

March 21, 2018

File Number: 56RZ-257264

## Via Electronic Mail and Hand Delivery

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Re: Appeal of Planning Commission's Approval of Final Mitigated Negative Declaration For Alcatraz Ferry Embarkation Project (2017-000188ENV)

Dear Ms. Calvillo:

The City of Sausalito (Sausalito), pursuant to San Francisco Administrative Code sections 31.16, subsections (b) and (d), submits this appeal of the San Francisco Planning Commission's approval on February 22, 2018 of the Final Mitigated Negative Declaration and the Mitigation Monitoring and Reporting Program (2017-000188EENV) (FMND) for the Alcatraz Ferry Embarkation Project (Project).

### SUMMARY OF CONCERNS AND REQUESTED MITIGATION MEASURES

Sausalito's concerns are limited to the Project's authorization of new ferry service from Pier 31 ½ in San Francisco to Fort Baker, located adjacent to Sausalito, under contracts that may extend for fifty (50) years.

Sausalito does not wish to delay the Project. Sausalito also supports regional transportation, including ferry service from San Francisco to Fort Baker, so long as mitigation measures are implemented to avoid or lessen potentially significant environmental impacts to Sausalito, San Francisco and the National Park Service. **Sausalito's concerns in this appeal are satisfied by the Board's adoption of three additional mitigation measures** to the FMND described in the next paragraphs. These mitigation measures are supported by the traffic/public safety analysis performed by Sausalito's retained traffic engineer, Parisi Transportation Consulting, dated March 19, 2018 (**Exhibit D.**) Each mitigation measure is necessary, not simply to avoid and lessen significant impacts in Sausalito, but also to **facilitate and promote regional transportation** by improving regional transportation conditions and the overall transport experience for visitors and residents alike.

Based on Parisi's analysis, Fort Baker ferry service's significant traffic and public safety impacts as currently proposed may be reduced to less than significant by the Board's adoption

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of the following three mitigation measures, each of which reduce private vehicle traffic and improve regional transportation.

(1) Muir Woods Shuttles Traveling Through Sausalito: Parisi determined that any shuttle/bus service connecting arriving Fort Baker ferry passengers to Muir Woods and other NPS sites would cause significant traffic, circulation and public safety impacts if routed through Sausalito. Thus, in order to mitigate these potential significant impacts, the following mitigation measure should be implemented:

*Mitigation Measure: NPS shall ensure, by agreement with transportation service providers or otherwise that in the event transportation services are offered at Fort Baker to transport arriving Fort Baker ferry passengers to Muir Woods or other NPS destinations, all such transportation shall be directed from Fort Baker southward to the Alexander Avenue/Highway 101 on-ramp, and shall not be permitted to drive through Sausalito.*

(2) Private Cars: San Francisco's traffic study concluded that even if Fort Baker ferry service was limited to two weekend trips per day as assumed in the FMND, the Project would generate in excess of 100 daily visitors to Sausalito. Parisi concluded this would mean 50 roundtrip vehicles (100 single trips) for hire to and from Sausalito, causing significant impacts, particularly through the narrow South Gateway corridor, the only route for all traffic between Fort Baker and Sausalito. Moreover, the number of new vehicle trips increases exponentially over the life of the Project based on even a modest five percent annual passenger growth rate. Thus, In order to mitigate potential significant traffic and public safety impacts resulting from arriving Fort Baker passengers hiring private vehicles (*i.e.*, Taxis, Uber, Lyft) to visit Sausalito, the following mitigation measure should be implemented:

*Mitigation Measure: Upon the commencement of ferry service from Pier 31 ½ directly or indirectly to Fort Baker, NPS shall ensure, by agreement with transportation service providers or otherwise, that roundtrip connecting shuttle bus service between Fort Baker and Sausalito is available to meet passenger demand.<sup>1</sup> Each shuttle bus shall accommodate bicycles and to the extent feasible, be powered by environmentally sustainable technology.*

(3) Increased Congestion: Parisi further determined that Fort Baker ferry service will cause significant traffic, congestion and public safety impacts within the South Gateway corridor and Sausalito's historic downtown waterfront from additional visitors travelling to Sausalito by foot, on bicycles and private cars. The Project's contributions would exacerbate existing heavily congested conditions in Sausalito during weekends and peak tourism months, as discussed in detail in Sausalito's 2017 CEQA Addendum prepared for the Sausalito Ferry Terminal (attached as **Exhibit A**). Thus, in order to mitigate these potential significant impacts, the following mitigation measure should be implemented:

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<sup>1</sup> NPS previously agreed to a similar requirement as a condition to developing Cavallo Point in Fort Baker.

*Mitigation Measure:* NPS shall ensure, by agreement with its ferry concessioners or otherwise, that any ferries authorized by the Project returning or otherwise traveling directly or indirectly from Fort Baker to Pier 31 1/2 shall accept and accommodate passengers with bicycles. In order to facilitate the transport of all potential passengers from Fort Baker to Pier 31 1/2, NPS shall ensure, by agreement with its ferry concessioners or otherwise, that passengers, including passengers with bicycles, may purchase at Fort Baker one-way tickets authorizing ferry transport from Fort Baker to Pier 31 1/2.<sup>2</sup>

As explained below, the FMND as presently drafted is legally deficient in violation of California's Environmental Quality Act (CEQA) because substantial evidence demonstrates that the Project's proposed Fort Baker ferry service will result in significant environmental impacts in Sausalito and the region over the life of the 50-year Project. Sausalito thus encourages the Board of Supervisors to implement the foregoing mitigation measures in order to comply with CEQA and to satisfy Sausalito's concerns.<sup>3</sup>

## RELEVANT FACTUAL HISTORY

Sausalito first expressed its concerns raised here regarding the Project's proposed Fort Baker ferry service to NPS almost three years ago. On May 18, 2015, Sausalito submitted extensive comments and objections to NPS' then-proposed Draft Environmental Impact Statement (DEIS) for the Project (**Exhibit E.**) NPS assured Sausalito in response that it would work cooperatively and collaboratively with Sausalito to address Sausalito's concerns and ensure that Fort Baker ferry service would include enforceable limitations to reduce or avoid potentially significant impacts on Sausalito and the region.

