

STAFF REPORT

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**CONSIDER A PUBLIC TRUST LAND EXCHANGE AGREEMENT BETWEEN
THE CITY AND COUNTY OF SAN FRANCISCO; THE CITY AND COUNTY OF
SAN FRANCISCO, ACTING BY AND THROUGH THE SAN FRANCISCO PORT
COMMISSION; AND THE CALIFORNIA STATE LANDS COMMISSION,
INVOLVING STREET PARCELS LOCATED WITHIN THE
CITY AND COUNTY OF SAN FRANCISCO**

PARTIES:

The City and County of San Francisco (City)

The City and County of San Francisco, acting by and through the San Francisco
Port Commission (Port)

The State of California, acting by and through the California State Lands
Commission (Commission)

PROPOSED PUBLIC TRUST EXCHANGE AGREEMENT:

The proposed Public Trust Exchange Agreement (Agreement) concerns public streets in the City and County of San Francisco. The City, by and through the Port, is a trustee of sovereign tide and submerged lands granted to it by the Legislature pursuant to Chapter 1333, Statutes of 1968, as amended (Burton Act). The City has requested that the Commission approve a Public Trust Land Exchange Agreement to terminate the Public Trust and the statutory trust imposed by the Burton Act (Burton Act Trust) on approximately 143,000 square feet of streets in the Transbay District. These streets, referred to as the Trust Termination Streets in this staff report, consist of a portion of Mission Street (between Beale and First Streets), a portion of Beale Street (between Mission and Howard Streets), and a portion of Fremont Street (between Mission and Howard Streets), that were historically tidelands within the shallow waterbody known as Yerba Buena Cove.

The Trust Termination Streets are located within and adjacent to the Sales Force Transit Center at the center of the Transbay District. The Transit Center, completed in 2018, was partially constructed within the airspace above and subsurface below portions of the Trust Termination Streets, allowing traffic to pass underneath the Transit Center and trains below Fremont and Beale streets.

STAFF REPORT NO. 60 (CONT'D)

The City plans to convey title to the airspace and subsurface area to the Transbay Joint Powers Authority within the Trust Termination Streets so that the entire Transit Center is under a single legal ownership. A proposed retrofit for the Millennium Tower, if approved by the City, may occupy a portion of the adjacent surface and subsurface of the Trust Termination Streets adjacent to the tower, and the City may wish to convey a permanent easement in the occupied areas to the Tower owners. The City cannot convey a permanent easement or title in the Trust Termination Streets unless the Public Trust and Burton Act Trust are terminated.

In exchange for the Trust Termination Streets, the City will convey to the State in trust approximately 153,000 square feet of public streets near Fisherman's Wharf (Trust Addition Streets). The State, acting through the Commission, will then convey the Trust Addition Streets to the Port to be held subject to the Public Trust and the Burton Act Trust with minerals reserved to the State. The Trust Addition Streets consist of a portion of Beach Street (between Van Ness Avenue and Leavenworth Street), a portion of Hyde Street (between Beach and Jefferson Streets), and a portion of Bay Street (between Stockton and Kearney Streets). The Trust Addition Streets provide public access along and to the water and the City's waterfront.

The proposed Agreement will involve the following transactions:

- 1) The City will quitclaim its interests in the Trust Addition Streets and the Trust Termination Streets to the Commission.
- 2) The Commission will convey to the City all of its right, title, and interest in the Trust Addition Streets. The Port will hold these lands subject to the Public Trust and the Burton Act Trust.
- 3) The State, through the Commission, will convey the Trust Termination Streets to the City by patent, to be held free of the Public Trust and Burton Act Trust.

LEGAL REQUIREMENTS:

Pursuant to section 5 of Chapter 310, Statutes of 1987, the Commission is authorized to terminate the State's Public Trust interests on granted lands held by the City in exchange for lands of equal or greater value that are useful for trust purposes. Because the City does not have the legal authority to terminate the State's trust interests in trust property, the Commission must take title to the proposed Trust Termination Streets and, as part of the exchange, terminate the trust interests on the Trust Termination Streets when conveying title to the Trust Termination Streets back to the City. In exchange, the City will quitclaim its interests in the Trust Addition Streets to the Commission, and the Commission will then convey title to the Trust Addition Streets to the City, to be held by the Port subject to the Public Trust and the Burton Act Trust. To comply with section

STAFF REPORT NO. 60 (CONT'D)

5 of Chapter 310, Statutes of 1987 and the California Constitution, article X, section 3, the Commission must make the following findings before it approves the Agreement.

- 1) The proposed Trust Termination Streets have been filled and reclaimed.
- 2) The proposed Trust Termination Streets are cut off from access to the waters of San Francisco Bay.
- 3) The proposed Trust Termination Streets constitute a relatively small portion of the granted tide and submerged lands.
- 4) The proposed Trust Termination Streets are no longer needed or required for the promotion of the Public Trust for commerce, navigation, and fisheries or the Burton Act Trust.
- 5) No substantial interference with the trust uses and purposes will ensue by virtue of the exchange.
- 6) The proposed Trust Addition Streets have a value equal to or greater than the value of the proposed Trust Termination Streets and are useful for the particular trust purposes authorized in the Burton Act.

ANALYSIS AND STAFF RECOMMENDATION:

During the California Gold Rush, Yerba Buena Cove was largely filled and reclaimed. The filled lands were mapped into streets and blocks and the State Legislature authorized the sale of the blocks into private ownership, free of the Public Trust, but retained State ownership of the streets. The State eventually granted ownership of these lands to the City in 1968 pursuant to the Burton Act, to be held by the Port subject to the Public Trust and the Burton Act Trust. The Trust Termination Streets constitute a relatively small portion of lands granted to the City and are distant from the City's present waterfront, in an area that is now a bus transit hub. These streets are not required for public access to the water and are no longer needed to serve the purposes of the Public Trust or the Burton Act Trust.

The Trust Addition Streets, located near the Fisherman's Wharf area, provide public access along the City's waterfront and to the water and are useful for important trust purposes. The Beach Street segment of the Trust Addition Streets runs along Aquatic Park, parallel to the beach, and provides views of the beach and the San Francisco Bay. The Beach Street segment is also lined with historic waterfront buildings such as the Cannery and Ghirardelli Square, waterfront hotels, and the Maritime Museum. The remainder of Beach Street, from Leavenworth Street to The Embarcadero, is already subject to the trust.

The Hyde Street segment runs from Beach Street to the waterfront, providing public access to Aquatic Park, the Dolphin Swim and Boat Club, the South End Rowing Club, and the historic Hyde Street Pier ships at the San Francisco

STAFF REPORT NO. **60** (CONT'D)

Maritime National Historical Park. The Bay Street segment is two blocks south of Pier 39 and one block west of Alcatraz Landing at Pier 33 and the Port's secondary cruise terminal at Pier 35. This segment is also adjacent to streets already subject to the trust.

