Oakland Harbor Turning Basins Widening

Coastal Zone Management Act
Bay Conservation and Development Commission
Letter of Agreement

May 2024

PORT OF OAKLAND

San Francisco Bay Conservation and Development Commission
375 Beale Street, Suite 510, San Francisco, California 94105 tel 415 352 3600
State of California | Gavin Newsom – Governor | info@bcdc.ca.gov | www.bcdc.ca.gov

Transmitted Via Electronic Mail

December 27, 2023

Lt. Colonel Shebesta, District Commander
U.S., Army Corps of Engineers, San Francisco District
450 Golden Gate Avenue Fourth Floor
San Francisco, CA 94102
Via Email: <Timothy.W.Shebesta@usace.army.mil>

SUBJECT: Letter of Agreement; BCDC Consistency Determination No. C2023.003.00

Dear Lt. Colonel Shebesta:

On December 21, 2023, the San Francisco Bay Conservation and Development Commission (Commission) voted to conditionally concur with the U.S. Army Corps of Engineers, San Francisco District's (USACE) first phase consistency determination concurrence request for its proposed Port of Oakland Turning Basins Widening Project, a project that would widen the Oakland Outer Harbor Turning Basin by 21 acres through dredging approximately 1.34 million cubic yards of sediment, beneficially reuse all suitable sediment at a wetland restoration project; and the Oakland Inner Harbor Turning Basin by 20 acres, through partial demolition of two wharves (Howard Terminal and Alameda Landing), removal of historic and recent fill under the wharves, installation of two new bulkheads and a subtidal retaining wall, and dredging approximately 835,000 cy of sediment; the construction debris would be recycled, reused, or disposed of at an appropriate landfill while the suitable dredged sediment would be beneficially reused at a wetland restoration site, and the unsuitable sediment disposed of at an appropriate landfill. The project is located wholly within the Commission's Coastal Zone Management Program in Alameda County. This first phase consistency determination does not authorize any construction activities. The Commission anticipates receiving and reviewing the second phased consistency determination in 2026.

In the enclosed Letter of Agreement, the Commission concurs, as conditioned, with the USACE's determination that its Oakland Turning Basins Widening Project, at the feasibility stage is *generally* consistent to the maximum extent practicable with the Commission's Amended Management Program for San Francisco Bay. If the USACE does not agree with the conditions contained herein or fails to incorporate them into the project, the USACE shall notify the Commission immediately of its refusal to agree or to incorporate the conditions into the project, at which point the conditional concurrence shall be converted into an objection. The USACE shall also immediately notify the Commission if the USACE determines to go forward with the Project without a second consistency determination or a condition, despite the Commission's objection.

Please sign the enclosed Letter of Agreement and return it to our offices within 10 days of receipt. If you should have any questions regarding the attached Letter of Agreement or need any further assistance, please contact Brenda Goeden of my staff at 415.352.3623 or via email at brenda.goeden@bcdc.ca.gov

Sincerely,

DocuSigned by:
Larry Goldzband
FD166E908010417...

LAWRENCE J. GOLDZBAND
Executive Director

Enc. Letter of Agreement
Exhibit A

LG/BG/kr

San Francisco Bay Conservation and Development Commission
375 Beale Street, Suite 510, San Francisco, California 94105 tel 415 352 3600
State of California | Gavin Newsom – Governor | info@bcdc.ca.gov | www.bcdc.ca.gov

LETTER OF AGREEMENT FOR
CONSISTENCY DETERMINATION
NO. C2023.003.00
(Issued on December 27, 2023)

U.S. Army Corps of Engineers
San Francisco District
450 Golden Gate Avenue, Fourth Floor
San Francisco, California 94902

On December 21, 2023, the San Francisco Bay Conservation and Development Commission, by a vote of 16 affirmative, 0 negative, and 3 abstentions, adopted the resolution pursuant to which this conditional Letter of Agreement is issued:

I. Consistency Determination

A. The Commission conditionally concurs with the U.S. Army Corps of Engineers (USACE) that the following feasibility level plan for widening the Port of Oakland Outer and Inner Harbor turning basins in the Port of Oakland (Port), Alameda County including removal of portions of the Port's Howard Terminal and Alameda Landing, a mixed-use waterfront development site proposed in the City of Alameda's Alameda Landing Master Plan (Alameda Landing), and dredging to widen and deepen both the Outer and Inner Harbor Turning Basins is ***generally*** consistent with the Commission's federally approved San Francisco Bay Coastal Zone Management Program.

In the San Francisco Bay Coastal Zone, including but not limited to, the Commission's Bay and 100-foot Shoreline Band, in the cities of Oakland and Alameda, in Alameda County: The feasibility level plans arising from the "Oakland Harbor Turning Basins Widening – Revised Draft Integrated Feasibility Report and Environmental Assessment" (April 2023) (DIFR/EA), proposes the following:

1. The Outer Harbor Turning Basin widening would be accomplished by:

    a. Dredging approximately 1.34 million cubic yards (cy) of sediment from subtidal habitat, currently at minus 4-5 feet Mean Lower Low Water (MLLW), to minus 50 feet using an electric dredge, and beneficially reusing suitable dredged sediment in a wetland restoration project or disposing of sediment that is not suitable for beneficial reuse at an appropriate landfill outside the coastal zone; and

    b. Installing electrical infrastructure at Berth 26 (Outer Harbor) to support an electric dredge.

2. The Inner Harbor Turning Basin widening would be accomplished by:

   a. Demolishing a portion of two wharves, infrastructure, removing piles, excavating soil (historic and recent fill) including a rock dike, and dredging Bay sediments at, adjacent to, and beneath Howard Terminal and Alameda Landing. At Alameda Landing, demolish portions of two warehouses. The 525 tons of construction debris would be recycled and/or disposed of at an appropriate landfill;

   b. Constructing a new shoreline and bulkhead through installation of sheet piles, batter piles and/or anchor tiebacks; placement of rip rap to stabilize slopes at Howard Terminal and Alameda Landing;

   c. Installing new electrical infrastructure at Howard Terminal to support an electric dredge;

   d. Installing an in-water retaining wall and rip rap adjacent to Schnitzer Steel to stabilize the subtidal slope such that the turning basin widening and deepening does not cause shoreline collapse; and

   e. Dredging approximately 835,000 cy of sediment from the Inner Harbor Turning Basin, using an electric dredge, and beneficially reusing approximately 825,000 cy at a wetland restoration site and disposing of approximately 10,000 cy at a landfill after drying at Berth 10.

B. Consistency Determination Submittal Date

This concurrence is generally pursuant to and limited by the request for consistency concurrence dated and received in the Commission's office on May 18, 2023, including all accompanying and subsequently submitted correspondence and exhibits, and subject to the modifications required by conditions hereto. The USACE provided the necessary information to analyze the effects to the Coastal Zone, and the consistency determination concurrence request was filed complete on November 2, 2023.

C. Concurrence is NOT for Demolition, Construction, or Dredging Activities

This first-phase consistency determination concurrence is for the revised DIFR/EA for the Oakland Turning Basins Widening feasibility level project only. Before any work can occur on this project, the USACE will need to submit a subsequent consistency determination concurrence request and the Port will need to submit a McAteer-Petris Act permit application in the pre-construction, engineering, and design phase (PED) of the project, likely in 2025-2026.

This consistency determination is for a feasibility study level plan only**.** The currently proposed project lacks significant information and analyses the Commission deems necessary to fully assess the potential impacts to resources within the Coastal Zone.

