and that also complies with sections 10830(b) or 10830(c), if applicable.

D. Permit Runs with the Land

Unless otherwise provided in this permit, the terms and conditions of this permit shall bind all future owners and future possessors of any legal interest in the land and shall run with the land.

E. Other Government Approvals

All required permissions from governmental bodies must be obtained before the commencement of work; these bodies include, but are not limited to, the U. S. Army Corps of Engineers, the State Lands Commission, the Regional Water Quality Control Board, and the city or county in which the work is to be performed, whenever any of these may be required. This permit does not relieve the permittee(s) of any obligations imposed by State or Federal law, either statutory or otherwise.

F. Built Project must be Consistent with Application

Work must be performed in the precise manner and at the precise locations indicated in your application, as such may have been modified by the terms of the permit and any plans approved in writing by or on behalf of the Commission.

G. Life of Authorization

Unless otherwise provided in this permit, all the terms and conditions of this permit shall remain effective for so long as the permit remains in effect or for so long as any use or construction authorized by this permit exists, whichever is longer.

H. Commission Jurisdiction

Any area subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission under either the McAteer-Petris Act or the Suisun Marsh Preservation Act at the time the permit is granted or thereafter shall remain subject to that jurisdiction notwithstanding the placement of any fill or the implementation of any substantial change in use authorized by this permit. Any area not subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission that becomes, as a result of any work or project authorized in this permit, subject to tidal action shall become subject to the Commission's "bay" jurisdiction.

I. Changes to the Commission's Jurisdiction as a Result of Natural Processes

This permit reflects the location of the shoreline of San Francisco Bay when the permit was issued. Over time, erosion, avulsion, accretion, subsidence, relative sea level change, and other factors may change the location of the shoreline, which may, in turn, change the extent of the Commission's regulatory jurisdiction. Therefore, the issuance of this permit does not guarantee that the Commission's jurisdiction will not change in the future.

J. Violation of Permit May Lead to Permit Revocation

Except as otherwise noted, violation of any of the terms of this permit shall be grounds for revocation. The Commission may revoke any permit for such violation after a public hearing held on reasonable notice to the permittee(s) 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 permittee(s) 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 permittee(s) 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. Indemnification by Applicants and Liability for Costs and Attorneys Fees

By acceptance of this permit, the permittee agrees to reimburse BCDC in full for all: (1) reasonable BCDC staff time, calculated using reasonable hourly rates; and (2) BCDC costs and attorneys fees - including (a) those charged by the Office of the Attorney General, and (b) any court costs and attorneys fees that BCDC may be required by a court to pay - that BCDC incurs in connection with the defense of any action brought by a party other than the permittee against BCDC or any of its officers or employees challenging the approval or issuance of this permit. As part of any request for reimbursement, BCDC will provide an itemized accounting of the reasonable BCDC staff time and BCDC costs and attorneys fees for which BCDC is requesting reimbursement, and permittee shall make payment within 30 days of receiving a reimbursement request. BCDC retains complete authority to conduct and direct the defense of any legal action initiated against the agency.

M. Permission to Conduct Site Visit

The permittee(s) 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.

N. Abandonment

If, at any time, the Commission determines that the improvements in the Bay authorized herein have been abandoned for a period of two years or more, or have deteriorated to the point that public health, safety or welfare is adversely affected, the Commission may require that the improvements be removed by the permittee(s), 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.

O. Best Management Practices

- a) **Debris Removal.** All construction debris shall be removed to an authorized location outside the jurisdiction of the Commission. In the event that any such material is placed in any area within the Commission's jurisdiction, the permittee(s), 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.
- b) **Construction Operations.** All construction operations shall be performed to prevent construction materials from falling, washing or blowing into the Bay. In the event that such material escapes or is placed in an area subject to tidal action of the Bay, the permittee(s) shall immediately retrieve and remove such material at its expense.