Commission staff has reviewed the information submitted for the proposed Agreement, including an appraisal of the interests in the Trust Termination Streets and the Trust Addition Streets, and has determined that the monetary value of the proposed Trust Addition Streets is greater than the monetary value of the proposed Trust Termination Streets. Commission staff has also determined that the exchange will not interfere with trust uses.

Commission staff and the Attorney General's Office have reviewed the proposed Agreement and believe all necessary legal elements have been met. Staff recommends that the Commission approve the proposed Agreement in substantially the form on file at the Commission's Sacramento Office and authorize its execution and the execution and recordation of all documents necessary to implement it.

OTHER PERTINENT INFORMATION:

1. The State, acting by and through the Commission, is authorized under section 5 of Chapter 310, Statutes of 1987, to enter into the proposed Public Trust exchange agreement.
2. On February 11, 2020, the San Francisco Board of Supervisors authorized the Port's Executive Director to execute the Agreement with the California State Lands Commission.
3. This action is consistent with Strategy 1.2 of the Commission's Strategic Plan to provide that the current and future management of granted lands is consistent with evolving Public Trust principles and values, particularly amid challenges relating to climate change, sea-level rise, public access, and complex land use planning; and with Strategy 1.3 to protect, expand, and enhance appropriate public use and access to and along the State's waterways.
4. A Mitigated Negative Declaration, State Clearinghouse No. 2019119077, and Mitigation Monitoring Program were prepared and adopted by the San Francisco Planning Department on December 27, 2019, for the 301 Mission Street, Millennium Tower Perimeter Pile Upgrade Project, which this Public Trust Land Exchange Agreement is a component of. Commission staff reviewed these documents and prepared an

STAFF REPORT NO. 60 (CONT'D)

independent Mitigation Monitoring Program (Exhibit B), which incorporates the San Francisco Planning Department's document.

5. This activity involves lands which have NOT been identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq.; however, the Commission has declared that all lands are significant by nature of their public ownership (as opposed to environmentally significant). Since such declaration of significance is not based upon the requirements and criteria of Public Resources Code section 6370 et seq., use classifications for such lands have not been designated. Therefore, the finding of the project's consistency with the use classification as required by California Code of Regulations, title 2, section 2954 is not applicable.

EXHIBITS:

- A. Location and Site Map of Trust Addition Streets and Trust Termination Streets
- B. Mitigation Monitoring Program

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that a Mitigated Negative Declaration, State Clearinghouse No. 2019119077, and a Mitigation Monitoring Program were prepared by the San Francisco Planning Department and adopted on December 27, 2019, for this project and that the Commission has reviewed and considered the information contained therein; that in the Commission's independent judgment, the scope of activities to be carried out under the Public Trust Land Exchange Agreement to be approved by this authorization have been adequately analyzed; that none of the events specified in Public Resources Code section 21166 or the State California Environmental Quality Act (CEQA) Guidelines section 15162 resulting in any new or substantially more severe significant impact has occurred; and, therefore no additional CEQA analysis is required.

Adopt the Mitigation Monitoring Program, as contained in the attached Exhibit B.

AUTHORIZATION:

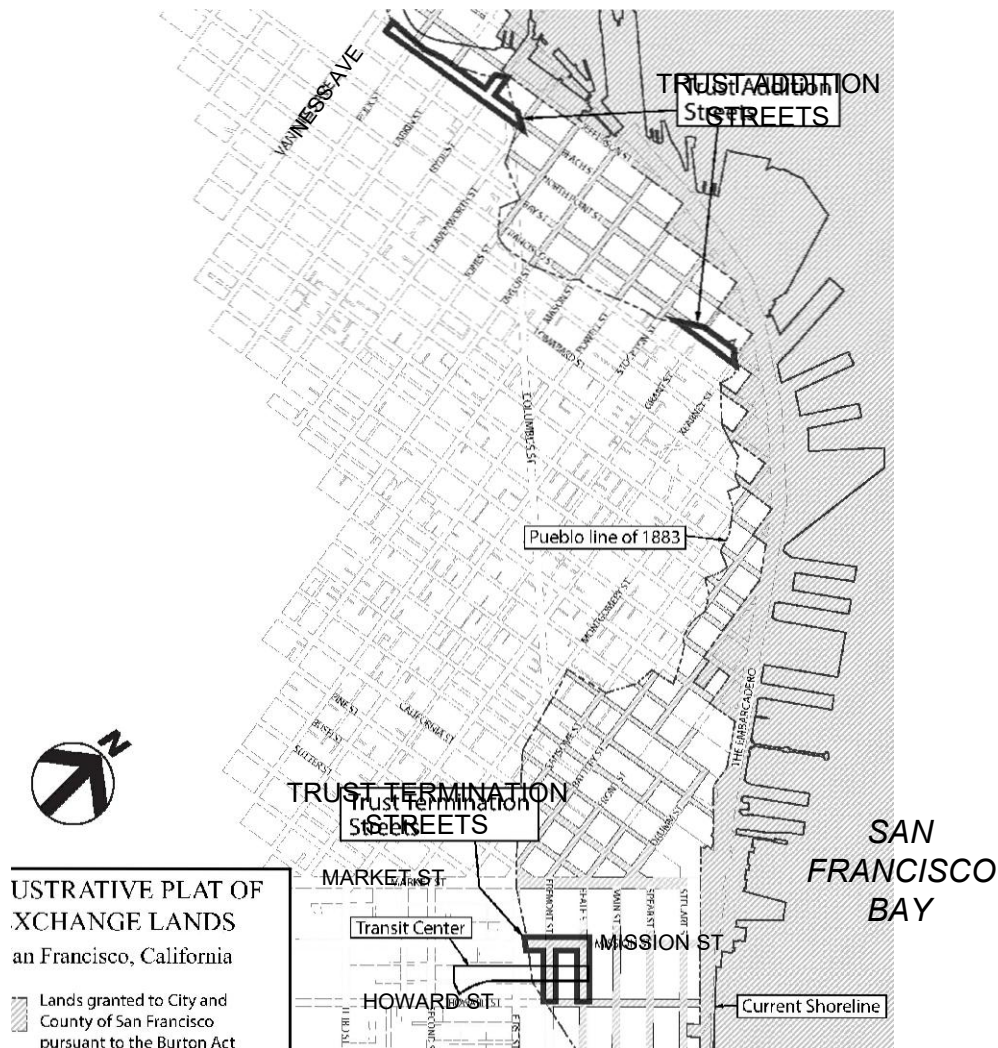
1. Find that, with respect to the proposed Public Trust Land Exchange Agreement, which findings shall be effective when the Agreement is recorded:

STAFF REPORT NO. 60 (CONT'D)