Sausalito's long-standing role as stakeholder with respect to potential development in Fort Baker was confirmed by the United States Court of Appeals for the Ninth Circuit in *City of Sausalito v. O'Neill et al.*, 386 F. 3d 1186 (9th Cir. 2004). The Ninth Circuit in *O'Neill* held that Sausalito has a proprietary interest in protecting its natural resources, and preventing injury from traffic, crowds, and accompanying congestion that may "destroy the City's quiet, beauty, serenity and quaint and historic village character and attributes."

Moreover, NPS has made numerous commitments to Sausalito over the years in light of those clear interests. NPS' June 2000 Record of Decision (ROD) for NPS' Golden Gate National Recreation Area General Management Plan for Fort Baker states: (1) "the National Park Service is committed to looking for and implementing innovative approaches to reduce long-term dependence on automobile use at Fort Baker;" (2) "[t]his will be done working

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<sup>2</sup> This mitigation measure requires no modification to the Project contracts because the Project contracts do not prohibit, but instead grant NPS full discretion regarding whether bicycles may board Fort Baker ferries.

<sup>3</sup> Sausalito proposes the foregoing mitigation measures in compromise to resolve this appeal, but does so without waiver, and expressly preserving all rights to assert in litigation if necessary all claims and objections to the Project asserted during the administrative proceedings.

cooperatively with other agencies to seek regional solutions to transportation challenges in the areas surrounding Fort Baker....”; and (3) [t]he NPS is specifically committed to working with the City of Sausalito [and other agencies]....”

In January 2005, following an agreement reached between Sausalito and NPS to resolve their dispute regarding NPS’ then-proposed development plans for Fort Baker, NPS issued a public statement that “the NPS and the City will continue to closely communicate on issues of joint interest at Fort Baker.” This public statement was consistent with NPS Policy adopted the following year. NPS’ Management Policies adopted in 2006 recognize that “NPS activities may have impacts outside park boundaries,” and therefore require that NPS conduct “cooperative regional planning and ecosystem planning... [intended to] identify and consider potential effects outside and inside park boundaries [and develop] plans [that] will identify and consider potential effects outside and inside park boundaries, and plans [to] identify ways to enhance beneficial effects and mitigate adverse effects.”

Unfortunately, despite NPS’ prior assurance to Sausalito, and contrary to NPS’ own Management Policies, NPS did not consult with Sausalito regarding the Project following NPS’ adoption of the Project’s EIS in January 2017, nor inform Sausalito that San Francisco was preparing a proposed mitigated negative declaration in support of the Project.

On December 6, 2017, San Francisco’s Planning Department (SF Planning) issued a proposed Preliminary Negative Declaration (PMND) for the Project pursuant to CEQA, thus commencing a 30-day period to appeal. Sausalito requested an extension of time to appeal in light of the intervening holidays, but this request was denied. Accordingly, on December 27, 2017, Sausalito filed an appeal regarding the proposed PMND to the Planning Commission. On February 15, 2018, SF Planning issued a revised, Draft Final Mitigated Negative Declaration (FMND), supported by SF Planning’s Staff Report dated February 15, 2018.

On February 22, 2018, the Planning Commission denied Sausalito’s appeal regarding the FMND. However, as discussed next, SF Planning and the Planning Commission violated San Francisco’s Administrative Code and CEQA’s mandatory public participation requirements in approving the FMND. This timely appeal followed.

## **SAN FRANCISCO’S OMISSION OF THE PROJECT CONTRACTS VIOLATES CEQA’S MANDATORY PUBLIC DISCLOSURE REQUIREMENTS AND SAN FRANCISCO’S ADMINISTRATIVE CODE**

### **A. The Planning Commission Failed To Proceed In The Manner Required By Law By Failing To Disclose And Review The Project Contracts**

The Planning Commission failed to disclose the Project contracts to the public and include them with Planning Staff’s materials regarding Sausalito’s appeal. That omission violated San Francisco’s Administrative Code requirements, as well as CEQA’s mandatory public disclosure and public participation requirements by thwarting both the Planning Commission’s and the public’s ability to meaningfully assess and/or modify the Project to minimize or avoid potentially significant environmental impacts.

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“Public participation is an essential part of the CEQA process...” (*Concerned Citizens of Costa Mesa, Inc. v. 32<sup>nd</sup> District Agricultural Association* (1987) 42 Cal. 3d 929, 935.) “The ‘privileged position’ that members of the public hold in the CEQA process is based on a belief that citizens can make important contributions to environmental protection and on notions of democratic decision-making.” (*Id.* at 936.) “CEQA compels an interactive process of assessment of environmental impacts and responsive project modification which must be genuine. It must be open to the public, premised upon a full and meaningful disclosure of the scope, purposes, and effect of a consistently described project, with flexibility to respond to unforeseen insights that emerge from the process.” (*County of Inyo v. City of Los Angeles* (1984) 160 Cal. App. 3d 1178, 1185.) “In short, a project must be open for public discussion and subject to agency modification during the CEQA process. This process helps demonstrate to the public that the agency has in fact analyzed and considered the environmental implications of its action.” (*Ibid.*, citing *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68, 86.)

The forgoing principles are codified by the San Francisco’s Administrative Code and the CEQA Guidelines. San Francisco Administrative Code section 3.11, subsection (g), states: “After holding such hearing the Planning Commission shall affirm the proposed negative declaration if it finds that the project could not have a significant effect on the environment.....” [emphasis added]. Implicit in the foregoing required finding is the ability to review not just the FMND, but the “project,” which in this case is the Project contracts.

Similarly, CEQA Guideline section 15025, subdivision (c), titled “Delegation of Responsibilities,” provides: “Where an advisory body such as a planning commission is required to make a recommendation on a project to the decision making body, the advisory body shall also review and consider the EIR or negative declaration in draft or final form.” [emphasis added]. Here, under Administrative Code section 3.11, the Planning Commission was required to make a recommendation on the project to the decisionmaking body. It therefore was required to review the draft environmental document and “also” the proposed Project. This interpretation is consistent with CEQA case law holding that “environmental review is not supposed be segregated from project approval.” (*California Clean Energy Committee v. City of San Jose* (2013) 220 Cal. App. 4th 1325, 1341.)