D. Project Summary

The project found to be generally consistent with the Commission's federally authorized coastal management program is the ***feasibility level plan*** arising from the revised DIFR/EA. That plan proposes to widen and deepen the Oakland Outer Harbor Turning Basin by dredging up to 1.34 million cy of sediment, approximately 21 acres of shallow subtidal habitat, to minus 50 Feet Mean Lower Low Water (MLLW); and to widen and deepen the Oakland Inner Harbor Turning Basin an additional 20 acres by demolishing approximately 3.9 acres of the Howard Terminal and approximately 6.5 acres of Alameda Landing, including demolition of a portion of two wharves, portions of two warehouses, removing pilings, a rock dike, and historic fill beneath the wharves, and installation of approximately 2,400 feet of new bulkheads including sheet piles, batter piles, and/or anchor tiebacks; and installation of an approximately 330-foot-long subtidal retaining wall in front of Schnitzer Steel (now Radius Recycling). Once complete, the expanded Inner Harbor Turning Basin would be widened and deepened by dredging approximately 835,000 cy of sediment from the area to minus 50 feet MLLW. The newly built bulkheads and retaining wall would be re-enforced by placing approximately 26,000 cy of rip rap along the base of the structures. The suitable dredged sediment would be beneficially reused at a wetland restoration project, or if not suitable for beneficial reuse at a wetland restoration project, it would be disposed of at an appropriate landfill outside the Commission's jurisdiction. The demolition and construction debris would be recycled, reused, or disposed of at an appropriate landfill outside the Commission's jurisdiction.

The Project would result in:

1. **Net Reduction of Bay Fill and an Increase in Bay Surface Area**
   The project as proposed would result in a net reduction of approximately 400,000 cy of solid fill and approximately 7.6 acres of overwater Bay fill via removal of portions of Howard Terminal and the rock dike and solid fill beneath it and the historic fill placed at the Alameda Landing when the tidal marshes at Alameda were diked and filled. As a result, the Bay surface area would be increased by 7.6 acres.

2. **Public Access**
   There is no public access proposed by the USACE as part of this first-phase consistency determination. The USACE and the Port will continue to coordinate with the Commission on this issue, and if determined to be necessary to comply with Commission policies, would propose public access amenities in the Port's anticipated BCDC permit application or the second phase of the USACE's consistency determination. At the Alameda Landing site, the City of Alameda's Alameda Landing Master Plan requires expansion of the adjacent Bohol Circle Immigrant Park, a

waterfront park, should sections of the warehouses be demolished. BCDC Permit No. 2018.004.00 required this park as a public access amenity, however, the expansion of the park is not a Commission requirement.

II. Special Conditions

For the Commission to be able to evaluate whether the proposed project at the Pre-construction, Engineering, and Design Phase is consistent with the Commission's federally authorized coastal management plan for San Francisco Bay, the USACE shall, at a minimum, provide the following information in the next phase consistency determination concurrence request. Further information or measures may be needed as the full project design is completed.

A. Specific Project Plans

1. **Project Plans**
   The USACE shall provide at a minimum of 30% project design with a project description, plans, and specifications at the next phase of the project consistency determination review. The project plans shall be labeled, at a minimum, with: the Mean High Water line 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; areas of known contamination, and the boundaries of existing and proposed public access areas and view corridor(s). The project plans must be dated and include the preparer's certification of project safety and contact information.

2. **Fill Description**
   The USACE shall provide an updated description of the proposed fill and fill removal by type, (in water, over water, solid, etc.), material, square footage or acreage, and volume. Additionally, the USACE shall provide an analysis as to why the proposed project is the minimum fill necessary for the project.

B. Public Access

The USACE shall work with its local project sponsor, the Port of Oakland, as well as the City of Alameda, and the Commission staff to identify and submit a plan that would provide the maximum feasible public access, consistent with the project, to the Bay and along the shoreline, whether it be on site or in lieu, consistent with the Commission's *San Francisco Bay Plan* policies on Public Access and Design and Scenic Views, if deemed necessary to comply with Commission policies.

C. Site Sediment and Soil Investigation

1. The USACE shall provide for Commission review and concurrence, preferably through the Dredged Materials Management Office (DMMO):

   a. A proposed sampling and analysis plan that describes the sample locations, testing protocols and analysis for the Outer and Inner Turning Basin sediments and soils to determine the sediment quality and potential toxicity of the sediments proposed for dredging consistent with the USACE and Environmental Protection Agency (EPA) Inland Testing Manual protocols as refined for the San Francisco Bay Region.

   b. The results of the sediment sampling and analysis plan and any additional testing required resulting from initial sampling analysis concerns, to assist the Commission in determining the appropriate beneficial reuse or disposal of the sediment in accordance with regional standards and programming.

2. **Geotechnical Evaluation**. The USACE shall conduct appropriate geotechnical and structural evaluations of the existing sediments, historic fill, upland soils, and proposed construction features and provide them to the Commission, including the Commission's Engineering Criteria Review Board (ECRB), for review and concurrence. The USACE shall consider and be responsive to the ECRB's direction and suggestions in the project design in the Pre-construction, Engineering, and Design Phase.

3. **Groundwater and Upland Soil Analysis**. The USACE shall develop a sampling and analysis plan for upland soils and ground water sampling to better understand the potential contamination at the various project sites (Howard Terminal and Alameda Landing) and the potential for these contaminants to enter the Bay or be discharged through ground water or surface runoff to the Bay during project construction. This analysis shall be provided to the Commission for review and concurrence.

4. **Mitigation and Minimization**. Should the investigations described above result in identification of contamination and potential pathways for contamination to reach the Bay or impact the Bay's water quality or wildlife, the USACE shall propose mitigation and minimization measures to eliminate the pathway and/or protect Bay water quality and wildlife for review and concurrence by the Commission. Such measures may include groundwater capture, erosion control, and the use of silt curtains, or other appropriate protective measures.

D. Beneficial Reuse of Dredged Sediment

The USACE shall beneficially reuse all dredged sediment that is suitable for placement at a wetland restoration site, in coordination with the DMMO agencies.

E. Wildlife Protection

The USACE shall minimize impacts to native and listed wildlife through implementation of the avoidance, minimization, and mitigation measures. As part of the second-phase consistency determination, the USACE shall refine the proposed measures for specific construction and dredging activities, such as for pile driving, etc., and confirm which measures will be used for corresponding project impacts. If during further project review, the USACE and the Commission determines a more protective measure is feasible, the USACE shall incorporate it into the project plans.

Minimization measures currently proposed, and to be implemented unless a more protective measure is identified and included in the project, includes the following:

1. Dredge and conduct in-water work during the environmental work windows for the area that are protective of listed salmonids, green sturgeon, longfin smelt, Pacific herring, and least tern.
2. Use silt curtains when site conditions are practicable and environmental buckets to reduce potential exposure of wildlife to contaminated sediments during dredging.
3. Monitor water quality levels to ensure there is no harm to wildlife during construction and dredging.
4. No creosote piles or wood treated with toxic chemicals shall be used in an aquatic setting.
5. Attenuate sound waves from pile driving or other marine construction by using vibratory hammers, bubble curtains, and sound walls where appropriate and necessary to eliminate harm and reduce disturbance from noise.
6. Exclude marine mammals from the construction site and monitor for their movement into the site. In the event marine mammals enter the exclusion zone, hold construction activities until the marine mammal has left the exclusion zone.

F. Construction

The USACE and the Port have committed to and shall use an electric dredge and other reduced emission construction equipment, such as Tier 4 engines, during dredging and construction to reduce particulate matter from affecting Bay water quality and wildlife exposure to toxins.

G. **Sufficient Property Interest**

The USACE shall provide documentation that it has appropriate legal interest in the various project areas, both dry and submerged lands where construction and dredging would occur. If the USACE claims navigable servitude for the widening area, that documentation should be included in the submission to the Commission.

H. **Public Engagement**

The USACE in conjunction with the Port shall continue to engage the local communities as the project is further refined and developed to better understand the community concerns and identify additional measures to reduce impacts from the project on the communities on issues that the Commission has authority. These meetings should occur quarterly, at a minimum within the communities affected by the project. The USACE shall invite the Commission staff to these meetings and report the outcomes of each meeting to the Commission annually, by January 20th of each year following engagement activities.

III. Findings

This consistency concurrence, as conditioned, is given based on the Commission's findings and declarations that the conceptual plans, in accordance with the Oakland Harbor Turning Basins Widening – Revised Draft Integrated Feasibility Report and Environmental Assessment (April 2023) (DIFR/EA), are ***generally consistent*** with the enforceable policies of the McAteer-Petris Act, the *San Francisco Bay Plan* (Bay Plan), and the San Francisco Bay Area Seaport Plan (1996 as amended in 2012)(Seaport Plan), that comprise the Commission's amended Coastal Zone Management Program for San Francisco Bay for the following reasons:

A. **Phased Consistency Determination**

Because the USACE has not submitted engineered plans beyond the engineering concept plans submitted to the ECRB, nor requested concurrence with a consistency determination for the construction of any project element other than the feasibility level plan, this consistency concurrence, as conditioned, is limited to finding that the conceptual plan arising from the Revised Draft Integrated Feasibility Report and Environmental Assessment (DIFR/EA) is *generally* consistent with the Commission's Amended Coastal Zone Management Program for San Francisco Bay. As pre-construction, engineering, and design-level plans are developed for the project, the USACE will submit a subsequent consistency determination(s) for this project at the Pre-construction, Engineering, and Design Phase of the project.