- A. The proposed Trust Termination Streets have been filled and reclaimed.
 - B. Trust Addition Lands provide significant benefits to the Public Trust including public access and uses consistent with the common law Public Trust Doctrine.
 - C. The proposed Trust Termination Streets are cut off from access to the waters of the San Francisco Bay.
 - D. The proposed Trust Termination Streets constitute a relatively small portion of the lands granted to City and County.
 - E. The proposed Trust Termination Streets are no longer needed or required for the promotion of the Public Trust for commerce, navigation, and fisheries or the Burton Act Trust.
 - F. No substantial interference with trust uses and purposes will ensue by virtue of the exchange.
 - G. The proposed Trust Addition Streets have a value equal to or greater than the value of the proposed Trust Termination Streets.
- 2. Approve and authorize the execution, acknowledgment, and recordation of the Public Trust Land Exchange Agreement, in substantially the form of the copy of the Agreement on file with the Commission, and the acceptance, execution, acknowledgment, and recordation of all associated deeds on behalf of the Commission.
 - 3. Authorize and direct Commission staff and/or the California Attorney General to take all necessary or appropriate action on behalf of the Commission, including the execution, acknowledgment, acceptance, and recordation of all documents as may be necessary or convenient to carry out the Public Trust Land Exchange Agreement; and to appear on behalf of the Commission in any legal proceedings relating to the subject matter of the Agreement.

NO SCALE

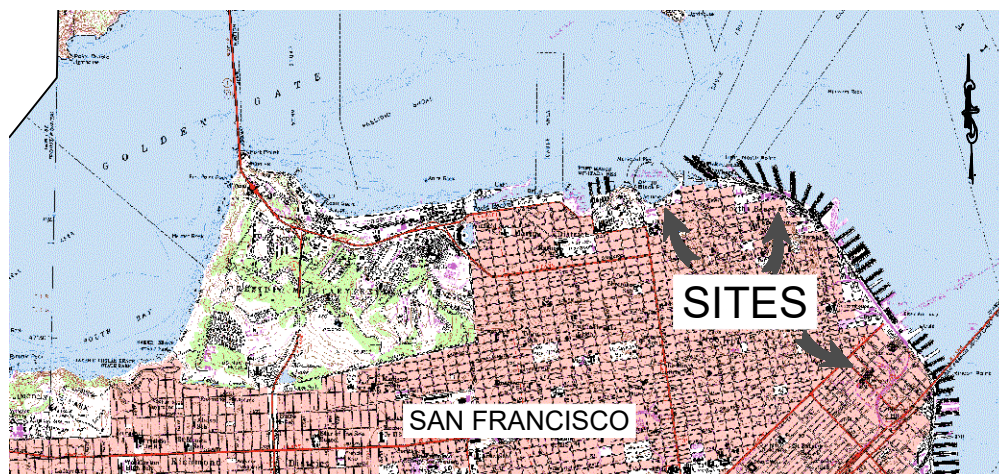
SITE



TRANSBAY AND FISHERMAN'S WHARF STREETS PUBLIC TRUST EXCHANGE AGREEMENT

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

THIS EXHIBIT IS SOLELY FOR PURPOSES OF GENERALLY DEFINING THE PREMISES, IS BASED ON UNVERIFIED INFORMATION PROVIDED BY THE PARTIES AND IS NOT INTENDED TO BE, NOR SHALL IT BE CONSTRUED AS, A WAIVER OR LIMITATION OF ANY STATE INTEREST IN THE SUBJECT OR ANY OTHER PROPERTY.

EXHIBIT A

G11-01

TRANSBAY AND
FISHERMAN'S WHARF
STREETS PUBLIC TRUST
EXCHANGE AGREEMENT
CITY & COUNTY OF SAN
FRANCISCO



JWP 6/08/2020

EXHIBIT B
CALIFORNIA STATE LANDS COMMISSION
MITIGATION MONITORING PROGRAM
301 MISSION STREET, MILLENNIUM TOWER PERIMETER PILE UPGRADE
PROJECT
(G11-01, State Clearinghouse No. 2019119077)

The California State Lands Commission (Commission or CSLC) is a responsible agency under the California Environmental Quality Act (CEQA) for the 301 Mission Street, Millennium Tower Perimeter Pile Upgrade Project (Project). The CEQA lead agency for the Project is San Francisco Planning Department.

In conjunction with approval of this Project, the Commission adopts this Mitigation Monitoring Program (MMP) for the implementation of mitigation measures for the portion(s) of the Project that is part of the Commission's action. The purpose of a MMP is to impose feasible measures to avoid or substantially reduce the significant environmental impacts from a project identified in an Environmental Impact Report (EIR) or a Mitigated Negative Declaration (MND). State CEQA Guidelines section 15097, subdivision (a), states in part:¹

In order to ensure that the mitigation measures and project revisions identified in the EIR or negative declaration are implemented, the public agency shall adopt a program for monitoring or reporting on the revisions which it has required in the project and the measures it has imposed to mitigate or avoid significant environmental effects. A public agency may delegate reporting or monitoring responsibilities to another public agency or to a private entity which accepts the delegation; however, until mitigation measures have been completed the lead agency remains responsible for ensuring that implementation of the mitigation measures occurs in accordance with the program.

The lead agency adopted an MND, State Clearinghouse No. 2019119077, adopted an MMP for the whole of the Project (see Exhibit B, Attachment B-1), and remains responsible for ensuring that implementation of the mitigation measures occurs in accordance with its program. The Commission's action and authority as a responsible agency apply only to the mitigation measures listed in Table B-1 below. The full text of each mitigation measure, as set forth in the MMP prepared by the CEQA lead agency and provided in Attachment B-1, is incorporated by reference b in this Exhibit B.

¹ The State CEQA Guidelines are found at California Code of Regulations, title 14, section 15000 et seq.

Table B-1. Project Impacts and Applicable Mitigation Measures

Potential Impact	Mitigation Measure (MM) ²
Cultural Resources Impact CR-2 Impact CR-3	M-CR-2
Tribal Cultural Resources Impact TC-1	M-TC-1
Noise Impact NO-1	M-NO-1a M-NO-1b
Impact NO-2	M-NO-2
Air Quality Impact AQ-1 Impact AQ-2 Impact C-AQ-1	M-AQ-1
Biological Resources Impact BI-2	M-BI-2
Geology and Soils Impact GE-5	M-GE-5a, b, c, & d

² See Attachment B-1 for the full text of each MM taken from the MMP prepared by the CEQA lead agency.