**B. Lacking The Ability To Review The Project Contracts, The Planning Commission Approved The FMND In Reliance On The False Premise That Further CEQA Review Would Be Required If Ferry Service To Fort Baker Increased Beyond Two Roundtrips Per Day, Weekends Only.**

During the Planning Commission hearing, SF Planning Staff informed the Planning Commission that: “[t]he proposed project would provide limited ferry service on weekends only, a maximum of two ferry trips per day transporting up to 500 passengers on a peak day and 40,000 passengers annually.” (**Exhibit C.**, p. 5.) However, the Project contracts include no such limits on ferry service to Fort Baker. NPS has complete discretion under the Project contracts to draft and modify its Operating Plan to determine the amount of ferry service to Fort Baker.

After SF Planning's presentation, Planning Commission President Hillis asked SF Planning's Environmental Review Officer whether further CEQA review would be required should ferry service to Fort Baker increase beyond two roundtrips, weekends only. (*Id.*, p. 27.) She responded: "[a]ny action that goes beyond the terms of the project that we described, any additional ferries would require additional review under the approving agency that would be required to approve that additional ferry service..." (*Id.*, p. 27.) That response, of course, begged the critical question of whether the Project contracts limit ferry service to Fort Baker to two roundtrips, weekends only, such that additional ferries would be "***beyond the terms of the project...***" The City's attorney thus clarified: "Any future approval action ***if the lease is changed or any part of the documents changed***, than certainly the Port would ask for Planning Department's evaluation of what additional CEQA review might be required." (*Id.*, p. 28.)

Thus, as the City's attorney clarified, future CEQA review is triggered only if ferry service to Fort Baker increases beyond that which is authorized under the Project contracts, thus requiring a discretionary approval to amend the Project contracts. However, here, because the Project contracts impose no limits on the amount of ferry service to Fort Baker, that service may increase beyond two weekend trips per day without the need for contract changes, and therefore no discretionary approval necessary to trigger further CEQA review. (*See Friends of Davis v. City of Davis* (2000) 83 Cal. App. 4th 1004, 1018 [holding that in the absence of an agency's subsequent discretionary approval over a project, "the interests of finality are favored... and the rule applies even if the initial review is discovered to have been inaccurate and misleading in the description of the significant effect or severity of the is consequences."].)

Neither the Planning Commission nor members of the public, however, were able to review the Project contracts in response to SF Planning Staff's and the City's attorney's statements in order to comprehend that additional ferry service beyond two weekend trips per day would not require any contract changes, and therefore no CEQA review would be possible. Consequently, the Planning Commission misunderstood the City's attorney's comments as confirmation that any expanded ferry service beyond two roundtrips per day on weekends only would trigger further CEQA review. Moreover, the record clearly demonstrates that several Planning Commission members approved the FMND in reliance on this misunderstanding.

PRESIDENT HILLIS: But the City would evaluate whether that would require additional CEQA analysis based on the new scope if they decided to expand beyond what's studied here.

[City Attorney] MS. STACY: That's correct. If there's a discretionary CEQA decision, they would necessarily have to contemplate additional CEQA review.

PRESIDENT HILLIS. Okay. Thank you. We often have this case where we're not the approval body of the transaction necessarily, but we're looking at the impact from a CEQA standpoint. I think I'm comfortable with that -- I agree with Commissioner Moore that that's been analyzed here. To the extent the scope goes beyond or the project goes beyond at a later date, we'd have to do exactly what we do in other cases....that entails additional CEQA analysis....So I'm comfortable with this. I agree with Commissioner Moore, and I'd support the motion.

(Exhibit C, pp. 27-29.)

Unfortunately, as explained next, the events before the Planning Commission were not the first, but rather merely the most recent example of SF Planning's failures to comply with CEQA's mandatory public notice and participation requirements in connection with its review and analysis of the Project.

## **SAN FRANCISCO FAILED TO COMPLY WITH SPECIAL CONSULTATION REQUIREMENTS THAT APPLY TO THIS PROJECT OF STATEWIDE, REGIONAL, OR AREAWIDE SIGNIFICANCE**

The Project is one of "Statewide Regional or Areawide Significance" under CEQA because it would "substantially affect" sensitive wildlife habitats, including but not limited to riparian lands, wet lands, bays, estuaries, marshes, and habitats for endangered, rare and threatened species. (CEQA Guidelines, § 15026(b)(5); Fort Baker Plan FEIS, p. 4-23 [concluding that ferry service to Fort Baker could increase turbidity and the amount of petroleum pollutants present in Horseshoe Bay resulting in potential adverse impact to water quality.]) Lead agencies responsible for Statewide, Regional or Areawide Significance projects must consult with "transportation planning agencies" and "public agencies which have transportation facilities within their jurisdiction which could be affected by the project." (Pub. Res. Code § 21092.4(a); CEQA Guidelines, § 15086(a)(5).) CEQA defines "transportation facilities" to include "major local arterials and public transit within five miles of the project site." (Pub. Res. Code § 21092.4(b).) Several of Sausalito's major local arterials that could be affected by the Project are located within a five-mile radius of the Fort Baker pier. Accordingly, SF Planning was required to consult with Sausalito in the same manner as a "responsible agency." (Pub. Res. Code § 21092.4(a).)

During the appeal proceedings before the Planning Commission, SF Planning argued in response to this claim that the Project has no such significance because the FMND determined that the Project would have less than significant impacts, and even if the Project had such significance, CEQA's consultation requirements for such projects apply only to the preparation of EIRs rather than negative declarations. (SF Planning Staff Report, February 22, 2018, p. 4.) Both contentions, however, are incorrect.

First, the FMND's finding that the Project's impacts would be less than significant is not relevant to the determination regarding whether a Project qualifies as one of Statewide, Regional or Areawide Significance. CEQA sets a lower threshold, and defines such projects broadly to include those that "*substantially affect*," among other things, sensitive wildlife habitats, bays and estuaries. Such is the case with the Project here.

Second, Public Resources Code section 21082.1 expressly imposes on lead agencies the procedural requirements applicable to projects of Statewide, Regional or Areawide Significance in connection with their preparation of EIRs **or negative declarations**. (Pub. Res. Code § 21082.1, subd. (c)(4)(C).) In fact, SF Planning's interpretation is irreconcilable with CEQA Guidelines section 15096(a) and (b), which state that SF Planning was required to consult with Sausalito regarding this project of Statewide, Regional or Areawide Significance in

part to assist in the determination regarding whether an EIR or negative declaration should be prepared.