In addition to the Special Conditions included in this first-phase consistency determination conditional concurrence, the Commission notes that additional plans would be necessary for a full project review and concurrence at the second-phase consistency determination (which may be accomplished as a condition of concurrence through plan review) and prior to commencement of the project, including plans that address, but may not be limited to: (1) water quality monitoring; (2) eelgrass surveys, monitoring, and potential mitigation; (3) dredge operations, including surveys, and proposed beneficial reuse or disposal volumes and locations; (4) stormwater, groundwater, and construction water management; (5) hydroacoustic monitoring of noise and vibrations; (6) biological impacts minimization and monitoring plan, including fish, marine mammals, and birds; (7) employee education program designed to address native species impacts and issues; (8) hazardous materials management; and (9) oil spill prevention, containment, and clean-up measures.

Due to the wide range of necessary plans, the USACE should provide ample time for the Commission staff to review the various documents to ensure that the Commission's review of the next phase consistency determination is fully informed.

B. Existing Conditions and Use

The USACE, as the federal sponsor, and the Port, as the local project sponsor, propose to widen the Oakland Harbor Federal Navigation Channel's Outer and Inner Turning Basins to address inefficiencies and less than optimal conditions at the Port for vessels both currently and anticipated to use the Oakland Harbor. The USACE deepened the Oakland Harbor Entrance, the Outer and Inner Harbor channels, and the Outer and Inner Harbor Turning basins to minus 50 feet Mean Lower Low Water (MLLW) to accommodate the larger class of container ships that were calling at the Port, beginning in 2000 and completing in 2009 (BCDC consistency determination No. C2000.014.00 and Permit No. 2000.014.00), to accommodate the larger class of container ships calling at the Port at that time. However, due to the increasing size of ships calling at the Port currently and anticipated in the future, the current turning basins are undersized. The vessels transiting in the Oakland Harbor today are longer, wider, and can sit deeper than the design vessel that last served as the basis for 50-foot Deepening Project improvements. The undersized turning basins have resulted in transit restrictions and inefficiencies today and are projected to increase in the future because longer vessels are expected to transit the harbor with greater frequency as older, smaller vessels are replaced with newer, larger vessels. The undersized turning basins have resulted in transit restrictions and inefficiencies today that are projected to increase in the future as older, smaller vessels are replaced with newer, larger vessels that will are expected to transit the harbor with greater frequency. The expanded turning basins, as proposed,

would accommodate vessels that are 1,310 feet long and 193 feet wide, with an estimated maximum cargo capacity of 19,000 TEUs (a unit representing a 20-foot-long container).

The Outer Harbor Turning Basin would be widened from 1,650 feet in diameter to 1,965 feet in diameter through dredging sediment to widen the basin to a depth of minus 50 feet MLLW, consistent with the depth of the existing Outer Harbor Turning Basin. Expansion of the Inner Harbor Turning Basin consists of widening it from 1,500 feet in diameter to 1,834 feet in diameter to a depth of minus 50 feet MLLW, consistent with the depth of the existing turning basin. In addition to dredging, a portion of Howard Terminal and Alameda Landing would be removed and a new bulkhead at each location will be created.

The widening of the Outer Harbor Turning Basin would occur though dredging approximately 1.34 million cy of 21 acres of subtidal habitat to minus 50 feet MLLW and upgrading existing electrical infrastructure at Berth 26 to support an electric dredge. The widening of the Inner Harbor Turning Basin would occur by removing portions of two wharves (Howard Terminal and Alameda Landing) and the fill beneath them (piles, a rock dike, and solid fill), demolishing portions of two warehouses at Alameda Landing, constructing two new bulkheads (Howard Terminal and Alameda Landing) and a subtidal retaining wall (adjacent to Schnitzer Steel), installing new electrical infrastructure at Howard Terminal, dredging approximately 835,000 cy of sediment to minus 50 feet MLLW over 20 acres, and placing rip rap to stabilize slopes and protect the base of the new subtidal retaining wall and bulkheads. Approximately 3.9 acres of Howard Terminal would be demolished and approximately 6.5 acres of Alameda Landing would be demolished. The construction and demolition debris would be recycled, reused, and/or taken to an appropriate landfill, and the dredged sediment would be beneficially reused at a wetland restoration project, or if not suitable for this use, dried if needed and taken to an appropriate landfill.

Bay Plan Map 5 designates the entire Port of Oakland as a Port Priority Use Area. In 2022, the Commission voted to approve Bay Plan Amendment 2-19 to remove the Port Priority Use designation from Howard Terminal. However, NOAA's Office of Coastal Management has not yet approved this Bay Plan amendment as part of the Commission's certified Coastal Management Program. Therefore, the Port Priority Use Area remains in place for purposes of this federal consistency determination review. Notwithstanding this fact, the Commission staff have determined that the presence of the Port Priority Use Area at Howard Terminal does not raise any consistency issues related to developing the Turning Basin.

Alameda Landing is a privately owned redevelopment site. The project would affect approximately 6.5 acres of the 18-acre potential mixed-use redevelopment site, as designated in the Alameda Landing Master Plan.

C. Bay Fill, Safety of Fills, Water Surface Area and Volume, and Navigation and Oil Spill Prevention Policies

The staff recommends that the Commission find that the project, as conditioned, is *generally* consistent with the McAteer-Petris Act Section 66605 and the applicable Bay Plan policies on Water Surface Area and Volume, Fill in Accord with the Bay Plan, and Safety of Fills for the following reasons:

Section 66605 of the McAteer-Petris Act and the Fill in Accord with the Bay Plan policies provide, in summary, that further filling of the San Francisco Bay (Bay) should be authorized only when public benefits from fill clearly exceed public detriment from the loss of the water areas; the fill is limited to water-oriented uses, including ports; when no upland alternative is available for the purpose of the project; the fill is the minimum amount necessary to achieve the purpose of the fill; harmful effects would be minimized; that the fill be constructed in accordance with sound safety standards and reasonable protection to persons and property is provided in the event of unstable geologic or soil conditions, flooding, or storm waters; that the fill would establish a permanent shoreline to the maximum extent feasible; and when the applicant has such valid title to the properties in question.

The Commission's Safety of Fills policies require that projects that place fill in the Bay are reviewed by and are responsive to the Commission's Engineering Criteria Review Board, which is charged with advising the Commission on the engineering soundness and safety of the proposed project and establishing criteria for the safety of fill.

The Commission's Water Surface Area and Volume Policy One states that "the surface area of the Bay and the total volume of water should be kept as large as possible in order to maximize active oxygen interchange, vigorous circulation, and effective tidal action. Filling and diking that reduce surface area and water volume should therefore be allowed only for purposes providing substantial public benefits and only if there is no reasonable alternative."

Navigation Safety Policy One states in summary that physical obstructions to safe navigation, identified by the U.S. Coast Guard and the Harbor Safety Committee, should be removed to the maximum extent feasible when removal contributes to navigational safety and would not create significant adverse environmental impacts, and ensure that any detriments arising from a significant alteration of Bay habitats are clearly outweighed by the public and environmental benefits of reducing the safety risk or the risk of hazardous spills.

After reviewing the generally-proposed project and evaluating the estimated acreage and volume of fill proposed for removal, fill that occurred both before and after the establishment of the Commission, and in comparison to the proposed acreage and volume of fill to be placed and removed in order to complete the project, the Commission finds that approximately 420,000 cy of fill would be removed and approximately 25,000 cy of fill would be placed to build the new bulkheads, retaining wall, and to stabilize slopes via the placement of riprap. In addition, the project would result in the removal of approximately 10.4 acres of overwater and solid fill, and the placement of 2.8 acres of solid fill, increasing the Bay surface area by 7.6 acres, and the Bay volume by approximately 395,400 cy.