ATTACHMENT B-1

**Mitigation Monitoring Program Adopted by the
San Francisco Planning Department**

MITIGATION MONITORING AND REPORTING PROGRAM FOR THE 301 MISSION STREET PERIMETER PILE UPGRADE PROJECT

Measures Adopted as Conditions of Approval	Implementation Responsibility	Mitigation Schedule	Monitoring/Reporting Responsibility	Monitoring Actions/Schedule and Verification of Compliance
MITIGATION MEASURES FOR THE 301 MISSION STREET PERIMETER PILE UPGRADE PROJECT				
Cultural Resources Mitigation Measure				
<p>Mitigation Measure M-CR-2: Archeological Testing and Monitoring.</p> <p>Based on a reasonable presumption that archeological resources may be present within the project site, the following measures shall be undertaken to avoid any potentially significant adverse effect from the proposed project on buried or submerged historical resources. The project sponsor shall retain the services of an archeological consultant from the rotational Department Qualified Archeological Consultants List (QACL) maintained by the Planning Department archeologist. The project sponsor shall contact the Department archeologist to obtain the names and contact information for the next three archeological consultants on the QACL, with specialized expertise in geoarcheology and historical archeology. The archeological consultant shall undertake an archeological testing and monitoring program as specified herein. In addition, the consultant shall be available to conduct a data recovery program if required pursuant to this measure. The archeological consultant's work shall be conducted in accordance with this measure at the direction of the Environmental Review Officer (ERO). All plans and reports prepared by the consultant as specified herein shall be submitted first and directly to the ERO for review and comment, and shall be considered draft reports subject to revision until final approval by the ERO. Archeological data recovery programs required by this measure could suspend construction of the project for up to a maximum of four weeks. At the direction of the ERO, the suspension of construction can be extended beyond four weeks only if such a suspension is the only feasible means to reduce to a less-than-significant level potential effects on a significant archeological resource as defined in CEQA Guidelines section 15064.5(a) and (c).</p> <p><i>Consultation with Descendant Communities.</i> On discovery of an archeological site associated with descendant Native Americans, the Overseas Chinese, or other potentially interested descendant group, an appropriate representative of the descendant group and the ERO shall be contacted. The representative of the descendant group shall be given the opportunity to monitor archeological field investigations of the site and to offer recommendations to the ERO regarding appropriate archeological treatment of the site, of recovered data from the site, and, if applicable, any interpretative treatment of the associated archeological site. A copy of the Final Archeological Resources Report shall be provided to the representative of the descendant group.</p> <p><i>Archeological Testing and Monitoring Program.</i> The archeological consultant shall prepare and submit to the ERO for review and approval an archeological testing plan and archeological monitoring plan (ATP/AMP). The ATP/AMP shall identify the property types of the expected archeological resource(s) that potentially could be adversely affected by the proposed project, the testing method to be used, and the locations recommended for testing and monitoring. The purpose of the archeological testing and monitoring program will be to determine to the extent possible the presence or absence of archeological resources or strata with potential to include archeological resources and to identify and to evaluate whether any archeological resource encountered on the site constitutes an historical resource under CEQA.</p> <p>The archeological testing and monitoring program shall be conducted in accordance with the approved ATP/AMP, as follows:</p> <p>Archeological testing shall consist of geoarchaeological coring prior to the beginning of project excavations and/or in concert with post-approval geotechnical testing, and shall, at minimum, include sampling of the uppermost five feet of the Young Bay Mud and the uppermost five feet of the Colma Sands Formation, or of the Old Bay Clay, where this stratum directly underlies the Young Bay Mud stratum. At the completion of the archeological testing program, the archeological consultant shall submit a written report of the findings to the ERO. If based on the archeological testing program the archeological consultant finds that significant archeological resources may be present, the ERO in consultation with the archeological consultant shall determine if additional measures are warranted. Additional measures that may be undertaken include additional archeological testing, modifications to the archeological monitoring program, and/or implementation of an archeological data recovery program, as detailed below. No archeological data recovery shall be undertaken without the prior approval of the ERO or the Planning Department archeologist.</p> <p>Archeological monitoring shall be conducted in accordance with the approved AMP. It is anticipated that at a minimum, this shall include at least intermittent monitoring of excavations within bay fill and the upper portion of the Young Bay Mud stratum, and selective monitoring of the installation of the 36-inch-diameter outer casings. The archeological consultant, project sponsor, and ERO shall meet and consult on any adjustments needed in the scope of archeological monitoring based on the results of geoarchaeological testing and the judgment of the project archaeologist, reasonably prior to the commencement of mass excavation and casing installations. Whether or not significant archeological resources are encountered, the archeological consultant shall submit a written report of the findings of the monitoring program to the ERO. If no potential archeological resources are identified, the final report shall consist of an Archaeological Testing Results Report/ Archeological Monitoring Results Report (AMRR/ATRR). If significant resources are identified, the consultant shall prepare a Final Archaeological Resources Report (FARR), the contents of which are detailed below.</p> <p>In addition:</p> <ul style="list-style-type: none">Prior to the beginning of construction soil disturbance, the archeological consultant shall advise all project contractors to be on the	<p>Project sponsor to retain qualified professional archeological consultant.</p> <p>Qualified archaeologist to identify descendant monitor; Project sponsor to retain monitor.</p> <p>Archeological consultant to prepare in consultation with ERO</p> <p>Project sponsor and archeological consultant to implement ATP/AMP in consultation with the ERO.</p> <p>Project sponsor, archaeological consultant, and project sponsor's contractors shall implement the applicable provisions of the AMP, if required by the ERO</p>	<p>Upon publication of the draft CEQA document.</p> <p>Upon discovery of an archaeological site associated with descendant groups, and for the duration of any archaeological investigation of the associated site.</p> <p>Prior to any excavation, site preparation or, geotechnical drilling, submit ATP/AMP to the ERO for approval.</p> <p>Testing to be completed concurrent with geotechnical drilling.</p> <p>Upon completion of the archeological testing program.</p> <p>Upon conclusion of archeological testing and prior to the commencement of post-coring soil-disturbing activities.</p>	<p>The archaeological consultant shall undertake an archaeological testing and monitoring program as specified herein. (See below regarding archaeological consultant's reports).</p> <p>Project sponsor/archaeological consultant shall contact the ERO and appropriate descendant group representative upon discovery of an archaeological site.</p> <p>ERO to review and approve ATP/AMP.</p> <p>Archaeological consultant to implement approved ATP/AMP in consultation with ERO. Archaeological consultant and project sponsor to submit results of testing and consult with ERO on subsequent tasks.</p> <p>Project sponsor and archeological consultant in consultation with the ERO</p>	<p>Considered complete when project sponsor retains a qualified professional archaeological consultant and scope of ATP/AMP has been approved by the ERO</p> <p>Considered complete upon submittal of Final Archeological Resources Report.</p> <p>Considered compete upon ERO approval of ATP/AMP</p> <p>Considered complete upon ERO approval of consultant's initial report of archeological testing results and ERO approval of scope of any subsequent monitoring and/or data recovery.</p> <p>Considered complete on ERO approval of Archaeological Monitoring Results Report and/or Final Archaeological Resources Report</p>