## THE FMND VIOLATES CEQA'S REQUIREMENTS

### A. The FMND's Project Description Is Inaccurate And Legally Deficient

For obvious reasons, CEQA requires that negative declarations provide an accurate and complete project description. The Court in *City of Redlands v. County of San Bernardino* (2002) 96 Cal. App. 4th 398, 406 explained:

An accurate and complete project description is necessary for intelligent evaluation of the potential environmental impacts of the agency's action. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal... and weigh other alternatives in the balance.

The Board of Supervisors may be surprised to learn that SF Planning never reviewed, much less analyzed the content of the Project contracts during its environmental review of the Project and preparation of the FMND. On February 1, 2018, SF Planning responded to Sausalito's request for an explanation regarding why no Project contracts were produced in response to Sausalito's Public Records Act Request (PRA) as follows:

The Planning Department only has the Environmental Application describing the project. Whatever Julie [Moore] provided from our files is all we have. **The agreement and contracts between NPS and the Port have nothing to do with our CEQA review**, therefore, we do not have copies of these.

(Attached as Exhibit F [emphasis added].)

During the hearing before the Planning Commission, SF Planning acknowledged that the FMND's Project Description is premised on the "best available information known at this time," referring to the *description of the project as presented with the original application*. (**Exhibit C**, at p. 7.)

The flaw in SF Planning's reasoning, of course, is that under CEQA, the "project" refers to the "underlying activity for which approval is being sought," which in this case is the **Project contracts** – not descriptive information submitted with a project application. (*City of Long Beach v. City of Los Angeles* (2018) 19 Cal. App. 5th 465, \* 9 (Jan. 12, 2018.)) Here, the Project contracts purportedly analyzed in the FMND consist of: (1) A Master Agreement between the Port and NPS for a thirty-year term with two ten-year options for use of the site as the embarkation to Alcatraz Island, Fort Baker and other locations (Master Agreement); (2) a form lease with an initial ferry concessioner to be selected by NPS for site improvements and ferry services including from the Site to Alcatraz Island, Angel Island and Fort Baker (Concession Contract); and (3) a lease with the Golden Gate National Parks Conservancy for site



improvements and to operate visitor amenities including a visitor-contact station and café for a thirty-year term with two ten-year options coterminous with the Master Agreement (Port Lease).<sup>4</sup>

It was impossible for SF Planning as CEQA “Lead Agency” to assure the accuracy of the Project’s description, and therefore the adequacy of environmental review in the absence of the Project contracts. This case vividly illustrates the consequences of conducting environmental review in a vacuum, without the benefit of the documents constituting the underlying activity for which approval is being sought.

As set forth in Sausalito’s appeal letters to San Francisco’s Planning Commission on December 27, 2017 and February 20, 2018, and Sausalito’s comments before the Planning Commission on February 22, 2018,<sup>5</sup> the FMND is legally inadequate as an informational document largely because of its inaccurate Project description.

The FMND fails to adequately analyze the potential impacts of the proposed Fort Baker ferry service because, among other reasons, the environmental analysis is premised on assumed enforceable “limits” on the number of future ferries and passengers and scope of authorized uses that do not exist in the Project contracts. As examples:

- The FMND and its supporting traffic analysis assumes that Fort Baker ferry service is limited to two trips per day, on weekends only. (FMND, p. 17.) However, the Project contracts impose no such limits on ferry service to Fort Baker. The proposed Ferry Concession Contract released with the National Park Service’s (NPS) prospectus provides that Fort Baker ferry service shall be determined by the Operating Plan that NPS may modify at its discretion. (Concession Contract, pp. 4-5.) Moreover, not addressed in the FMND, the Project contracts additionally authorize unlimited charter ferry services to Fort Baker for conferences and other special events. (Concession Contract, p. 4, Draft Operating Plan, p. B-12.)
- The FMND and its supporting traffic analysis assumes that bicycles are prohibited from boarding Fort Baker ferries. (FMND, p. 76). However, the Project contracts include no such prohibition. NPS has full discretion to prohibit or allow bicycles over the life of the 50-year Project. The FMND’s revised

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<sup>4</sup> On January 31, 2018, NPS released its Prospectus for the Project containing the draft Project Contracts.

<sup>5</sup> Pursuant to San Francisco Administrative Code section 31.16, subsections (b) and Section 31.22, Sausalito submits with this letter attached as **Exhibits A and B**, copies of its appeal letters to the Planning Commission dated December 27, 2017 and February 20, 2018 (without exhibits, as they are separately attached hereto), and the required appeal fee in the amount of \$597 payable to the San Francisco Planning Department. Sausalito also submits a transcript of the proceedings on February 22, 2018 before the Planning Commission regarding Sausalito’s appeal. (**Exhibit C.**)

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Project description concedes this fact by clarifying that currently there are “no plans” to allow bicycles to board Fort Baker ferries. (FMND, p. 17.)

- While the FMND and NPS in earlier planning documents acknowledge that the Project’s objectives include increasing “connectivity” between San Francisco and NPS parks, including Marin Headlands and Muir Woods, the FMND fails to analyze potential impacts resulting from the reasonably foreseeable addition of shuttle service connecting arriving Fort Baker passengers to these NPS destinations.

Consequently, the intensity and scope of authorized use for Fort Baker ferry service may, and indeed, almost certainly will increase over the life of the 50-year Project, consistent with the broad authority granted under the Project contracts but beyond the scope of environmental review. Because such expanded and more intense use is authorized under the broad scope of the proposed Project contracts and therefore require no additional discretionary approvals, it would be immune from further CEQA review. It therefore is imperative that the Project as described and analyzed in the FMND accurately aligns with the *actual* Project defined in the proposed Project contracts. Presently that is not the case, in violation of CEQA.

The FMND’s “Project description” is further deficient because it fails to describe and consider the project as a whole, including reasonably foreseeable expansion of the project to include transport connections to the Marin Headlands, Muir Woods and/or other NPS destinations. (CEQA Guidelines, § 15063(a).) SF Planning states in response that “CEQA provides that the PMND need not engage in speculative analysis of environmental consequences for future unspecified development.” (Planning Staff Report, February 22, 2018, p. 11.) That response, however, does not withstand legal scrutiny on this administrative record.