The fill that would be placed provides public benefits to the region in that vessels transiting the Oakland Harbor can do so with increased safety, less restrictions, and improved efficiencies, thereby reducing vessel delays, the time vessels spend waiting to dock or undock within the Port, and related vessel air emissions. According to the USACE, the Port, and the San Francisco Bay Bar Pilots, for use of a turning basin, the entire vessel's length must be able to maneuver within the basin, including accommodating of the vessel's length, space for assist tugs working around the vessel, and water movement. Safety considerations must also be accounted for in relation to the interaction between the vessels and currents, waves, and wind. For this reason, the industry standard for turning basins is to provide a minimum of twenty percent of the vessel's length on either side (bow and stern) as a buffer. The current turning basins cannot accommodate the minimum 20 percent industry standard for larger vessels, and specific restrictions are in place for all vessels that are longer than 1,115 feet transiting the Oakland Harbor, including Post Panamax (PPX) vessel classes PPX 2, PPX3, and PPX4.

Transit restrictions, including scheduling around specific tide, current, and wind conditions; limiting use of turning basins to daylight hours; requiring an additional Bar Pilot; and using a required number of vessel-assist tugs result in delays for the vessel restricted and can lead to cascading delays for all vessels waiting to use the Harbor. In addition, there are greater Inner Harbor restrictions due to the effects of an undersized turning basin and drift caused by the channel's natural current. Ships longer than 1,210 feet are not permitted to use the Inner Harbor Turning Basin for turning due to their length and are restricted to docking with their bow [front] pointed east. This restriction could reduce the ability for a vessel to use shore electrical power while at berth and decrease a vessel's ability to depart in an emergency because they are required to be towed out of the Inner Harbor Channel stern end (back of the vessel) first.

These restrictions and the resultant inefficiencies and delays associated with larger vessels can range from an additional one to two hours while in transit to several days,

which can lead to further cascading delays for other vessels, thereby increasing both transportation costs to, and air pollutant emissions from, all impacted vessels. Further, the limited width of the turning basin increases the potential of groundings or allisions during the turning of larger vessels, which are inherently more difficult to maneuver against the external forces applied by winds, waves, and currents, and could result in safety and environmental risks, such as oil spills. For these reasons, the Commission considers the proposed project and its associated fill reduction a public benefit, as well as the reduction of potential oil spills due to the removal of navigation hazards associated with undersized turning basins within the Oakland Harbor that are currently being used by increasingly larger vessels.

Because fill that was previously placed (both before and subsequent to the Commission's creation) will be removed, the public also benefits from larger open water areas within the Port that can be viewed from different vantage points along the shore. As the fill proposed is to create new bulkheads in the newly constructed shoreline, the proposed fill is water-oriented, and establishes a new shoreline. Further, as the work is intended to aid in safe *Bay* navigation, there is no upland alternative to the project.

The USACE is still studying the geotechnical, sediment, and soil conditions, and is planning to further review the design of the project in its Pre-construction, Engineering, and Design Phase. Special Condition II-C-2 requires the USACE to provide further review of these items. The USACE presented the project to the Commission's Engineering Criteria Review Board (ECRB) on September 27, 2023, and will continue to work with the ECRB to ensure the soundness and safety of the design in accordance with modern engineering standards and the Commission's Safety of Fill policies, thus ensuring the project would be built in a way that protects the safety of those relying on the newly established bulkheads and shorelines. It further requires the USACE to investigate sediment, soils, and groundwater issues and consider the impacts of groundwater in the sediments during the planning and construction phase.

Regarding valid title to the property, at this time property interests have not been secured for the full project area. In federal projects partnered with local project sponsors, the local project sponsor (the Port) is required to obtain the lands, easements, and right-of-ways before the project can start construction. In this project, some of the lands are owned by the Port. The USACE has claimed navigable servitude[1] for the federal channel and likely would do the same for the expanded turning basins. Alameda Landing is privately-owned and is a part of the Alameda Landing Master Plan. The

[1] Navigable servitude is a doctrine in United States constitutional law that gives the federal government the right to regulate navigable waterways as an extension of the Commerce Clause in Article I, Section 8 of the constitution. It is also sometimes called federal navigational servitude.

Master Plan envisions a large mixed-use development that includes housing, shopping, and jobs, according to the City of Alameda. Inclusion of this property in the project would require a property interest, and a potential amendment to the Master Plan and a city permit for the construction. Other property ownerships and interests are being further investigated by the Port, and all necessary property interests would be acquired prior to construction. Special Condition II-G requires that the USACE provide the Commission with proof of valid title/property interests (including those provided to the USACE by the Port as local project sponsor) prior to requesting the next phase consistency determination.

D. Ports and Seaport Plan Policies

Staff recommends that the Commission find that the project, as conditioned, is *generally* consistent with the applicable Bay Plan policies on ports, and the Seaport Plan for the following reasons:

The Bay Plan Port policies state that port planning and development should be governed by the policies of the Seaport Plan and other applicable policies of the Bay Plan, and further describes provisions of the Seaport Plan.[2] Bay Plan Map 5 and the Seaport Plan includes policies that support redevelopment expansion and/or redevelopment of port facilities at existing ports, including the Port of Oakland. The Seaport Plan specifically states that deepening of shipping channels is needed to accommodate expected ship growth and to improve terminal productivity. It charges the Commission with identifying and permitting development of port facilities with the least potential adverse environmental impacts, while providing for reasonable terminal development. In addition, it states that some filling and dredging will be required for necessary port expansion, in accord with the Seaport Plan. The Seaport Plan Dredging Policies 2 and 3 together state that ship channels should be deepened and widened to accommodate larger ships with greater cargo capacity that will call on Bay Area container terminals and be maintained at depths and widths to safely accommodate the types of ships docking at marine terminals, if economically justified, and if those projects conform to State and national environmental law and policies.

As described by the USACE, the need for this widening arises from inefficiencies currently experienced by vessels in harbor, specifically in the turning basins, where the current fleet exceeds the maximum dimensions of the constructed minus 50-Foot Oakland Deepening Project. As described, these inefficiencies are projected to continue

[2] As explained at the public hearing on December 7, 2023, the version of the Seaport Plan applicable for consideration here is the 1996 Plan as last amended through 2012, not the comprehensive overhaul as adopted by the Commission as part of BPA No. 1-19 in November 2023. This is because the changes to the Seaport Plan as reflected in BPA No. 1-19 have not yet been approved by NOAA as a program change to BCDC's CMP for CZMA purposes.

and magnify into the future because vessels exceeding the vessel size for which the existing turning basins were designed are expected to enter the channel with greater frequency and in greater numbers. The USACE relied on the Commission's 2019-2050 Bay Area Seaport Cargo Forecast (Tioga Group and Hackett Associates 2020), which discusses two scenarios for the Port's future with and without the widening project.

The "no project" scenario described in the Cargo Forecast limits maximum vessel size to the existing vessel size (14,000 TEU). The second scenario, with an expanded turning basin, limits maximum vessel size to 25,000 TEU, which is slightly larger than the largest existing container ship in the world. Based on those two scenarios, the Cargo Forecast concludes that: (1) If moderate growth happens, by 2050 with the widening project and the cap on vessel size is 25,000 TEU and the average vessel size is 15,802 TEU, then 29 weekly calls would be needed at the Port to keep up with growth. The average weekly calls at the Port at the time of publication of the Cargo Forecast was 28, so all future growth could be accommodated with the same number of ships but only if the ships are larger; or (2) If the widening project does not happen and the cap on vessel size remains 14,000 TEU and the average vessel size remains at its current capacity size (11,618 TEU), then 40 weekly calls would be needed to keep up with projected growth. In summary, if the both the Outer and Inner Harbor Turning Basin are not expanded, and if moderate growth occurs, the Port of Oakland would need to handle about 40 weekly calls to accommodate projected growth, but that could create the potential for significant delays. See pages 126-127 of the Cargo Forecast for more detailed information.