MITIGATION MONITORING AND REPORTING PROGRAM FOR THE 301 MISSION STREET PERIMETER PILE UPGRADE PROJECT

Measures Adopted as Conditions of Approval	Implementation Responsibility	Mitigation Schedule	Monitoring/Reporting Responsibility	Monitoring Actions/Schedule and Verification of Compliance
<p>alert for evidence of the presence of the expected resource(s), of how to identify the evidence of the expected resource(s), and of the appropriate protocol in the event of apparent discovery of an archeological resource;</p> <ul style="list-style-type: none">The archeological monitor(s) shall be present on the project site according to a schedule agreed upon by the archeological consultant and the ERO until the ERO has, in consultation with the project archeological consultant, determined that project construction activities could have no effects on significant archeological deposits;The archeological monitor shall record and be authorized to collect soil samples and artifactual/ecofactual material as warranted for analysis;If an intact archeological deposit is encountered, all soils-disturbing activities in the vicinity of the deposit shall cease. The archeological monitor shall be empowered to temporarily redirect demolition/excavation/pile installation/construction activities and equipment until the deposit is evaluated. If in the case of pile installation or deep foundation activities (foundation, shoring, etc.), the archeological monitor has cause to believe that the pile installation or deep foundation activities may affect an archeological resource, the pile installation or deep foundation activities shall be terminated until an appropriate evaluation of the resource has been made in consultation with the ERO. The archeological consultant shall immediately notify the ERO of the encountered archeological deposit. The archeological consultant shall make a reasonable effort to assess the identity, integrity, and significance of the encountered archeological deposit, and present the findings of this assessment to the ERO. <p><i>Archeological Data Recovery Program.</i> The archeological data recovery program, when required through the process set forth above, shall be conducted in accord with an archeological data recovery plan (ADRP). The archeological consultant, project sponsor, and ERO shall meet and consult on the scope of the ADRP prior to preparation of a draft ADRP. The archeological consultant shall submit a draft ADRP to the ERO. The ADRP shall identify how the proposed data recovery program will preserve the significant information the archeological resource is expected to contain. That is, the ADRP will identify what scientific/historical research questions are applicable to the expected resource, what data classes the resource is expected to possess, and how the expected data classes would address the applicable research questions. Data recovery, in general, should be limited to the portions of the historical resource that could be adversely affected by the proposed project. Destructive data recovery methods shall not be applied to portions of the archeological resources if nondestructive methods are practical.</p> <p>The scope of the ADRP shall include the following elements:</p> <ul style="list-style-type: none">Field Methods and Procedures – Descriptions of proposed field strategies, procedures, and operationsCataloguing and Laboratory Analysis – Description of selected cataloguing system and artifact analysis proceduresDiscard and Deaccession Policy – Description of and rationale for field and post-field discard and deaccession policiesInterpretive Program – Consideration of an on-site/off-site public interpretive program based on the results of the archeological data recovery programSecurity Measures – Recommended security measures to protect the archeological resource from vandalism, looting, and non-intentionally damaging activitiesFinal Report – Description of proposed report format and distribution of resultsCuration – Description of the procedures and recommendations for the curation of any recovered data having potential research value, identification of appropriate curation facilities, and a summary of the accession policies of the curation facilities. <p><i>Human Remains, Associated or Unassociated Funerary Objects.</i> The treatment of human remains and of associated or unassociated funerary objects discovered during any soils disturbing activity shall comply with applicable State and federal laws. This shall include immediate notification of the Medical Examiner of the City and County of San Francisco and, in the event of the Medical Examiner's determination that the human remains are Native American remains, notification of the California State Native American Heritage Commission, which will appoint a Most Likely Descendant (MLD). The MLD will complete his or her inspection of the remains and make recommendations or preferences for treatment within 48 hours of being granted access to the site (Public Resources Code section 5097.98). The ERO also shall be notified immediately upon the discovery of human remains.</p> <p>The project sponsor and ERO shall make all reasonable efforts to develop a Burial Agreement ("Agreement") with the MLD, as expeditiously as possible, for the treatment and disposition, with appropriate dignity, of human remains and associated or unassociated funerary objects (as detailed in CEQA Guidelines section 15064.5(d)). The Agreement shall take into consideration the appropriate excavation, removal, recordation, scientific analysis, custodianship, curation, and final disposition of the human remains and associated or unassociated funerary objects. If the MLD agrees to scientific analyses of the remains and/or associated or unassociated funerary objects, the archeological consultant shall retain possession of the remains and associated or unassociated funerary objects until completion of any such analyses, after which the remains and associated or unassociated funerary objects shall be reinterred or curated as specified in the Agreement.</p> <p>Nothing in existing State regulations or in this mitigation measure compels the project sponsor and the ERO to accept treatment</p>	<p>Project sponsor and archaeological consultant in consultation with the ERO.</p> <p>Project sponsor and archaeological consultant shall notify the San Francisco Medical Examiner and if applicable, Native American Heritage Commission who will appoint a Most Likely Descendent. Project sponsor, ERO, and the Most Likely Descendent shall make all reasonable efforts to develop a burial agreement.</p>	<p>ADRP to be prepared by consultant upon determination by the ERO that an ADRP is required. Archaeological data recovery to be implemented prior to or during construction, as determined by provisions of approved ADRP.</p> <p>Upon discovery of human remains and as required by PRC 5097.98</p>	<p>If required, archaeological consultant to prepare and implement an ADRP in consultation with the ERO</p> <p>Archaeological consultant and project sponsor to report discovery and notification of ME to ERO</p>	<p>Considered complete upon review and approval of the ADRP by the ERO and upon notification of the ERO, by the consultant, that data recovery is complete.</p> <p>Considered complete on completion of burial agreement and/or analysis and/or legal disposition of the remains and associated funerary materials.</p>