“The fair argument test requires the preparation of an EIR where there is substantial evidence that any aspect of the project, either individually or cumulatively, may cause a significant effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial.” (*County of Sanitation Dist. No. 2 of Los Angeles County v. County of Kern* (2005) 127 Cal. App. 4th 1544, 1580; CEQA Guidelines, § 15063(b)(1).) “The finding of ‘significance’ of an environmental effect requires the evaluation of ‘direct physical changes in the environment [that] may be caused by the project and reasonably foreseeable indirect changes in the environment [that] may be caused by the project.’” (*Id.* at 1581, CEQA Guidelines, § 15064(d).)

“The test for the strength of the nexus between the project and an indirect physical change is whether ‘that change is a reasonably foreseeable impact [that] may be caused by the project.’” (*Ibid.*, citing CEQA Guidelines, § 15064(d)(3).) “Under the fair argument test, the inquiry into what is reasonably foreseeable depends on whether the administrative record contains enough evidence to show a reasonable possibility that a particular [activity] would [occur] in the future. (*Id.* at 1584.) Future direct or indirect project activities are not rendered speculative by virtue of prediction. (*Id.* at 1586.) “Predicting the physical changes a project will bring about is an inescapable part of CEQA analysis.” (*Ibid.*, citing *Planning & Conservation League v. Department of Water Resources* (2000) 83 Cal. App. 4th 892, 919 [CEQA compels

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reasonable forecasting].) The CEQA Guidelines further provide that: “[d]rafting an EIR or preparing a negative declaration necessarily involves some degree of forecasting. While forecasting the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can.” (CEQA Guidelines, § 15144.)

Here, the administrative record contains more than sufficient evidence of a fair argument demonstrating the *possibility* that the Project may ultimately result in transport connections to Marin Headlands, Muir Woods and other NPS destinations.

- The 2011 Draft Final Alcatraz Ferry Embarkation and Education Site Feasibility Study (May 2011), states: “Given that visitation to Alcatraz Island is limited, the ferry embarkation site is more than just a transit stop...the Embarkation facility has the potential to be developed as a gateway to the GGNRA and the NPS as well as to Alcatraz Island. The offerings at the Embarkation Facility could be expanded in the future, and the Embarkation Facility itself could become a first-class, distinct experience for visitors to the GGNRA.” (**Exhibit G**, pp. 1-2-1-3.)

This same Study states that the Project objectives include: “...providing for the opportunity to connect to other parklands (such as Fort Baker, Fort Mason, and Muir Woods Monument.)” (*Id.*, p. 4-2.)

- On November 10, 2016, SF Planning’s CEQA consultant, Anchor QEA, LLC, submitted a memorandum to SF Planning providing the Project’s description. The memo describes the purposes of the Project to include: “...provide a connection to other Golden Gate National Recreation Area (GGNRA) parklands and orientation to the national park system in general.” This memo further states that the Project would provide “convenient transit connections to other GGNRA parklands, such as Fort Baker...” It further states that additional ferry services would “provide visitors the opportunity to visit other parks within the Bay, including the Fort Baker Pier, Angel Island, or other destinations in San Francisco Bay in the future.” (**Exhibit H**, pp. 1-3 and 6.)
- The FMND now concedes that the Project would increase visitors to Fort Baker, the Marin Headlands and “nearby parklands.” (FMND, p. 121.)

Beyond the foregoing evidence affirmatively demonstrating that future transit connections from Fort Baker to other NPS sites are reasonably foreseeable, neither the FMND nor Planning Staff’s response provide evidence of any effort by SF Planning, much less the legally required “*best efforts*,” to find out all it can from NPS regarding the foregoing reasonable possibilities. Moreover, Sausalito attempted to gather such evidence by submitting a Freedom of Information Act (FOIA) request to NPS. Unfortunately, however, Sausalito’s efforts to date have been stymied by NPS’ assertion of baseless objections to Sausalito’s FOIA request. (**Exhibits I and J**).

Finally, the FMND’s description of the Project’s environmental setting is legally deficient. The FMND and SF Planning concede that Fort Baker arriving ferry passengers will visit the

Marin Headlands. The FMND's description of the Project setting, however, provides no information regarding the Marin Headlands. No information is provided regarding the pedestrian trails allegedly linking the two parks (Planning Staff Report, February 22, 2018, p. 15), including the location, length, condition, and route of such trails, and the extent to which such trails present potential traffic and/or public safety concerns because they require crossing of Alexander Avenue. This omission renders the FMND's description of the Projects' environmental setting inadequate as an informational document. Second, although SF Planning's traffic engineer, Fehr & Pèers (F&P), acknowledges in its supplemental traffic report that the Project may generate additional vehicle trips to deliver passengers to and from Sausalito, the FMND's description of the Project's environmental setting provides no information regarding parking capacity and vehicle queuing/loading capacity at the Fort Baker pier. This omission impedes the ability of the Board of Supervisors and members of the public to meaningfully assess the Project's potential traffic and circulation impacts, including the ability to devise mitigation measures and/or alternatives.

## **B. The FMND's Analysis of Traffic and Circulation Impacts Is Deficient**

Parisi determined that the Project's proposed Fort Baker ferry service may cause significant traffic, congestion and public safety impacts from the following sources:

- New vehicle trips between Fort Baker and Sausalito from arriving passengers hiring private vehicles, such as Uber and Lyft;
- New bicycle trips between Fort Baker and Sausalito from Fort Baker ferry passengers arriving with bicycles, or renting bicycles at Fort Baker;
- Increased congestion and related public safety impacts from added pedestrians, vehicles and bicycle traffic from Fort Baker ferry passengers traveling to and from Sausalito's historic downtown waterfront, already impacted by conditions of extreme congestion and overcrowding, particularly on weekends and during peak tourism months;
- Increased congestion and related public safety impacts from added pedestrian, vehicle and bicycle traffic from Fort Baker ferry passengers traveling to and from Sausalito through Sausalito's already congested South Gateway;
- Future shuttle/bus services connecting arriving Fort Baker ferry passengers to Muir Woods, traveling through Sausalito.

(Exhibit D, p. 2.)

