



CITY OF SAUSALITO

Joan Cox, Mayor

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June 11, 2018

Superintendent Laura E. Joss
United States Department of the Interior
National Park Service
Golden Gate National Recreation Area
Fort Mason, San Francisco, California 94123
Via US mail and Electronic Mail

Re: Fort Baker Ferry Service – Alcatraz Ferry Embarkation Project
Your reference: (A7217 (GOGA-SUPT))

Dear Superintendent Joss,

Thank you for your letter of June 4, 2018. Sausalito agrees that the Alcatraz Ferry Embarkation Project (Project) potentially offers many public benefits. We continue to disagree, however, with your statement that the Project's addition of ferry service between Pier 31 ½ and Fort Baker, as presently proposed, will not have significant environmental impacts on Sausalito and the surrounding area and resources.

Sausalito first expressed its concerns to the National Park Service (NPS) regarding the Project's proposed Fort Baker ferry service in May, 2015 through extensive comments on the Draft Environmental Impact Statement (EIS). Although NPS assured Sausalito in response that it would work cooperatively and collaboratively with us, we heard nothing from NPS or otherwise regarding the Project until December 6, 2017, when without warning we received San Francisco's notice of intent to adopt the Mitigated Negative Declaration (MND) for the Project.

Since then, in an effort to avoid delay to the Project and in furtherance of our shared goal to improve and expand regional, public transportation options, Sausalito has expended substantial resources and time, and has retained multiple environmental engineers and consultants in order to assist NPS and San Francisco to identify and mitigate potentially significant environmental impacts arising from Fort Baker ferry service as currently proposed.

As you know from our multiple meetings, exchanges of communications and from Sausalito's appeal of the MND to San Francisco's Planning Commission and Board of Supervisors, for purposes of its negotiations with NPS, Sausalito has reduced its numerous objections to three principle concerns regarding the Project's proposed Fort Baker ferry service. We restate these concerns here to provide context for our comments on NPS' most recently proposed draft Memorandum of Understanding (MOU).

First, based on NPS' previous statements in multiple publications, it is foreseeable that NPS will at some point in the future offer shuttle/bus service connecting arriving Fort Baker ferry passengers to Muir Woods and other NPS sites. This service would cause significant traffic and related impacts along Alexander Avenue, through the narrow South Gateway and other areas of Sausalito if directed northward from Fort Baker through Sausalito.

Sausalito therefore requests, either as a condition to the Project or as an added mitigation measure to the MND, a requirement that any connecting shuttle service from Fort Baker to other NPS sites proceed southward to Highway 101 rather than through Sausalito. This condition, which would facilitate our shared goals of improved and expanded regional transportation, should not require any commitment of federal funds nor require additional environmental analysis.

Second, while NPS currently believes that Fort Baker service would be limited to two weekend round trips per day, the Project agreements impose no such limits on Fort Baker ferry service. The Project agreements grant NPS complete discretion to adjust the extent of Fort Baker service over the life of the 50-year Project. Because expansion of Fort Baker ferry service would require no changes to the Project agreements or other discretionary approvals from San Francisco, no additional environmental review would be required under California's Environmental Quality Act (CEQA); even if Fort Baker ferry service at some point over the long life of the Project expanded to daily service, well beyond the usage assumed and analyzed in the MND. Moreover, even if Fort Baker ferry service remained limited to two weekend trips per day, Sausalito's retained traffic engineer, Parisi Transportation Consultants, determined that this level of service would result in significant traffic impacts on Sausalito from arriving passengers hiring private vehicles for transport to Sausalito and the region.

Sausalito therefore requests, either as a condition to the Project or as an additional mitigation measure to the MND, that NPS coordinate with public transportation providers in Marin County to ensure the availability of connecting shuttle bus service between Fort Baker and Sausalito and the region. This condition, which again would facilitate our shared goals of improved and expanded regional, public transportation, should not require any commitment of federal funds nor require additional environmental analysis.

Third, Parisi determined that even if Fort Baker ferry service remained limited to two weekend round trips per day, the Project would contribute substantial additional visitors to Sausalito, exacerbating existing heavily congested conditions in Sausalito during weekends and peak tourism months.

Sausalito therefore requests, either as a condition to the Project or as an added mitigation measure to the MND, that NPS offset the Project's added congestion impacts in Sausalito and the region by requiring that the selected Fort Baker ferry concessioner provide one-way return service from Fort Baker to Pier 31 ½ to provide weekend visitors to Marin, many of whom travel by bicycle from San Francisco and return on Sausalito's ferry, with an additional option to return to San Francisco. This condition similarly would facilitate our shared goals of improved and expanded regional, public transportation.

NPS has stated that this condition would require the construction of a ticket booth at Fort Baker and other commitment of federal funds, as well as require additional environmental study. We do not believe these requirements are likely. For example, the Project's proposed ferry concession contracts require that concessioners offer on-line electronic purchase of tickets. Moreover, as we have previously communicated to you, to the extent additional environmental

analysis is required to support this condition, Sausalito is willing to contribute and assist San Francisco and NPS to complete this additional study.

Importantly, however, notwithstanding NPS' perceived concerns, neither the need for federal expenditures nor additional environmental analysis excuses NPS or San Francisco from their legal obligations under CEQA to impose enforceable conditions on the Project to reduce or avoid significant environmental impacts. Sausalito has and will continue to offer its support and assistance, but ultimately San Francisco and NPS bear the legal obligation to comply with CEQA before approving the Project.