MITIGATION MONITORING AND REPORTING PROGRAM FOR THE 301 MISSION STREET PERIMETER PILE UPGRADE PROJECT

Measures Adopted as Conditions of Approval	Implementation Responsibility	Mitigation Schedule	Monitoring/Reporting Responsibility	Monitoring Actions/Schedule and Verification of Compliance
<p>recommendations of the MLD. However, if the ERO, project sponsor and MLD are unable to reach an Agreement on scientific treatment of the remains and associated or unassociated funerary objects, the ERO, with cooperation of the project sponsor, shall ensure that the remains and/or mortuary materials are stored securely and respectfully until they can be reinterred on the property, with appropriate dignity, in a location not subject to further or future subsurface disturbance.</p> <p>Treatment of historic-period human remains and of associated or unassociated funerary objects discovered during any soil-disturbing activity, additionally, shall follow protocols laid out in the project’s archeological treatment documents, and in any related agreement established between the project sponsor, Medical Examiner and the ERO.</p> <p><i>Final Archeological Resources Report.</i> The archeological consultant shall submit a Draft Final Archeological Resources Report (FARR) to the ERO that evaluates the historical significance of any discovered archeological resource and describes the archeological and historical research methods employed in the archeological testing/monitoring/data recovery program(s) undertaken. The Draft FARR shall also include an Interpretation Plan for public interpretation of all significant archeological features.</p> <p>Once approved by the ERO, copies of the FARR shall be distributed as follows: California Historical Resources Information Center Northwest Information Center (NWIC) shall receive one (1) copy and the ERO shall receive a copy of the transmittal of the FARR to the NWIC. The Environmental Planning division of the Planning Department shall receive one bound, one unbound and one unlocked, searchable PDF copy on CD of the FARR along with copies of any formal site recordation forms (CA DPR 523 series) and/or documentation for nomination to the National Register of Historic Places/California Register of Historical Resources. In instances of high public interest in or the high interpretive value of the resource, the ERO may require a different final report content, format, and distribution than that presented above.</p>	<p>Project sponsor and archaeological consultant in consultation with the ERO if the project results in archeological discoveries.</p>	<p>After completion of archeological testing, monitoring, data recovery, analysis and interpretation, as applicable.</p>	<p>If applicable, archeological consultant to submit a FARR to ERO for approval; distribute FARR and provide written certification of distribution to ERO</p>	<p>Considered complete upon approval of FARR by ERO and distribution of FARR as directed by ERO.</p>
Tribal Cultural Resources Mitigation Measure				
<p>Mitigation Measure M-TC-1: Tribal Cultural Resources Interpretive Program.</p> <p>If the Environmental Review Officer (ERO) determines that a significant archeological resource is present, and if in consultation with the affiliated Native American tribal representatives, the ERO determines that the resource constitutes a tribal cultural resource and that the resource could be adversely affected by the proposed project, the proposed project shall be redesigned so as to avoid any adverse effect on the significant tribal cultural resource, if feasible.</p>	<p>Project sponsor, tribal representative and ERO to consult on feasibility of preservation in place.</p>	<p>Prior to further soil disturbing activities that could affect the resource</p>	<p>Archeological consultant shall contact the ERO and appropriate Native American tribe representative upon discovery of an archeological resource that may constitutes a tribal cultural resource.</p>	<p>Upon agreement between ERO and project sponsor that preservation plan shall be prepared and implemented.</p>
<p>If the ERO determines that preservation-in-place of the tribal cultural resource is both feasible and effective, then the archeological consultant shall prepare an archeological resource preservation plan (ARPP). Implementation of the approved ARPP by the project sponsor and the archeological consultant shall be required when feasible.</p> <p>If the ERO, in consultation with the affiliated Native American tribal representatives and the project sponsor, determines that preservation-in-place of the tribal cultural resources is not a sufficient or feasible option, the project sponsor shall implement an interpretive program of the tribal cultural resource in consultation with affiliated tribal representatives. An interpretive plan produced in consultation with the ERO and affiliated tribal representatives, at a minimum, and approved by the ERO would be required to guide the interpretive program. The plan shall identify, as appropriate, proposed locations for installations or displays, the proposed content and materials of those displays or installation, the producers or artists of the displays or installation, and a long-term maintenance program. The interpretive program may include artist installations, preferably by local Native American artists, oral histories with local Native Americans, artifacts displays and interpretation, and educational panels or other informational displays.</p>	<p>Project sponsor and archeological consultant</p> <p>Project sponsor in consultation with the ERO and tribal representatives.</p>	<p>Preservation Plan to be prepared on agreement that preservation in place is feasible and implemented prior to further activities that could affect the resources</p> <p>Prior to issuance of final certificate of occupancy.</p>	<p>Project sponsor and archeological consultant in consultation with the ERO</p> <p>. The ERO to approve final interpretive program. ..</p>	<p>Archeological consultant submits preservation plan; ERO reviews and approves; project sponsor verifies to ERO that plan has been implemented.</p> <p>Considered complete upon installation of approved interpretive program, if required. Project sponsor to provide verification to ERO that approved Interpretation program has been implemented</p>
Noise Mitigation Measures				
<p>Mitigation Measure M-NO-1a: General Construction Noise Control Measures.</p> <p>To ensure that project noise from construction activities is minimized to the maximum extent feasible, the project sponsor shall undertake the following:</p> <ul style="list-style-type: none">The project sponsor shall require the general contractor to ensure that equipment and trucks used for project construction utilize the best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures and acoustically-attenuating shields or shrouds, wherever feasible).The project sponsor shall require the general contractor to locate stationary noise sources (such as compressors) as far from adjacent or nearby sensitive receptors as possible, to muffle such noise sources, and to construct barriers around such sources and/or the	<p>Project sponsor and contractor shall prepare a construction noise management plan</p>	<p>Draft construction noise management plan to be submitted to Planning Department and DBI prior to issuance of the first permit.</p>	<p>Prior to the issuance of any building permit, San Francisco Department of Building Inspection and Planning Department shall review and approve Construction Noise Management Plan.</p> <p>Project sponsor, qualified consultant, and/or construction</p>	<p>Considered complete at the completion of construction and submittal of final noise monitoring reports for all construction stages.</p>