Parisi determined that the FMND's and F&P's finding (Project Analysis) that Fort Baker service would cause no significant impacts from private car hires is premised on three false assumptions. First, contrary to the Project Analysis, the Project does not "limit" Fort Baker ferry service to two roundtrips per day, weekends only. Second, contrary to the Project Analysis, reasonably anticipated vehicle occupancy rate at Fort Baker should be 2.5 rather than 3.9

assumed in the Project Analysis. Third, the Project Analysis measured additional vehicle impacts on Alexander Avenue outside Sausalito's city limits, rather than the most relevant location – the narrow South Gateway corridor through which all traffic between Fort Baker and Sausalito must travel.

Correcting the foregoing false assumptions underlying the Project Analysis, Parisi determined that Fort Baker ferry service would cause significant traffic, circulation and public safety impacts in Sausalito, even assuming limited two roundtrips per day, weekend only service, and these significant impacts increase exponentially as the number of ferries and/or passengers increase over time, even assuming a modest 5% annual passenger growth rate. (*Id.*, pp. 3-5.) Specifically, Parisi determined that Fort Baker ferry service would generate a minimum of 50 new roundtrip vehicle trips (assuming only limited weekend ferry service), which by itself would cause significant impacts in Sausalito, particularly within the South Gateway corridor. (*Id.* pp. 4-5.) Assuming a modest 5% annual passenger growth rate for 10 years, these significant impacts increase exponentially by the addition of 60 additional vehicles (above the baseline assumptions). (*Id.* p. 5.)

Parisi further determined that Fort Baker ferry service would cause significant impacts within Sausalito's South Gateway corridor and the historic downtown waterfront from increased pedestrian, bicycle and vehicle traffic. (*Id.* pp. 5-6.) Parisi explained that contrary to the Project Analysis' false assumption underlying the less than significant findings, the Project contracts do not prohibit bicycles from boarding Fort Baker ferries, and this use clearly is foreseeable over the extended life of the Project in light of NPS' stated Project objectives. (*Id.*, p. 5.) Parisi further observed that the amount of bicycle traffic added by the Project would be significant in light of comparable data available from the Golden Gate Bridge, Highway & Transportation District's (District) regarding its Sausalito ferry service. (*Ibid.*)

Additionally, Parisi determined that shuttle service connecting arriving Fort Baker ferry passengers to Muir Woods and other NPS destinations is foreseeable and would cause significant traffic and circulation impacts if routed through Sausalito. (*Id.* pp. 7-8.)

Finally, Parisi determined that the Project's Fort Baker ferry service would cause significant circulation and public safety impacts at the Fort Baker pier from arriving/departing vehicles and shuttles, as the existing infrastructure cannot accommodate this additional traffic. (*Id.* p. 8.)

Parisi thus recommends that the Board adopt the mitigation measures described above (*supra*, p. 2) to reduce these impacts to less than significant, or alternatively, that the Board grant this appeal and require the preparation of an Environmental Impact Report (EIR). (*Id.* pp. 8-9.)

Importantly, Parisi's analysis and findings constitute a "fair argument" demonstrating that the Project's Fort Baker ferry service may cause significant environmental impacts. (CEQA Guidelines § 15064, subd. (g) ["If there is disagreement among expert opinion supported by facts over the significance of an effect on the environment, the Lead Agency shall treat the effect as significant and shall prepare an EIR."]; *City of Carmel-by-the-Sea v. Board of*

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*Supervisors of Monterey County* (1986) 183 Cal. App. 3d 229, 245 [EIR required to resolve conflicting expert testimony].) **The Board of Supervisors therefore may not lawfully approve the FMND** absent adoption of the additional enforceable mitigation measures described herein.

## C. The FMND's Inaccurate Project Description Invalidates Virtually All Of The FMND's Analysis Regarding Fort Baker Ferry Service

### 1. The FMND Conceals Significant Construction Noise Impacts Previously Identified By NPS in the FEIS

Table 76 of the FEIS prepared by NPS, copied below, summarized the Project's construction noise impacts on sensitive receptors at Fort Baker. This Table reveals that at the Recreational Use Area along the Fort Baker pier, construction noise would exceed the applicable FTA Daytime Noise Criterion of 100 dBA, reaching a maximum of 108 dBA.

TABLE 76. CONSTRUCTION NOISE FROM FORT BAKER LIMITED FERRY SERVICE

Receptor	Recreational Use Area	USCG Station	Bay Area Discovery Museum
Applicable FTA Daytime Construction Noise Criterion (dBA)	100	100	100
Distance from Outer Boundary of Alternative Site (feet)	0	600	1,150
Existing Noise Level without Project (dBA, $L_{dn}$ )	55	55	55
$L_{max}$ Contribution from Construction (dBA)	108	36	0
Predicted Noise Level with Construction (dBA, $L_{dn}$ )	108	55	55
Exceeds Applicable FTA Criteria?	Yes	No	No

SF Planning commenced its analysis of this potential impact based on the FEIS, but then modified those findings to support the decision to prepare a negative declaration rather than an EIR. For example, SF Planning and its environmental consultants held a meeting on January 11, 2017 to discuss the CEQA analysis for the Project. The notes from the meeting show that San Francisco's proposed approach to noise impacts was to "review the analysis presented in the EIS to determine whether additional analyses are required for CEQA."

SF Planning accordingly followed the noise approach used in the FEIS, even structuring its impact summary tables in the same way. However, in contrast to the FEIS, the FMND deletes any discussion of the Project's construction noise impacts on the Recreational Use Area. Table 19 (Construction Noise At Fort Baker), copied below, deletes the Recreational Use Area column without any explanation.

**TABLE 19  
 CONSTRUCTION NOISE AT FORT BAKER**

Affected Receptor	USCG Station	Bay Area Discovery Museum
Distance from Outer Boundary of Receptor to Outer Boundary of Site (feet)	600	1,150
Existing Daytime Background Noise Level without Project (dBA, $L_{eq}$ )	55	55
<b>During Pile Driving</b>		
Predicted Maximum ( $L_{max}$ ) Construction Noise Level (dBA)	79.7	74.0
Predicted Average Construction Noise Level (dBA, $L_{eq}$ )	72.8	67.1
Noise Ordinance Threshold	N/A	

Affected Receptor	USCG Station	Bay Area Discovery Museum
Exceeds Threshold?	No	No
<b>During Loudest Non-Pile-Driving Phase (Site Demolition)</b>		
Predicted Maximum ( $L_{max}$ ) Construction Noise Level (dBA)	68	62.3
Predicted Average Construction Noise Level (dBA, $L_{eq}$ )	62.7	57.1
Noise Ordinance Threshold	Work restricted to daytime hours	
Exceeds Threshold?	No	No

dBA: decibels, A-weighted  
 $L_{eq}$ : average day/night equivalent sound level  
 $L_{eq}$ : equivalent continuous sound level  
 $L_{max}$ : maximum sound level  
 SFPW: San Francisco Department of Public Works  
 USCG: U.S. Coast Guard

(FMND, p. 87.)<sup>6</sup>

Moreover, the FMND's modeling shows that construction noise impacts at Fort Baker would be even greater than was predicted in the FEIS. For example, while the FEIS predicted maximum construction noise levels of 55 dBA at the USCG Station and Bay Area Discovery Museum, the FMND reveals they would be 72.8 and 67.1 dBA, respectively, during pile driving.

