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August 22, 2018

File Number: 39WB-266822

VIA E-MAIL

Angela Calvillo, Clerk of the Board of
Supervisors
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City Hall, Room 244
San Francisco, CA
94102-4689
Board.of.Supervisors@sfgov.org

Lisa Gibson
Director of Environmental Planning
San Francisco City Planning
1650 Mission Street, Suite 400
San Francisco, CA 94103
Lisa.gibson@sfgov.org

Re: Conditional Withdrawal of City of Sausalito Appeal of Planning Commission's Approval of Final Mitigated Negative Declaration for Alcatraz Ferry Embarkation Project (2017-000199ENV)

Dear Ms. Calvillo and Ms. Gibson:

As you know, this firm represents the City of Sausalito (Sausalito) in its appeal to the Board of Supervisors of the Planning Commission's approval on February 22, 2018 of the Final Mitigated Negative Declaration (FMND) for the Alcatraz Ferry Embarkation Project (Project), which is scheduled for hearing before the Board of Supervisors on September 4, 2018.

We are pleased to inform you that Sausalito and the National Park Service (NPS) recently entered into the enclosed Memorandum of Understanding (MOU) that resolves Sausalito's concerns set forth in the appeal, on the condition that there are no material changes to the Project's Lease Agreement between the Port Commission and the Ferry Concessioner as approved by the Port Commission on June 25, 2018 (Port Commission Lease). Sausalito thus withdraws its appeal subject to this condition.¹

¹ In the unlikely event that changes are proposed to the scope of Permitted Uses under the Port Commission Lease as approved on June 25, Sausalito reinstates its appeal and requests a hearing and opportunity to oppose such Project changes.

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Sausalito appreciates the cooperation and collaboration with NPS, San Francisco Planning staff the Port Commission and its staff in addressing Sausalito's concerns and ultimately clarifying and improving the Project. Because of these joint efforts, Sausalito supports the Board of Supervisors' final approval of the Project as approved by the Port Commission.

Sincerely,



Arthur J. Friedman
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

SMRH:487568244.1
Encl:

cc: Brian Aviles -- National Park Conservancy
Elaine Forbes -- Port of San Francisco

MEMORANDUM OF UNDERSTANDING
between the
CITY OF SAUSALITO
and the
NATIONAL PARK SERVICE

This Memorandum of Understanding (MOU) is made and entered into as of August 22, 2108, by and between the CITY OF SAUSALITO ("Sausalito") and the NATIONAL PARK SERVICE, U.S. DEPARTMENT OF THE INTERIOR ("NPS"). Sausalito and NPS are sometimes collectively referred to herein as the "Parties."

WHEREAS, Fort Baker is a federal property managed by NPS as part of the Golden Gate National Recreation Area ("GGNRA"); and

WHEREAS, as neighbor to Fort Baker, Sausalito is potentially impacted by development and other activities at Fort Baker to the extent that such development or activities have effects outside park boundaries; and

WHEREAS, the Parties have long-standing commitments to communicate and collaborate with each other regarding matters of joint interest at Fort Baker. NPS' June 2000 Record of Decision (ROD) for the GGNRA Fort Baker Plan states NPS' commitment to work with Sausalito and other agencies to seek regional solutions to transportation challenges in the areas surrounding Fort Baker. In January 2005, following an agreement reached between the Parties regarding development of the Cavallo retreat and conference center, the Parties issued a joint public statement providing in part that "the NPS and [Sausalito] will continue to closely communicate on issues of joint interest at Fort Baker."; and

WHEREAS, recreational visitation to Sausalito by tour buses, private vehicles and bicycles has increased in recent years, which often creates conditions of extreme congestion and overcrowding in and near the historic downtown waterfront, particularly on weekends and during peak tourism months; and

WHEREAS, the GGNRA was established to preserve for public use and enjoyment certain areas of Marin and San Francisco Counties, possessing outstanding natural historic, scenic, and recreational values, and in order to provide for the maintenance of needed recreational open space necessary to the urban environment and planning. Legislation directs NPS to utilize the park's resources in a manner which will provide for recreation and educational opportunities consistent with sound principles of land use planning and management, and to preserve the recreation area, as far as possible, in its natural setting, and protect it from development and uses which would destroy the scenic beauty and natural character of the area; and

WHEREAS, the Parties support regional transportation solutions, which may include ferry service to Fort Baker, that protect the environment and enhance the experience of visitors and Sausalito residents alike; and

WHEREAS, the Parties seek to memorialize their shared vision and mutual commitment to sound regional public transportation planning as set forth herein, and as they may develop in the future through regular consultation with each other.