MITIGATION MONITORING AND REPORTING PROGRAM FOR THE 301 MISSION STREET PERIMETER PILE UPGRADE PROJECT

Measures Adopted as Conditions of Approval	Implementation Responsibility	Mitigation Schedule	Monitoring/Reporting Responsibility	Monitoring Actions/Schedule and Verification of Compliance
<p>construction site, which could reduce construction noise by as much as 5 dBA. To further reduce noise, the contractor shall locate stationary equipment in pit areas or excavated areas, if feasible.</p> <ul style="list-style-type: none">The project sponsor shall require the general contractor to use impact tools (e.g., jack hammers, pavement breakers, and rock drills) that are hydraulically or electrically powered wherever possible to avoid noise associated with compressed air exhaust from pneumatically powered tools. Where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed air exhaust shall be used, along with external noise jackets on the tools, which could reduce noise levels by as much as 10 dBA.The project sponsor shall include noise control requirements in specifications provided to construction contractors. Such requirements could include, but not be limited to, performing all work in a manner that minimizes noise to the extent feasible; use of equipment with effective mufflers; undertaking the most noisy activities during times of least disturbance to surrounding residents and occupants, as feasible; and selecting haul routes that avoid residential buildings inasmuch as such routes are otherwise feasible.Prior to the issuance of the building permit, the project sponsor shall submit to the planning department and Department of Building Inspection (building department) a Construction Noise Management Plan identifying all measures be implemented and identifying a contact person and phone number to respond to and track complaints pertaining to construction noise. These measures shall include (1) a procedure and phone numbers for notifying the building department, the Department of Public Health (health department), and the Police Department (during regular construction hours and off-hours); (2) a sign posted on-site describing noise complaint procedures and a complaint hotline number that shall be answered at all times during construction; (3) designation of an on-site construction complaint and enforcement manager for the project; and (4) notification of neighboring residents and non-residential building managers within 300 feet of the project construction area at least 30 days in advance of commencement of construction activities.The general contractor or other designated person(s) shall prepare a weekly noise monitoring log report that shall be made available to the planning department upon request. The log shall include any noise complaints received, whether in connection with an exceedance or not, as well as any noise complaints received through calls to 311 or DBI if the contractor is made aware of them (for example, via a building department notice, inspection, or investigation). Any weekly report that includes an exceedance or for a period during which a complaint is received shall be submitted to the planning department within three business days following the week in which the exceedance or complaint occurred. A report shall be submitted to the planning department at the completion of construction. The report shall document noise levels, exceedances of standards, if reported, and corrective action(s) taken.			<p>contractor(s) to prepare a weekly noise monitoring log which shall be made available to the Planning Department when requested. Any weekly report that includes an exceedance or for a period during which a complaint is received shall be submitted to the development performance coordinator within 3 business days following the week in which the exceedance or complaint occurred.</p> <p>Project sponsor, qualified consultant, and/or construction contractor(s) to submit final noise monitoring report to the Planning Department development performance coordinator at the completion of each construction stage.</p>	
<p>Mitigation Measure M-NO-1b: Noise Reduction Techniques for Equipment Used in Nighttime Delivery Activity.</p> <p>The project sponsor shall notify the Planning Department Development Performance Coordinator of any night noise permit application filed with the Department of Building Inspection on the day of filing and any emergency/unanticipated activity with the potential to exceed standard as soon as possible. The project sponsor shall implement all of the following noise reduction techniques to reduce nighttime construction delivery noise during Stages 3 and 4:</p> <ul style="list-style-type: none">The crane used for nighttime deliveries shall be directionally positioned such that the exhaust faces away from the building at 301 Mission Street. This measure would be expected to reduce noise levels by 2 to 3 dBA.Provide acoustically-rated shielding around crane engine. This measure would be expected to reduce noise levels by 5 to 12 dBA depending on the proximity of shielding to the crane engine.The crane shall be operated in ECO silent mode during nighttime hours. This measure would be expected to reduce noise levels by 3 to 5 dBA.Forklifts shall employ self-adjusting directional backup alarms. Such alarms constantly measure the background noise and can reduce their sound level by 20 dBA or more.	Project sponsor and contractor	During nighttime delivery activity in Stages 3 and 4 of construction	Planning Department and project contractor.	Considered complete at the completion of construction and submittal of final noise monitoring reports.
<p>Mitigation Measure M-NO-2: Limited Use of Vibratory Rollers.</p> <p>The project sponsor shall require that the contractors use non vibratory excavator mounted compaction wheels and small, smooth drum rollers for final compaction of any asphalt base and asphalt concrete. If needed to meet compaction requirements, smaller vibratory rollers shall be used to minimize vibration levels during repaving activities where needed to meet vibration standards.</p>	Project sponsor and contractor	During construction	San Francisco Department of Building Inspection (DBI)	Considered complete at the completion of construction and submittal of final noise monitoring reports.
Air Quality Mitigation Measure				
<p>Mitigation Measure M-AQ-1: Construction Air Quality.</p> <p>The project sponsor or contractor shall provide the Planning Department with a certification statement that the sponsor or contractor agrees to fully comply with the following requirements which shall be included in contract specifications:</p> <ul style="list-style-type: none">All construction equipment shall be maintained and properly tuned in accordance with the manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to two minutes.The project construction contractor shall not use diesel generators for construction purposes where feasible alternative sources of power are available.All construction equipment, diesel trucks, and generators shall be equipped with Best Available Control Technology for emission	Project sponsor and cantactor	Implement during construction activities	Planning Department Environmental Review Officer (ERO).	Considered complete upon Planning Department review and approval of documentation and completion of construction.

MITIGATION MONITORING AND REPORTING PROGRAM FOR THE 301 MISSION STREET PERIMETER PILE UPGRADE PROJECT

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reductions of NOx and Particulate Matter, including Tier 4 Interim or Final or alternative fuel engines where such equipment is available and feasible for use. <ul style="list-style-type: none">– The following equipment shall have Tier 4 final engines: air compressors, bore/drill rigs, compactor, concrete pump, crawler tractors, excavator, generator sets/power pack, pavers, rollers, rough terrain forklifts, rubber tired loaders, skid steer loaders, and track drill.– The following equipment shall have Tier 4 interim or final engines: backhoes.– The following equipment shall have Tier 1 or newer engines: truck mount drills. <ul style="list-style-type: none">• Should any deviations in the construction equipment list or tier levels be required, the project sponsor shall present documentation to the satisfaction of the ERO that any such deviation would not result in an exceedance of the average daily NOx significance threshold or any health risk threshold.				
Biological Resource Mitigation Measure				
Mitigation Measure M-BI-2: Preconstruction Nesting Bird Surveys and Buffer Areas <p>Nesting birds and their nests shall be protected during construction by implementation of the following measures for each construction phase:</p> <ol style="list-style-type: none">To the extent feasible, conduct initial activities including, but not limited to, vegetation removal, tree trimming or removal, ground disturbance, building demolition, site grading, and other construction activities which may compromise breeding birds or the success of their nests outside of the nesting season (January 15 through August 15).If construction during the bird nesting season cannot be fully avoided, a qualified wildlife biologist* shall conduct pre-construction nesting surveys within 14 days prior to the start of construction or demolition at areas that have not been previously disturbed by project activities or after any construction breaks of 14 days or more. Surveys shall be performed for suitable habitat within 250 feet of the project site in order to locate any active nests of common bird species and within 500 feet of the project site to locate any active raptor (birds of prey) nests.If active nests are located during the preconstruction nesting bird surveys, a qualified biologist shall evaluate if the schedule of construction activities could affect the active nests and if so, the following measures would apply:<ol style="list-style-type: none">If construction is not likely to affect the active nest, construction may proceed without restriction; however, a qualified biologist shall regularly monitor the nest at a frequency determined appropriate for the surrounding construction activity to confirm there is no adverse effect. Spot-check monitoring frequency would be determined on a nest-by-nest basis considering the particular construction activity, duration, proximity to the nest, and physical barriers which may screen activity from the nest. The qualified biologist may revise his/her determination at any time during the nesting season in coordination with the Planning Department.If it is determined that construction may affect the active nest, the qualified biologist shall establish a no-disturbance buffer around the nest(s) and all project work shall halt within the buffer until a qualified biologist determines the nest is no longer in use. Typically, these buffer distances are 250 feet for passerines and 500 feet for raptors; however, the buffers may be adjusted if an obstruction, such as a building, is within line-of-sight between the nest and construction.Modifying nest buffer distances, allowing certain construction activities within the buffer, and/or modifying construction methods in proximity to active nests shall be done at the discretion of the qualified biologist and in coordination with the Planning Department, who would notify CDFW. Necessary actions to remove or relocate an active nest(s) shall be coordinated with the Planning Department and approved by CDFW.Any work that must occur within established no-disturbance buffers around active nests shall be monitored by a qualified biologist. If adverse effects in response to project work within the buffer are observed and could compromise the nest, work within the no disturbance buffer(s) shall halt until the nest occupants have fledged.Any birds that begin nesting within the project area and survey buffers amid construction activities are assumed to be habituated to construction-related or similar noise and disturbance levels, so exclusion zones around nests may be reduced or eliminated in these cases as determined by the qualified biologist in coordination with the Planning Department, who would notify CDFW. Work may proceed around these active nests as long as the nests and their occupants are not directly impacted.In the event inactive nests are observed within or adjacent to the project site at any time throughout the year, any removal or relocation of the inactive nests shall be at the discretion of the qualified biologist in coordination with the Planning Department, who would notify and seek approval from the CDFW, as appropriate. Work may proceed around these inactive nests. <p>* Typical experience requirements for a “qualified biologist” include a minimum of four years of academic training and professional experience in biological sciences and related resource management activities, and a minimum of two years of experience conducting surveys for each species that may be present within the project area.</p>	Project sponsor and construction contactor	Implement during construction activities	Planning Department Environmental Review Officer (ERO).	Considered complete upon Planning Department review and approval of documentation and completion of construction.
Geology and Soils Mitigation Measures				
Mitigation Measure GE-4a: Project Paleontologist <p>The project sponsor or its contractor shall retain a qualified professional paleontologist (qualified paleontologist) prior to the approval of</p>	Project sponsor to retain qualified professional paleontologist.	Prior to approval of demolition or grading permits.	ERO to approve selection of professional paleontologist.	Considered complete when project sponsor retains a