E. Dredging and Water Quality Policies

Staff recommends that the Commission find that the project, as conditioned, is *generally* consistent with the McAteer-Petris Act Section 66663 and the applicable Bay Plan policies on Water Surface Area and Volume, Fill in Accord with the Bay Plan, and Safety of Fills for the following reasons:

In the McAteer Petris Act Section 66663, the Legislature found and declared 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 other public purposes. The Bay Plan Dredging policies state in summary that dredging and dredged sediment disposal should be conducted in an environmentally and economically sound manner; in-bay disposal of dredged sediment should be reduced in accordance with the Long Term Management Strategy for the Placement of Dredged Material in the Bay Region (LTMS) Management Plan (Policy 1); dredged sediment should, if feasible, be reused or disposed outside the Bay (Policy 3); and dredging projects should maximize use of dredged sediment as a resource consistent with protecting and enhancing Bay natural resources, such as creating, enhancing, or restoring tidal wetlands (Policy 5).

Further, Dredging Policies 2 and 3, in summary, provide for authorization of dredging and disposal or beneficial reuse of the sediment when the Commission can find: (a) the dredging is needed to serve a water-oriented use or other important public purpose, such as navigational safety; (b) the dredged sediments meet the water quality requirements of the San Francisco Bay Regional Water Quality Control Board (Water Board); (c) Bay natural resources, including fisheries, would be protected by seasonal restrictions and work restrictions established by the Resources Agencies[3], or 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 sediment, if feasible, would be reused or disposed outside the Bay and certain waterways.

In addition, Policy 3 states that dredged sediment should not be disposed in the Bay unless disposal outside the Bay is infeasible and within Commission authorized disposal site volume limits, the sediment quality is consistent with the Water Board and the inter-agency Dredged Material Management Office (DMMO)'s guidance for the proposed site, and disposal timing is consistent with the advice of the Resources Agencies.

The Commission's applicable water quality policies state in summary that Bay water pollution should be prevented to the greatest extent feasible, conserving its water surface area and volume, and, whenever possible, restoring and increasing it to protect and improve water quality. Water quality in all parts of the Bay should be maintained at levels that support and promote the beneficial uses of the Bay as identified by the Water Board's *Water Quality Control Plan, San Francisco Bay Basin (Basin Plan)* and should be protected from all harmful or potentially harmful pollutants. New projects, including those in areas that are polluted with toxic or hazardous substances should be constructed and maintained to prevent or, if prevention is infeasible, to minimize the discharge of pollutants into the Bay by controlling pollutant sources at the project site; using non-polluting construction materials; and applying best management practices. When approving a project, the Commission should seek the advice, recommendations and decisions of the Water Board and when approving a project with elevated levels of contamination, coordinate with appropriate local, state and federal agencies to ensure that the project will not cause harm to the public, Bay resources, or to beneficial uses of the Bay.

The proposed project includes dredging of approximately 1.34 million cubic yards of sediment to expand the Outer Harbor Turning Basin and approximately 835,000 cubic yards of sediment from the Inner Harbor Turning Basin, totaling approximately 2.165 million cubic yards, to a depth of 50 feet MLLW, plus two feet of over dredge allowance. The sediment proposed for dredging consists of recently deposited sediments, young bay

[3] The Resources Agencies include California Department of Fish and Wildlife (CDFW), the US Fish and Wildlife Service (USFWS), and NOAA's National Marine Fisheries Service (NMFS).

mud, old bay mud, and Merritt sand (fine grain sand). Based on the available information regarding sediment type, the USACE anticipates the young and old bay mud and Merritt sand to be clean and available for beneficial reuse at a wetland restoration project because it was deposited over 10,000 years ago, before filling, diking, and industrialization in the Bay Area. During the planning and execution phase of the 50-foot Deepening Project, these historic sediments were considered by the DMMO, and determined to be suitable for beneficial reuse. There have been no activities since that time that would affect the sediment quality of the deep sediments. Any ammonia or sulfates in these sediments would likely dissipate during dredging and placement at a beneficial reuse site because the deep, anoxic sediments (sediment not exposed to oxygen) would be oxygenated and diluted when dredged and slurried as part of the placement of the sediment at a beneficial reuse site.

However, the recently deposited sediments at the top of the young bay mud are potentially exposed to anthropogenic contaminants and should be evaluated to determine any potential contamination to ascertain the appropriate placement as either cover or foundation quality sediment, or if contaminants are significantly elevated, disposed at an appropriate landfill. Special Condition II-C requires the USACE to submit a sampling and analysis plan to the Commission, preferably through the DMMO, for review and concurrence, and then to test the dredged sediment to determine the cleanliness of the sediment and suitability of it for beneficial reuse at a wetland restoration site. Special Condition II-D requires the USACE to place suitable dredged sediment at an appropriate beneficial reuse site. No dredged sediment is proposed for in-Bay disposal. These measures are consistent with the USACE's proposed project and use of dredged sediment and the Bay Plan policies on dredging and the LTMS Program. Use of the dredged sediment at a wetland restoration site makes use of the sediment as a resource and provides increase tidal marsh habitat within the Bay decades sooner than wetland restoration projects that do not raise elevations as part of the project design.

Regarding the timing of the dredging activities, the USACE has proposed to complete the dredging activities over two to three dredging seasons, in accordance with the environmental work windows recommended by the California Department of Fish and Wildlife (CDFW), U.S. Fish and Wildlife Service (USFWS), and NOAA's National Marine Fisheries Service (NMFS) to protect listed fish species from June 1 to November 30 annually. However, the dredging timing does not include the period protective of state and federally listed least tern, a bird that visually forages on fish, which is March 15 through August 1. The USFWS has coordinated with the USACE and is not requiring the least tern work window for this project, however the USACE will continue coordination as needed. Special Condition II-E-1 requires the USACE to conduct dredging during the environmental work windows consistent with Dredging Policies 2 and 3. This issue is

discussed further in the Natural Resources section below. Lastly, as described in the project description, the project has been carefully designed to support the safe navigation of vessels calling at the Port, and therefore is the minimum volume of dredging necessary.

Regarding the Commission's Water Quality policies, acting through its Coastal Zone Management Act authority, the Commission cannot compel the USACE to seek or obtain permits from other agencies as part of its concurrence process, and therefore relies on its own water quality policies and authority for this project. The USACE has not yet requested a water quality certificate or waste discharge requirements from the Water Board, therefore the Commission staff cannot rely on the Water Board's decision in accord with Water Quality Policy 2. However, the Commission staff has coordinated with the Water Board staff who have generally supported the staff's approach and described potential special conditions. Therefore, the Commission has included Special Condition II-C-3 and C-4 and required additional testing of sediment and soils that may be dredged and/or excavated during this project to identify potential contaminates that may affect the Bay or its natural resources resulting from the project activities.

Both Howard Terminal and Alameda Landing have been affected by human activities that may have resulted in on site contamination. Schnitzer Steel (now Radius Recycling) and the subtidal area adjacent to the site have known elevated levels of contamination identified in the most recent DMMO evaluation. All three sites are under the purview of the Department of Toxic Substances Control (DTSC) though various programs and required actions depend on how the sites are developed or managed. The Commission has had initial coordination meetings with DTSC to better understand some of these challenges. The additional investigations required by the special conditions here would further inform the need for material management, erosion and site water management, and other mitigation and minimization measures to protect Bay water quality. These issues would be addressed more thoroughly as part of the next phase of the consistency determination and/or the Port's permitting process.

Special Condition II-E and II-F includes requirements for the construction aspect of the project, including a prohibition of using creosote treated wood in areas that would be in contact with water, and the use of construction equipment that is electric or has tier 4 engines, respectively, wherever feasible to reduce water quality pollution from diesel particulate matter, in accord with the Commission's Water Quality Policies 1, 2, 3, and 4.