NOW THEREFORE:

This MOU is made and entered into on the basis of the following facts and understanding of the Parties hereto:

AGREEMENT:

- A.** In January, 2017, NPS prepared the Alcatraz Ferry Embarkation final Environmental Impact Statement (“EIS”) and completed a Record of Decision (“ROD”) in December 2017 to establish: (1) a long-term ferry embarkation site for passenger service between Pier 31½ in San Francisco and Alcatraz Island; (2) interpretive cruises for Golden Gate National Recreation Area parklands around the San Francisco Bay; and (3) limited ferry service between Pier 31½ in San Francisco and the existing Fort Baker pier. The foregoing components are collectively referred to herein as the “Project.”
- B.** On December 6, 2017, San Francisco’s Planning Department as Lead Agency for the Project under California’s Environmental Quality Act (“CEQA”), published a Preliminary Mitigated Negative Declaration (“PMND”) for the Project.
- C.** On December 27, 2017, Sausalito appealed the proposed PMND to the City of San Francisco’s Planning Commission (“Appeal”).
- D.** On February 15, 2018, San Francisco’s Planning Department published a proposed Final Mitigated Negative Declaration (“FMND”) for the Project, containing certain revisions and supplemental information to the PMND.
- E.** On February 22, 2018, San Francisco’s Planning Commission denied Sausalito’s appeal and approved the proposed FMND for the Project.
- F.** On March 21, 2018, Sausalito appealed the Planning Commission’s approval of the FMND to San Francisco’s Board of Supervisors.
- G.** On June 25, 2018, San Francisco Port Commission approved the Project.
- H.** The Parties have met and conferred to discuss areas of mutual concern and enter into this MOU in a good faith effort to work together and obviate the need for Sausalito to pursue its Appeal.

- I.** As part of completing consultation with the Bay Conservation and Development Commission (“BCDC”) as required under the Coastal Zone Management Act, and prior to initiating limited ferry service from Pier 31½ to Fort Baker, the NPS agrees to meet and confer with Sausalito on the proposed rehabilitation and management of the historic Fort Baker pier in sufficient time for due consideration of Sausalito’s interests.
- J.** Prior to beginning limited ferry service from Pier 31½ to Fort Baker, NPS agrees to share information about proposed service start dates, vessels, operating schedules, ticketing procedures, passenger requirements, and other related materials with Sausalito in sufficient time for due consideration of Sausalito’s interests.
- K.** Prior to commencement of Fort Baker ferry service and with sufficient time for due consideration of the following, NPS shall meet and confer with Sausalito to consider the desirability and feasibility of ensuring that passengers, including passengers with bicycles, may purchase one-way tickets authorizing transport from Fort Baker to Pier 31½.
- L.** Following the commencement of Fort Baker ferry service, in the event that Sausalito provides NPS written notice that Sausalito is experiencing adverse impacts resulting from the Fort Baker ferry service, the Parties shall meet and confer on ways to potentially reduce, mitigate or avoid such adverse impacts.
- M.** If NPS proposes to expand ferry service from Pier 31½ to Fort Baker beyond the levels identified in the FMND and EIS (2 roundtrips on Saturdays and Sundays, carrying approximately 40,000 passengers per year), the NPS will provide Sausalito written notice as soon as reasonably practicable. Following such written notice, the Parties further agree to regularly meet and confer and collaborate regarding how best to reduce, mitigate or avoid potential adverse impacts to Sausalito arising from the proposal or proposed project. The Parties’ collaboration shall include an invitation to Sausalito to act as a Cooperating Agency due to their special expertise to share information, provide its recommendation and the basis for that recommendation to NPS regarding the appropriate environmental review and/or mitigation measures recommended for the proposal or proposed project.
- N.** If NPS proposes to offer transportation services at Fort Baker to transport arriving Fort Baker ferry passengers to Muir Woods or other NPS destinations, the NPS will provide Sausalito written notice as soon as reasonably practicable. Following such written notice, the Parties further agree to regularly meet and confer and collaborate regarding how best to reduce, mitigate or avoid potential adverse impacts to Sausalito arising from the proposal or proposed project. The Parties’ collaboration shall include the opportunity for Sausalito to provide its recommendation and the basis for that recommendation to NPS regarding the appropriate environmental review and/or mitigation measures recommended for the proposal or proposed project. NPS further agrees to consider as an alternative in the environmental analysis the routing of all such transportation from Fort Baker to the northbound Alexander Avenue/Highway 101 on-ramp to potentially mitigate impacts to downtown Sausalito.
- O.** The Parties agree to participate in regional transportation planning efforts to address issues of mutual concern, including the growth of ridesharing and recreational bicycling, along

with agencies including but not limited to California Highway Patrol, Marin County Transportation Authority, California Department of Transportation, Golden Gate Bridge and Highway Transportation District, and the Metropolitan Transportation Commission.

P. This MOU shall not affect NPS' continuing duty to comply with all Project agreements and conditions of approval, including any conditions and legal requirements under federal or state law that may apply to proposed changes to the Project.