<sup>6</sup> Notably, the column identifying "Recreational Use Area" impacts was selectively deleted solely from Table 19, addressing Construction Noise Impacts. This column is reintroduced in Table 20, identifying Operational Noise Impacts, where inclusion of this analysis does not disclose that the Project will exceed the threshold of significance.

This indicates that the significant construction noise impact on the Recreational Use Area will be even greater than disclosed in the FEIS. (Table 19, FEIS, p. 87.)

Table 19 further summarizes the Project's potential construction noise impacts separately as to "Pile Driving," and "Non-Pile Driving." As to the former, the FMND asserts that no threshold of significance applies. (See Table 19 [stating Noise Ordinance Threshold "N/A"].) That approach, however, is unlawful because while a lead agency has discretion to choose an appropriate threshold of significance, it cannot refuse to apply any threshold whatsoever. Here, as shown in the FEIS, Fort Baker is a federal property, and the FTA noise standards should be applied. In fact, the FMND applies the FTA noise standards in the next section analyzing operational noise impacts. (See Table 20, FMND, pp. 87-88.)

As to "Non-Pile Driving" construction noise, Table 19 purports to rely on the County of Marin's Noise Ordinance limiting construction to daytime activities. (See FMND, p. 81.) The FMND contends that by complying with that ordinance, "Non-Pile Driving" construction noise is less than significant. (See Table 19 [stating "Noise Ordinance Threshold" – "Work restricted to daytime hours."]) However, compliance with a local noise ordinance does not ensure that a project's CEQA impacts are less than significant. (See *Keep Our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714, 733 ["compliance with [local noise] ordinance does not foreclose the possibility of significant noise impacts."].)

In summary, the FEIS itself provides substantial evidence of a fair argument that Fort Baker ferry construction noise will have significant impacts on nearby sensitive receptors, thus triggering the requirement to prepare an EIR. It is apparent, however, that the FMND suppresses this information by excluding the data revealed in the FEIS demonstrating this significant impact. Under CEQA, "stubborn problems" must not be "swept under the rug" as this destroys "the integrity of the process." (*Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918, 940.)<sup>7</sup>

## 2. The Project Will Cause Significant Recreation Impacts

The FMND states that the Project would increase visitors to the Marin Headlands and "nearby parklands," but that impacts to these parks would be less than significant. (FMND, p. 121.) However, this conclusory assertion is unsupported by analysis or supporting evidence. The FMND provides no information regarding these parks. No estimates are provided regarding how many new visitors will visit these parks because of the Project, and by what means. No information is provided regarding the threshold of significance the FMND applied to assess such impacts. Nor is any evidence provided demonstrating how Project impacts fall below this threshold. The FMND therefore is legally inadequate as an informational document.

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<sup>7</sup> As an additional and independent legal deficiency, the FMND provides no analysis of potential noise impacts resulting from construction of the Project's pedestrian pathway, notwithstanding the fact that this pathway extends substantially closer to sensitive receptors than the Fort Baker pier.



### 3. The FMND Fails To Adequately Analyze Potential Land Use and Regulatory Consistency Impacts

Lead agencies under CEQA must analyze a project's potential to cause significant land use and planning impacts. A project may cause significant land use impacts where, among other things, it conflicts with any applicable land use plan, policy or regulation of an agency with jurisdiction over the project accepted for the purpose of avoiding or mitigating an environmental effect; or conflicts with any applicable habitat conservation plan or natural communities conservation plan. (CEQA Guidelines, Appendix G.)

The FMND concludes that the Project is compliant with all "relevant" regulations under the Clean Water Act, Endangered Species Act, Bay Plan and McAteer-Peetris Act. (FMND, p. 36.) This analysis, however, is incomplete because it fails to consider whether the proposed Fort Baker ferry service complies with applicable legal requirements under the Coastal Zone Management Act (CZMA) (16 U.S.C. § 1451 *et seq.*) and the Marine Mammal Protection Act (MMPA). (16 U.S.C. §§ 1372, 1374.).

The CZMA requires that "each Federal agency activity within or outside the coastal zone that affects any land or water use or natural resource of the coastal zone shall be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved State management programs." (16 U.S.C. § 1456( c)(1)(C).) A federal agency ensures consistency of its actions with a state management program by submitting a consistency determination to the relevant state agency. (*Ibid.*) After receipt of the consistency determination, the "State agency shall inform the Federal agency of its concurrence with or objection to the Federal agency's consistency determination." (15 C.F.R. § 930.41). The PMND, however, provides no analysis nor evidence of the Project's compliance with the CZMA's requirements.

Under the MMPA, it is unlawful to "take" a marine mammal without a permit. (16 U.S.C. §§ 1372, 1374.) Under this statute, "take" means "harass, hunt, capture, or kill" or attempt to "harass, hunt, capture, or kill." (*Ibid.*) The MMPA defines "harassment" as "any act of pursuit, torment, or annoyance which: (i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including but not limited to, migration, breathing, nursing, breeding, feeding or sheltering." (*Id.* § 1362(18)(A).)

The FMND acknowledges that construction activity at the Fort Baker pier could annoy marine mammals and cause them to change course to avoid the construction area. The FMND, however, contains no mitigation measures to reduce impacts to marine mammals to less than significant. It provides instead only an "Improvement Measure," which states in relevant part:

If marine mammals enter the safety zone after pile driving of a segment has begun, *pile driving will continue*. The biologist will monitor and record the species and number of individuals observed, and make note of their behavior patterns. If the animal appears distressed, *and if it is operationally safe to do so*, pile driving will cease until the animal leaves the area.