F. Natural Resources and Mitigation

Staff recommends that the Commission find that the project, as conditioned, is *generally* consistent with applicable Bay Plan policies on Fish, Other Aquatic Organisms, and Wildlife and Subtidal Areas for the following reasons:

The Commission's Fish, Other Aquatic Organisms, and Wildlife Policies 1, 2 and 4 state in summary that to assure the benefits of fish, other aquatic organisms and wildlife for future generations the Bay's tidal and subtidal habitat should be conserved, restored

and increased, and that native species, including state and federally listed species, as well as specific habitats that are needed to conserve, increase, or prevent the extinction of these species, should be protected. Policy 4a directs the Commission to consult with the Resources Agencies whenever a proposed project may adversely affect wildlife species and seek their advice on the project. Subtidal Areas Policy 1 requires thorough evaluation of any filling or dredging project in a subtidal area to determine the local and Bay-wide effects of the project on the possible introduction or spread of invasive species, tidal hydrology and sediment movement, fish and wildlife, aquatic plants, and the Bay's bathymetry. These projects should be designed to minimize and, if feasible, avoid any harmful effects. Subtidal Areas Policy 2 seeks to protect areas in the Bay that are scarce or have an abundance and diversity of fish and wildlife (e.g., eelgrass beds) through their conservation. It further states that filling and dredging projects in these areas should be allowed only if there is no feasible alternative and the project provides substantial public benefits.

Bay Plan Mitigation Policy 1 states in part that projects should be designed to avoid adverse environmental impacts to Bay natural resources. Whenever adverse impacts cannot be avoided, they should be minimized to the greatest extent practicable and measures to compensate for unavoidable adverse impacts to the natural resources should be required. Mitigation is not a substitute for meeting the other requirements of the McAteer-Petris Act.

The expansion of the Outer Harbor would be accomplished by dredging approximately 1.34 million cubic yards from 21 acres of shallow subtidal habitat and deepening it to minus 50 feet MLLW, converting this area from undisturbed shallow water habitat to deep water maritime use, creating a regularly disturbed habitat that would be dredged annually to maintain its depth. As a result, only quickly colonizing bottom dwelling organisms would inhabit it, but those would be removed each year as the basin is maintained. Birds, fish, invertebrates, and marine mammals may forage or transit the area, but in a more limited fashion due to the ship traffic that would occur in the basin. The Inner Harbor expansion would increase the subtidal areas of the harbor by removing portions of Howard Terminal and Alameda Landing but, similarly to the expanded area of the Outer Harbor, this area would also be regularly maintained through maintenance dredging and would offer only limited disturbed habitat benefits to fish and wildlife as the project is completed. Given the need for improved safety and increase in vessel transit efficiencies (arriving and departing a dock) at the Port to accommodate the current and predicted vessel fleet mix of larger classes of vessels, there is no feasible alternative to this project.

Regarding the project's evaluation of potential introduction or spread of invasive species; impacts to tidal hydrology and sediment movement, fish and wildlife, aquatic plants, and the Bay's bathymetry, the USACE considered these issues as part of its environmental impacts analysis and found that the project would increase disturbed

habitat, which creates opportunities for invasive species to colonize the newly disturbed area. The USACE analysis did not anticipate specific aspects of the project to increase invasive species beyond those existing in the area currently. The tidal hydrology would not be affected Bay-wide but may have some effects locally based on the deepened and widened areas in the narrow Oakland estuary. The deepening would cause increased sediment deposition in the expansion area like the existing turning basins because deeper waters, as a matter of physics, increases sedimentation due to slowing of water passing through the area and loss of energy allowing sediment to drop out of the water column. Immediate impacts to the Bay's bathymetry would be localized within Oakland Harbor, with the shallow areas becoming permanently deeper, and wider and deeper in the Inner Harbor expansion where fill would be removed.

The approximately three-year construction period would include impacts to fish and wildlife beyond alteration of habitat. While ongoing, the dredging would increase sediment suspended in the water, turbidity, and decrease visibility resulting in impacts to respiration and clogging of gills in fish, increased predation, and loss of visibility for foraging for fish, birds, and marine mammals. Pile driving, and other in water construction activities can impact wildlife through sound waves that can harm internal organs, such as swim bladders, and hearing organs, that can result in temporary or permanent damage or death, depending on the level of impact and sound waves. Other noise can make foraging more difficult or reduce the ability of wildlife to avoid predation. Increased exposure to contaminated sediment or water can cause acute or chronicle illness for exposed wildlife, through ingestion, absorption, or exposure.

The USFWS and NMFS consulted on this project via the Wildlife Coordination Act, the federal Endangered Species Act, and the Magnuson Stevenson Fisheries Management Act. They have concurred with the USACE that the project, with the proposed minimization and mitigation measures, is not likely to adversely affect listed salmonids, longfin smelt, and green sturgeon. NMFS has requested that the USACE request further consultation when the project is more fully developed (corresponding to the second-phase consistency determination).

The USACE proposes to minimize impacts to aquatic species through use of silt curtains to reduce turbidity and exposure to sediment with elevated contaminates; use either vibratory hammers and/or bubble curtains, or sound reduction methods when pile driving or during pile removal. Special Condition II – E requires these measures or more protective measures, as the project is further developed (again, corresponding to the second-phase consistency determination).

The dredging activity would increase turbidity in the Outer Harbor where least tern may forage during the nesting season. However, the use of silt curtains, required by Special Condition II-E would reduce the turbidity that may impair the foraging ability of visually foraging birds. The USACE has committed to conduct in water work during the

environmental work windows established for dredging, from June 1 through November 30 for this project. This work window does not include the restrictive period of June 1 to August 1 that is protective of state and federally listed least tern, a fish foraging tern that nest on nearby Alameda airfield. The USACE completed federal Endangered Species Act consultation with the USFWS which determined the project may affect, but unlikely to adversely affect the least tern.

However, requirements under the California Endangered Species Act, differ from the federal Endangered Species Act. The CDFW manages least tern as a fully protected species as well as one listed under the California Endangered Species Act and would require a permit for the project from the Port of Oakland, and from BCDC under the McAteer-Petris authority. Due to its fully protected status, no incidental take of this species can be authorized. The CDFW did not comment on the DIFR/EA for this project but will comment on the Port's CEQA document currently out for review. In reviewing this project, CDFW may require additional minimization and mitigation measures for this project related to least tern and other species that the Commission may further consider as part of the Port's permit application process to BCDC.

Marine mammals, including harbor seals, sea lions, and harbor porpoises are present in the Bay and are often observed in the project area. The USACE has proposed creating marine mammal exclusion areas and observers to ensure that marine mammals do not enter areas where sound waves may affect or damage them. The USACE has proposed measures, including observers, sound deterrents, and work stoppage to prevent harm to these species.

Lastly, there is limited eelgrass near the dredging site both in the Outer and Inner Harbors that may be affected by increased turbidity and sedimentation. Prior to project commencement, and in accord with Special Condition II-E, the USACE has agreed to complete pre-and post-dredging eelgrass surveys to assess any impacts to nearby eelgrass habitat. Should eelgrass be impacted, Special Condition II-E commits USACE to providing mitigation for said impacts. This potential would be addressed in the next-phase consistency determination when more information is available on the status of eelgrass closer to the construction period.

The proposed project has unavoidable adverse impacts on subtidal habitat and fish and wildlife, including removal of shallow subtidal habitat and foraging opportunities. Therefore, the Commission has included Special Condition II-D, which requires beneficial reuse of all suitable dredged sediment at a wetland restoration project as mitigation for the impacts to subtidal habitat and native species. No wetland restoration site is located adjacent to or nearby the project that accepts dredged sediment. However, two sites at a distance from the project are operational – one in Vallejo and the other in Suisun Marsh. A third may be opened in Marin County prior to the project commencement. If a

local site became available in the interim period (*i.e.*, before the second-phase consistency determination), it could be considered for the dredged sediment.

Once the dredged sediment is placed at a restoration site, and the restoration site is breached, shallow subtidal habitat would exist for a period of time before marsh vegetation colonizes the site, providing a temporary mitigation nexus to shallow water impacts. Once the site becomes fully vegetated, it would provide wetland benefits for fish and wildlife in that area, creating permanent mitigation.

G. Maximum Feasible Public Access and Design and Scenic Views

The staff recommends that the Commission find that the project at the feasibility level, as conditioned, would be *generally* consistent with the McAteer-Petris Act and applicable Bay Plan policies related to public access for the following reasons:

Section 66602 of the McAteer-Petris Act states, in part, that certain water-oriented land uses along the bay shoreline are essential to the public welfare of the bay area, and that these uses include ports and other water related uses; that the Bay Plan should make provision for adequate and suitable locations for all these uses, thereby minimizing the need to fill the bay to create new sites for these uses; and that existing public access to the Bay is inadequate and that maximum feasible public access, consistent with a proposed project, should be provided."