Q. Notices: Any notice or communication required pursuant to this MOU by any Party shall be in writing and shall be given either personally, by Federal Express or other similar courier promising overnight delivery, or by regular U.S. Mail. Notices shall be given to the Parties at their addresses set forth below:

City of Sausalito City Manager
Sausalito City Hall
420 Litho Street
Sausalito, California 94965
Telephone: (415) 289-4165
apolitzer@ci.sausalito.ca.us

With copies to: City Attorney
Sausalito City Hall
420 Litho Street
Sausalito, California 94965

National Park Service Superintendent, Golden Gate NRA
Building 201-Fort Mason
San Francisco, CA 94123
Telephone: (415) 561-4720
GOGA_Superintendent@nps.gov

With copies to: Field Solicitor
U.S. Department of the Interior
333 Bush Street, Suite 775
San Francisco, CA 94104

Any Party may change its mailing address or contact person(s) at any time by giving written notice of such change to the other Parties in the manner provided herein at least ten (10) days prior to the date such change is affected.

R. Term and Termination: This MOU shall remain in effect concurrently with the life of the Project. The Parties will confer at the conclusion of the term to review outcomes. The Parties

may, upon mutual agreement in writing, renew the MOU. The parties may, upon mutual agreement in writing, terminate the MOU.

S. Dispute Resolution: If either Party identifies a material failure consisting of a breach of any of the substantive terms or conditions of this MOU which results in a dispute, that party may notify the other party in writing. The Parties will follow up with meetings and communications in an attempt to resolve the dispute within 90 days. If the Parties cannot resolve the dispute within 90 days, the Parties may mutually agree to seek the assistance of a mediator to assist in resolving the dispute.

T. Expenditure of Funds and Resources: Nothing in this MOU shall be construed as obligating NPS to expend any funds in excess of appropriations authorized by law. The commitment of funds in furtherance of this MOU is subject to federal budgeting and appropriations procedures.

U. Non-Discrimination: All activities pursuant this MOU shall be in compliance with the requirement of Executive Order 11246; Title VI of the Civil Rights Act of 1964, as amended, (78 Stat. 252; 42 U.S.C. §§2000d et seq.); Title V, Section 504 of the Rehabilitation Act of 1973, as amended, *87 Stat. 394; 29 U.S.C. §794); the Age Discrimination Act of 1975 (89 Stat. 728; 42 U.S.C. §§6101 et seq.); and with all other federal laws and regulations prohibiting discrimination on grounds of race, color, sexual orientation, national origin, disabilities, religion, age, or sex.

V. Lobbying Prohibition: 18 U.S.C. § 1913, Lobbying with Appropriated Moneys-No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation; but this shall not prevent officers or employees of the United States or of its department or agencies from communicating to Members of congress on the request of any Member or to Congress, through the proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of the public business.

W. Anti-Deficiency Act: 31 U.S.C. §1341- Nothing contained in this MOU shall be construed as binding the NPS to expend in any one fiscal year any sum in excess of appropriations made by Congress for the purposes of this Agreement for that fiscal year, or other obligation for the further expenditure of money in excess of such appropriations.

X. Liability

1. Each Party accepts responsibility for any property damage, injury or death that occurs in connection with its implementation of this Agreement to the extent that such damage, injury or death is caused by its own negligent acts or omissions, or willful misconduct, or the negligent acts, omissions, or willful misconduct of its officers,

employees and/or agents acting within the scope of their employment, agency or official capacity, to the fullest extent permitted by law.

2. Each Party agrees to cooperate in the investigation of any claims that may be filed with any other Party arising out of or in any way connected to activities authorized pursuant to this Agreement. In particular, the NPS agrees to cooperate, to the extent allowed by law, in the submission of claims pursuant to the Federal Tort Claims Act against the United States for personal injuries or property damage resulting from the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his/her employment, arising out of this Agreement.
3. Except as expressly provided for herein, nothing in this Agreement shall be construed as creating joint liability with regard to any of the activities undertaken in implementation of this Agreement. Nothing in this Agreement shall be construed as giving any of the Parties the right or ability to bind the others or create any joint liability with regard to, or as a result of, the activities undertaken to implement this Agreement.
4. All employees or agents of a party shall remain employees or agents of that Party and subject to the laws, procedures, rules and policies governing that Party's employees and/or agents.

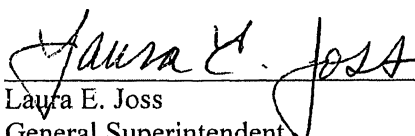
Y. Counterparts: This Agreement may be executed in any number of counterparts, by facsimile or pdf, each of which shall be deemed an original; however, all such counterparts shall constitute but one and the same instrument.

IN WITNESS WHEREOF, this MOU has been entered into by and between the Parties as of the day and year first above written.

8/22/18
Date


Joan Cox
Mayor
City of Sausalito

8/22/2018
Date


Laura E. Joss
General Superintendent
Golden Gate NRA