You will no doubt recall that Sausalito originally proposed to NPS either that Fort Baker ferry service be severed from the Project pending further refinement of the proposed new service and additional environmental analysis, or alternatively, modification of the Project's agreements to incorporate the foregoing conditions in order to prevent the environmental impacts of Fort Baker ferry service. For example, Section 2.2, subsection (g) of the General Agreement between NPS and the San Francisco Port Commission states in relevant part:

(g) Additional Excursions. NPS shall include in each Ferry Concession Contract a requirement that the Ferry Concessioner operate Interpretive Cruises, which may include ferry transportation from the Site to Fort Baker when associated infrastructure improvements at Fort Baker are completed.

This provision of the General Agreement can easily be modified to include the conditions discussed above as additional requirements to be included in each Ferry Concession Contract. NPS, however, firmly rejected any modifications to the proposed Project agreements on the grounds that it was too late in the process and cumbersome to make changes to these heavily-negotiated and complex agreements. However, we have since learned that following NPS' release of the Prospectus for the Project on January 31, 2018, NPS has issued six amendments to the Prospectus, several of which provide notice of multiple revisions and amendments to each of the Project agreements. It is therefore apparent that NPS in fact retains the ability to modify the Project agreements to include the foregoing conditions.

Nonetheless, in response to NPS' refusal to modify any of the Project agreements, Sausalito expended additional resources, working with its retained environmental engineers, to conduct the environmental analysis necessary to demonstrate that the three conditions set forth above may and, in the absence of modifications to the Project agreements, should be added to the MND as additional mitigation measures in order to reduce or avoid significant environmental impacts from Fort Baker ferry service.

Yet despite all of Sausalito's efforts and settlement concessions, at each of our meetings, NPS has continued to reject each of Sausalito's approaches and proposed conditions, offering instead a commitment to conduct future discussions with Sausalito regarding the Project and future Project changes. This is illustrated by the statement in your letter that: "[NPS] have proposed language in the MOU that charts a future for collaborative planning between Sausalito and the Park Service."

There is, of course, a fundamental difference between a commitment to further discussion and an enforceable Project condition that ensures protection of the environment over the life of this 50-year Project. This important distinction is reflected in the following passage from the MND regarding mandatory ferry emission requirements:

The following conditions will be required by the Park Service as part of the concession contract and therefore are an enforceable part of the proposed project.

(MND, p. 18.)

Similarly *enforceable* conditions on the Project are necessary to prevent significant environmental injury to Sausalito and the region from Fort Baker ferry service.

NPS' draft MOU dated April 20, 2018, like the prior drafts, offers to provide Sausalito written notice of any expanded Fort Baker ferry service and a willingness to meet and confer with Sausalito to "collaborate regarding how best to reduce, mitigate or avoid potential adverse impacts to Sausalito...." In this version, NPS proposes additionally that 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..." Unfortunately this new language does not adequately address Sausalito's concerns nor satisfy NPS' and San Francisco's legal obligations under CEQA.

A "Cooperating Agency" is a term that applies to environmental review under the National Environmental Protection Act (NEPA). This status applies only if NPS agrees to perform future NEPA analysis for the Project. NPS, however, makes no commitment to do so under the draft MOA. Moreover, NEPA, in contrast to CEQA, requires only identification and consideration of significant environmental impacts, rather than mitigation of significant environmental impacts. NEPA compliance therefore is no substitute for CEQA compliance.

Even if NPS committed to further Project review under NEPA under specified conditions (and such additional NEPA review provided reasonable assurances that NPS would in fact implement measures to mitigate Fort Baker ferry service impacts), Sausalito's influence is not materially enhanced by the status of a Cooperating Agency. As a Cooperating Agency, Sausalito may perform additional environmental analysis (at its own expense) as may be requested by NPS as lead agency, and NPS thereafter shall use the Cooperating Agency's analysis "to the maximum extent possible and consistent with its responsibility as lead agency." NPS therefore would maintain substantial discretion to accept or reject Sausalito's proposals, notwithstanding Sausalito's substantial expenditure of its own funds to conduct analysis as directed by NPS. Adding to NPS' broad discretion under this legal framework under NEPA is additional language in the April 20 draft MOU which provides that "[n]othing in this MOU shall be construed as obligating NPS to expend any funds in excess of appropriations authorized by law."

Moreover, the April 20 draft MOU further provides that in the event NPS and Sausalito fail to reach agreement through meet and confer and collaboration efforts, they shall mutually attempt to mediate their differences, and that failing, either party may simply terminate the MOU. This language does not embody a meaningful dispute "resolution" process, nor does it provide Sausalito with any enforceable mechanism to ensure that NPS implements measures necessary to reduce or avoid the Project's potentially significant environmental impacts.

In short, the April 20 MOU draft, like NPS' prior drafts, offers Sausalito a promise to conduct future discussions regarding the Project. While we appreciate and welcome future dialogue and collaboration with NPS about the Project and many other issues, those promises alone do not cure the deficiencies in the adequacy of the MND, and they provide no enforceable means for

us or our successors to avoid or reduce the significant environmental impacts from Fort Baker ferry service over the long life of the Project.

Please know that we appreciate your commitment on behalf of NPS to the MOU process. Sausalito likewise remains committed to this process. However, we urge NPS to meaningfully consider our concerns and to propose solutions that include, but are not limited simply to a commitment to future collaborative planning. Tangible and enforceable Project conditions are needed now, in conjunction with San Francisco's approval of the Project. In light of our apparent impasse in our MOU discussions, Sausalito welcomes assistance from Congressman Huffman and his office. We look forward to productive negotiations.

Sincerely,

A handwritten signature in blue ink, appearing to read "Joan Cox".

Mayor Joan Cox

Cc: Congressman Jared Huffman
Executive Director Elaine Forbes
Supervisor Kate Sears
Chief of Planning Brian Aviles