Further, Public Access Policy No. 1 states that "fill projects should increase public access to the Bay to the maximum extent feasible" and Policy 2 states, in part, "that access to and along the waterfront and on any permitted fills should be provided, …whether it be for housing…ports, airports, etc.,… except in cases where the public access would be clearly inconsistent because of public safety or significant use conflicts."

Design and Scenic Views Policy 5 states "to enhance the maritime atmosphere of the Bay Area, ports should be designed, whenever feasible, to permit public access and viewing of port activities by means of (a) viewpoints …that would not interfere with port operations, and (b)-openings between buildings and other site designs that permit views from nearby roads."

At this time, the USACE and the Port have not proposed any public access associated with this project because the USACE views it as a navigation project. While an active Port facility is often not safe for the public, there may be opportunities for public access amenities within the project area and/or nearby areas that could be deemed to constitute maximum feasible public access to the Bay and along the shoreline, consistent with the project. It is also important to note that the communities adjacent

to the Port have limited opportunities to access the Bay compared to other communities.

The Port as the local project sponsor, will be seeking a permit for this project in 2025-2026 and could provide public access as a "betterment" to the USACE project, if determined necessary to find consistency with the Commission's laws and policies. A "betterment" in a federal-local partnership is often provided by the project's local project sponsor when the federal authority does not provide for certain aspects of locally required or preferred project features. There are opportunities to provide public access near the project site. For example, the Alameda Landing Master Plan includes provisions for expansion of an adjacent park and/or Bay Trail should the demolition of the two warehouses occur, potentially connecting an existing park required by BCDC Permit No. 2018.004.00 that requires public access amenities at an adjacent residential development. Additional nexus to potential future public access also exists at Howard Terminal due to the potential for that site to be developed into residential or commercial uses in the future. In accord with Bay Plan Public Access policies, Special Condition II – B requires the USACE to work with the Port, the City of Alameda, and the Commission to develop and submit a public access plan that represents the maximum feasible public access to the Bay and along the shoreline consistent with the project prior to the next-phase consistency determination request for Commission review and concurrence.

H. Environmental Justice and Social Equity

Staff recommends that the Commission find that the project, as conditioned, is *generally* consistent the applicable Bay Plan policies on Environmental Justice and Social Equity for the following reasons:

Bay Plan policies on Environmental Justice and Social Equity state, in part: "Equitable, culturally-relevant community engagement should be conducted by local governments and project applicants to meaningfully involve potentially impacted projects in underrepresented, vulnerable, and/or disadvantaged communities, should continue throughout the Commission review and permitting processes. If a project is proposed within such communities, potential disproportionate impacts should be identified in collaboration with the 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."

While the USACE includes mitigation measures to minimize construction-related air quality, and noise impacts through the use of an electric dredge, emission reduced

vehicles, and sound attenuation measures, they remain an issue for the surrounding communities. While the Commission acknowledges these issues, its ability to address them is limited by its law, policies, and authority that do not include air quality and human health issues, as reflected in its enforceable policies as part of its Coastal Zone Management Program for CZMA purposes. These issues are addressed by other local, regional, and state law, including the Bay Area Air Quality Management District and the California Air Resources Board. Therefore, the Commission's requirements to ensure consistency of the proposed project to the maximum extent practicable with BCDC's Environmental Justice and Social Equity policies are focused on public engagement.

Special Condition II – H requires the USACE to continue to engage with the community through the development of the project and report back to the Commission annually on outcomes of the community engagement.

I. Flooding and Sea Level Rise

Staff recommends that the Commission find that the project, as conditioned, is *generally* consistent with McAteer-Petris Act and applicable Bay Plan policies related to Climate Change for the following reasons:

The Bay Plan Climate Change Policy 1 states, 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 and should identify all types of potential flooding, uncertainty, and consequences of defense failure..." Further, Policy 3 states, in summary, that projects within areas that a risk assessment determines are vulnerable to future shoreline flooding that threaten public safety should be designed to be resilient to a mid-century sea level rise projection. If the project will remain in place longer than mid-century, an adaptive management plan should be developed to address the long-term impacts using the best available science-based projection for sea level rise at the end of the century.

Climate Change Policy 7 states that until a regional sea level rise adaptation strategy can be completed, the Commission should evaluate each project based in vulnerable areas on a case-by-case basis, to determine the public benefits, resilience to flooding, and capacity to adapt to climate change impacts. It further defines project types that have

regional benefits and should be encouraged, if the regional benefits outweigh the risk from flooding, including a transportation facilities, public utilities, and other critical infrastructure.

The Inner Harbor bulkheads at Howard Terminal and Alameda Landing to be newly constructed are the only portion of the proposed project that would be affected by rising seas or has potential to affect flooding. The USACE states that the project would construct the new bulkheads at the same or higher elevation than those being replaced; would not add any new structures or facilities that would be vulnerable to sea level rise; and would not otherwise modify shoreline areas in such a way that the vulnerability or hazard risk of existing developments would be changed.

However, as part of its consistency determination review, the USACE analyzed the project in accord with its required federal Engineering Regulations 1100-2-8162, evaluating the project using three sea change scenarios, low, medium, and high, using the trend of sea level rise of 0.87 millimeters per year based on an appropriate NOAA station at Alameda. It evaluated the project based on a 2030 construction completion year and for a fifty- and one-hundred-year sea level rise and adaptation horizon. This evaluation found that under all scenarios the newly created decks would avoid inundation under all extreme tide conditions through 2050, and in all scenarios except under the high sea level rise scenario in 2100. The USACE Engineering Guidance does not direct it to incorporate the 100-year flood risk information into its analysis and therefore, it did not overlay precipitation with the extreme high tide in conjunction with rising sea levels. The combined analysis may result in a finding of localized flooding at the project sites. However, the USACE can further address this issue as it refines its engineering design.

As described in the Commission's Climate Change policies and the Seaport Plan, the Oakland Harbor is an important transportation facility for imports and export of containerized cargo in the region, state, and nation that provides significant economic benefits, jobs, and commerce. Because there is no regional sea level adaptation strategy at this time, in accordance with Climate Change Policy 7, this regionally important project has benefits that outweigh the risks at the project site from flooding between now and 2090, according the USACE's vulnerability analysis.

The predicted flooding associated with sea level rise at the Howard Terminal and Alameda Landing, according to the evaluation completed by the USACE and by examining the Commission's Flood Explorer program, is not primarily due to the elevations of current or proposed bulkheads, but rather other low-lying areas associated with the landforms at the Port and Alameda. While coordination of sea level rise adaptation planning would be a benefit to both the Port and the City of Alameda, the

larger planning efforts for both sides of the Inner Harbor Turning Basin are not prevented from tying into the bulkheads at a future time. Further, should either the Port or the City of Alameda develop a regional plan before this project returns to the Commission as part of the second-phase consistency determination, the USACE, Port and City of Alameda could further consider incorporation of regional plan requirements into the project.

J. Public Trust

Staff recommends that the Commission find that the project, as conditioned, is *generally* consistent with McAteer-Petris Act and applicable Bay Plan policies related to the Public Trust for the following reasons:

Through a series of legislative grants, the State granted to the City of Oakland (City), in trust, publicly owned tide and submerged lands within the City's boundaries. In 1927, the City Charter gave the Port of Oakland (Port) the exclusive authority to hold, manage, and administer the Port Area (which includes "the Seaport"), as defined by ordinance, which includes tidal and submerged lands granted to the City.

The Commission's policy on the Public Trust seeks to ensure that any project proposed on public trust lands are consistent with the Public Trust Needs and Uses. This project, a widening of a navigation channel's turning basins for the purpose of safe and efficient navigation, as well as the transport of water-related commerce, are uses consistent with the historic understanding of the Public Trust Doctrine. This project does not interfere with other public trust uses or needs beyond those currently constrained by the Port's use of the Public Trust lands.