(FMND, p. 185. [emphasis added]) Thus, although the FMND acknowledges that Project construction activity *will proceed* in many cases, notwithstanding clearly visible annoyance and disruption of marine mammal behavior patterns, the FMND provides no analysis nor explanation regarding why such Project activity would not constitute a “take” under the MMPA.

#### **4. The FMND Fails To Adequately Analyze And Mitigate Potential Hazards, Pollutants and Water Quality Impacts**

The FEIS for the Fort Baker Plan previously noted that the provision of ferry service to Fort Baker could increase turbidity and the amount of petroleum pollutants present in Horseshoe Bay resulting in potential adverse impact to water quality. (Fort Baker Plan FEIS, p. 4-23.). The FMND concludes that Fort Baker ferry operation impacts would be less than significant because ferry service would be “limited” (FMND, p.159, 161). Here again, the FMND’s inaccurate Project description invalidates the analysis of these impacts. The FMND, however, concludes that the Fort Baker ferry service will have less than significant impacts either because the Project will comply with all “applicable” Federal, state and local requirements and regulations; or alternatively, plans will be “developed” to identify and mitigate potential impacts. Both approaches, however, violate CEQA.

The FMND repeatedly finds that the Fort Baker ferry service will have no impacts or less than significant impacts because the Project will comply with “applicable” Federal, state and local requirements and regulations. For example, while the FMND acknowledges that “[f]erry operations have the potential to impact water quality from potential pollutant discharges of hazardous materials, including chemicals and solvents used onboard, boat cleaning and maintenance materials, fuels, bilge or ballast water, sewage from toilets, and gray water, and trash from passengers and visitors,” it concludes that such impacts would be less than significant because operations at Fort Baker “would adhere with plans and policies designed to address potential water quality impacts.” (FMND, p. 159.) The FMND further states that Project impacts would be less than significant because:

- Vessel fueling would adhere to Coast Guard regulations;
- Any spills would be “cleaned up immediately using spill response equipment as identified in the Spill Prevention Control and Countermeasure Plan;
- Discharges and quantities of ballast water would occur in compliance with “federal and state regulations, including the Vessel General Permit and Ballast Water Management for Control of Nonindigenous Species Act; and
- Sanitary sewage ferries would be subject to the requirements of the MARPOL convention and Section 312 of the Clean Water Act; and
- Due to the proximity of Pier 31 ½ and Fort Baker to the Bay, litter from visitors at the site could potentially enter the bay. The ferry operator would be responsible for implementation of a trash collection and management program, and waste

management at both proposed project sites would proceed in accordance with all applicable federal, state and local regulations for waste management disposal.”

(FMND, p. 60.)

The foregoing less-than-significant impact findings, however, are unsupported by substantial evidence and violate CEQA because they are premised on conditions and assumptions regarding the Project’s future compliance with legal requirements that are not imposed on the Project as legally enforceable mitigation measures. (See FMND, p. 156 [no mitigation measures identified for Hydrology and Water Quality Impacts].) The FMND thus violates CEQA’s substantive mandate to impose feasible and enforceable mitigation measures to *ensure* that a project’s environmental impacts remain less than significant throughout the life of the project.

Adding to the foregoing legal deficiencies, the FMND’s analysis of hazards and water quality impacts also relies on deferred “development” of plans to identify future mitigation measures. For example, the FMND states:

The Park Service would prepare a Stormwater Pollution Prevention Plan for operations at Fort Baker. The Stormwater Pollution Plan Prevention Plan would identify pollutant sources within the site and provide site-specific best management practices regarding control of sediments in runoff and storage and use of hazardous materials to prevent discharge of pollutants into stormwater.

(FMND, p. 159.) The FMND thus concludes that: “[w]hile the proposed project would result in a minor increase in the number of ferry trips... and would introduce limited ferry service to Fort Baker, *development of required plans* and compliance with regulations as detailed above would ensure that water quality impacts associated with long-term operations of the proposed project would be less than significant.” (FMND, p. 160 [emphasis added].)

Here, the FMND’s reliance on *future* “plans” to be “developed” to mitigate the Project’s potential impacts contravenes CEQA’s prohibition of “deferred” mitigation. Under CEQA, “formulation of mitigation measures should not be deferred until some future time” as this frustrates review by the public. (CEQA Guidelines, § 15126.4(a)(1)(B); *Gentry v. City of Murrieta, supra*, 36 Cal. App. 4th at 1393).

## **5. The FMND Fails To Adequately Analyze and Mitigate Potential Growth-Inducing Impacts**

CEQA requires that lead agencies describe any growth-inducing impacts of the proposed project. (Pub. Res. Code § 21100(b)(5); CEQA Guidelines, § 15126(d).) Lead agencies must discuss the ways in which the project could directly or indirectly foster economic or population growth or the construction of new housing in the surrounding environment. (CEQA Guidelines, § 15126.2(d).) The discussion should also include characteristics of the project that may encourage and facilitate other activities that could have a significant effect on the environment, either individually or cumulatively. The CEQA Guidelines explain that projects,

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like the Fort Baker ferry service aspect of the Project, that make improvements to infrastructure, are more likely to be growth-inducing. (CEQA Guidelines, §15126.2(d).)

As noted above, the NPS' FEIS for the Fort Baker Plan concluded that the increase of visitors to Fort Baker would cause growth-inducing impacts in the surrounding area, including Sausalito. (Fort Baker Plan FEIS, p. 5-4.) This evidence alone constitutes substantial evidence supporting a fair argument that the Fort Baker ferry service may cause significant growth-inducing impacts. Yet despite the NPS's previous acknowledgment of potential significant impacts, the FMND provides no analysis whatsoever of the Fort Baker ferry service's potential to cause growth-inducing impacts in Sausalito or elsewhere within the region.

## CONCLUSION

Sausalito encourages the Board of Supervisors to grant this appeal by approving the FMND subject to adoption of the three mitigation measures described above supported by Parisi's analysis and findings, or alternatively, by requiring that SF Planning prepare an EIR to analyze Fort Baker ferry service's potential impacts.

Very truly yours,



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

SMRH:485759296.1

cc: Brian Aviles – National Parks Conservancy  
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