K. Review Boards

Engineering Criteria Review Board. Per Safety of Fills Policy 1, the Commission's has appointed the Engineering Criteria Review Board and adequately empowered it to establish and revise safety criteria for Bay fills and structures, review all (except minor) projects for the adequacy of safety features and make recommendations to the Commission regarding safety provisions. The Commission's Engineering Criteria Review Board (ECRB) reviewed the conceptual project on September 27, 2023. Because this project is in the feasibility study stage, and design provided is not yet at a level appropriate for full review, the ECRB members made recommendation to the USACE regarding structural elements of the bulkheads and retaining walls, and to give consideration to the response of different types and layers of sediment to the newly installed features. They requested the project come back for review once the design and analysis are further developed.

Design Review Board. Per the Bay Plan Public Access Policy 3, the Design Review Board should advise the Commission on the adequacy of the public access proposed. Because there is no public access proposed at this phase of the consistency determination, the project was not presented to the Design Review Board. Should the USACE and the Port proposed public access in the next phase consistency determination, as conditioned as part of this concurrence, the DRB would review the proposal.

L. Environmental Review

NEPA and CEQA Review. The USACE first issued its initial draft of the *Oakland Turning Basins Widening Draft Integrated Feasibility Report and Environmental Assessment* as required by the National Environmental Policy Act (NEPA) in December of 2021 and received and responded to public comments. In April 2023, after addressing comments and responding to new guidance on greenhouse gas analysis, the USACE released the *Oakland Turning Basins Widening Revised Draft Integrated Feasibility Report and Environmental Assessment* (April 2023) solicited and received comments on the document as required by NEPA. It is currently reviewing and responding to comments, with the completed document with a finding of no significant impacts anticipated in early 2024. The Port, as the local project sponsor and lead agency under the California Environmental Quality Act (CEQA), is conducting the CEQA review for this project. The draft Environmental Impact Report was released on October 3, 2023. The public comment period closes on December 18, 2023. The Port anticipates requesting a permit from the Commission in 2025-26, and the Commission will consider the CEQA document findings in that permit action.

IV. Standard Conditions

A. Letter of Agreement Execution

This Letter of Agreement shall not take effect unless the USACE executes the Letter of Agreement and returns it to the Commission within ten days after the date of the issuance.

B. 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 Letter or Agreement 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 Letter of Agreement. 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 Letter of Agreement, subject to tidal action shall become subject to the Commission's "bay" jurisdiction.

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

This Letter of Agreement 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 Letter of Agreement does not guarantee that the Commission's jurisdiction will not change in the future.

Executed at San Francisco, California, on behalf of the San Francisco Bay Conservation and Development Commission on the date first above written.

DocuSigned by:
Larry Goldzband
ΓD166Ε908010417...

LAWRENCE J. GOLDZBAND
Executive Director
San Francisco Bay Conservation and Development Commission

LJG/BG/kr

cc: Ms. Ellie Covington, U.S. Army Corps of Engineers; <ellie.k.covington@usace.army.mil>
Ms. Erika Powell, U.S. Army Corps of Engineers; <erika.g.powell@usace.army.mil>
Mr. Eric Jolliffe, U.S. Army Corps of Engineers; <eric.f.jolliffe@usace.army.mil>
Ms. Jennifer Siu, U.S. Environmental Protection Agency; <siu.jennifer@epa.gov>
Mr. Kevin Lunde, S.F. Bay Regional Water Quality Control Board; <kevin.lunde@waterboards.ca.gov>
Mr. Ryan Olah, U.S. Fish and Wildlife Service, Sacramento Office; <ryan_olah@fws.gov>
Mr. Steven Schoenberg, U.S. Fish and Wildlife Service, Bay Delta Office; <steven_schoenberg@fws.gov>
Mr. Arn Aarreberg, California Department of Fish and Wildlife, Marine Region; <arn.aarreberg@wildlife.ca.gov>
Mr. Brian Meux, NOAA Fisheries; <brian.meux@noaa.gov>
Mr. Justin Taschek, Port of Oakland; <jtascheck@portoakland.com>
Ms. Colleen Liang, Port of Oakland; <cliang@portoakland.com>

* *

Receipt acknowledged, contents understood and agreed to:

Executed at San Francisco District

On January 9, 2024

U.S. Army Corps of Engineers
Permittee

GLASS.SHANTEL.KEION.1289960585 Digitally signed by GLASS.SHANTEL.KEION.1289960585 Date: 2024.01.09 16:24:19 -08'00'
Signature

Shantel K. Glass
Major, U.S. Army
Print Name

Acting Commander
Title

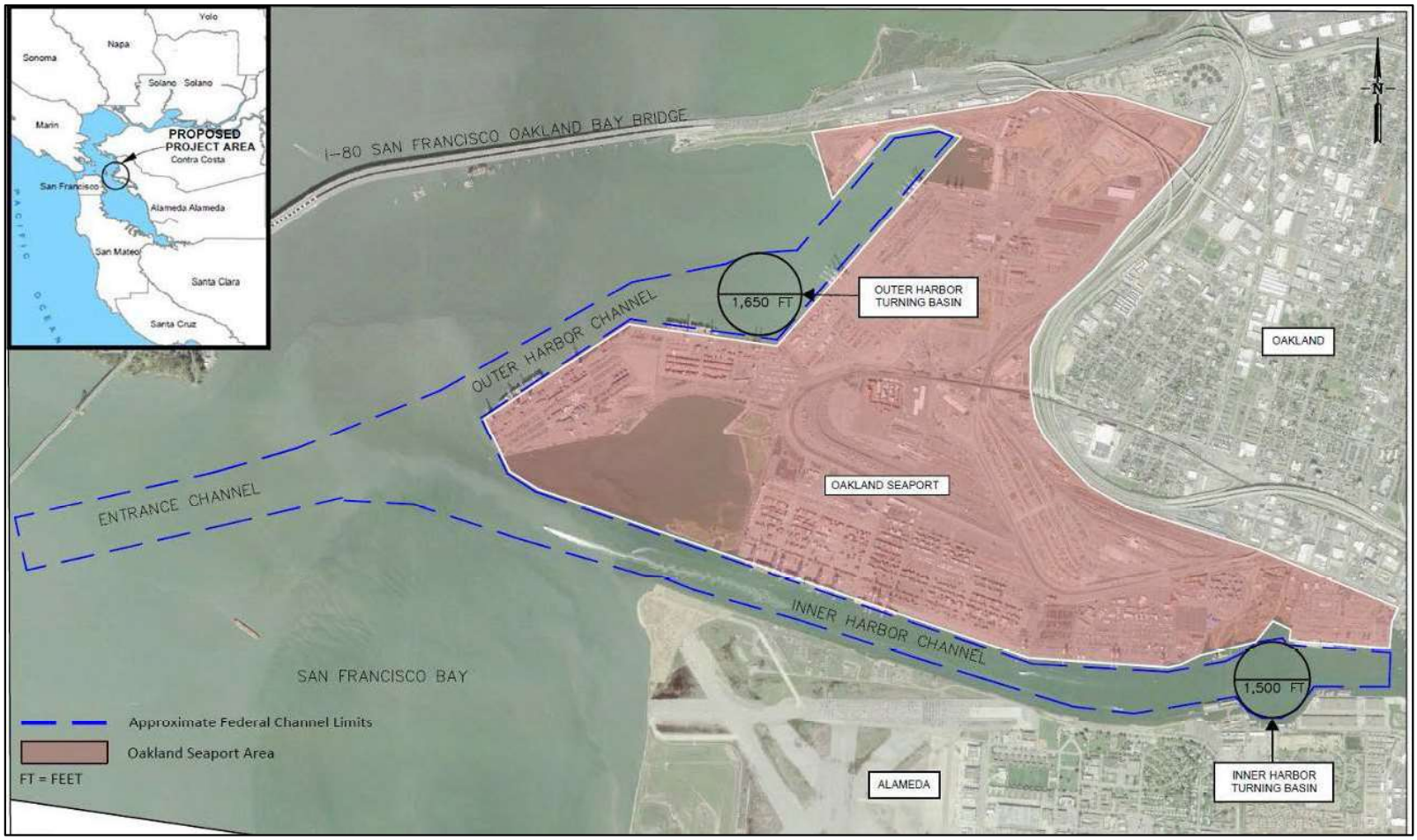

Exhibit A - U.S. Army Corps of Engineers

Port of Oakland Turning Basins Widening Project

BCDC Consistency Determination No. C2023.003.00