MITIGATION MONITORING AND REPORTING PROGRAM FOR THE 301 MISSION STREET PERIMETER PILE UPGRADE PROJECT

Measures Adopted as Conditions of Approval	Implementation Responsibility	Mitigation Schedule	Monitoring/Reporting Responsibility	Monitoring Actions/Schedule and Verification of Compliance
demolition or grading permits. The qualified paleontologist shall attend the project kick-off meeting and project progress meetings on an as-needed basis, shall report to the project site for drilling activities associated with installation of the outer casings for the perimeter piles that are anticipated to return Colma Sands or Old Bay Clay materials, and shall implement the duties outlined in Mitigation Measures M-GE-4b through M-GE-4d.				qualified professional paleontologist.
Mitigation Measure GE-4b: Worker Training Prior to the start of ground-disturbing activity related to the installation of the outer casings for the perimeter piles, which is anticipated to return Colma Sands or Old Bay Clay materials, the qualified paleontologist shall prepare paleontological resources sensitivity training materials for use during Project-wide Worker Environmental Awareness Training (or equivalent). The paleontological resources sensitivity training shall be conducted by a qualified environmental trainer working under the supervision of the qualified paleontologist. In the event construction crews are phased, additional trainings shall be conducted for new construction personnel. The training session shall focus on the recognition of the types of paleontological resources that could be encountered within the project site and the procedures to be followed if they are found, as outlined in the approved Paleontological Resources Monitoring and Mitigation Plan in Mitigation Measure M-GE-4c. The project sponsor and/or its contractor shall retain documentation demonstrating that all construction personnel attended the training prior to the start of work on the site, and shall provide the documentation to the City Planning Department Project Manager upon request.	Paleontologist to conduct training.	Prior to any excavation, site preparation or, geotechnical drilling.	ERO to verify that training has been conducted.	Considered complete after qualified professional paleontologist conducts training.
Mitigation Measure M-GE-4c: Paleontological Monitoring The qualified paleontologist shall prepare, and the project sponsor and/or its contractors shall implement, a Paleontological Resources Monitoring and Mitigation Plan (PRMMP). The project sponsor shall submit the plan to the planning department for review and approval at least 30 days prior to the start of construction. This plan shall address specifics of monitoring and mitigation and comply with the City requirements, as follows. <ul style="list-style-type: none">The qualified paleontologist shall identify, and the project sponsor or its contractor(s) shall retain, qualified paleontological resource monitors (qualified monitors).The qualified paleontologist and/or the qualified monitors under the direction of the qualified paleontologist shall conduct full-time paleontological resources monitoring of the installation of the 36-inch-diameter outer casings for all ground-disturbing activities anticipated to return Colma Sands or Old Bay Clay materials.Monitors shall have the authority to temporarily halt or divert work away from exposed fossils in order to evaluate and recover the fossil specimens.If construction or other project personnel discover any potential paleontological resources during construction, regardless of the depth of work or location and regardless of whether the site is being monitored, work at the discovery location shall cease until the qualified paleontologist, project sponsor, and ERO shall meet and consult on the appropriate course of action at the 36-inch-diameter outer casing locations, based on the nature of the recovered paleontological resource and the judgment of the qualified paleontologist, reasonably provided prior to continuing with the installation of outer casings. The qualified paleontologist shall determine the significance of any paleontological resources discovered, and shall determine the appropriate treatment for significant paleontological resources in accordance with City standards. Whether or not a significant paleontological resource has been encountered, the qualified paleontologist shall assess the discovery, make recommendations as to the appropriate treatment, and submit a written report of the findings of the monitoring program to the ERO. Mitigation Measure M-GE-4d regarding significant fossil treatment is described further below.Monitors shall prepare daily logs detailing the types of activities and soils observed, and any discoveries. The qualified paleontologist shall prepare a final monitoring and mitigation report to document the results of the monitoring effort and any curation of fossils. The project sponsor shall provide the daily logs to the City Planning Department upon request, and shall provide the final report to the City Planning Department upon completion.	Paleontologist to prepare in consultation with ERO.	Prior to any excavation, site preparation or, geotechnical drilling, submit PRMMP to the ERO for approval.	ERO to review and approve PRMMP.	Considered complete upon ERO approval of PRMMP.
Mitigation Measure M-GE-4d: Significant Fossil Treatment If any find is deemed significant following the process outlined in Mitigation Measure M-GE-4c, the qualified paleontologist shall salvage and prepare the fossil for permanent curation with a certified repository with retrievable storage.	Project sponsor and paleontologist in consultation with the ERO.	Upon discovery of fossil.	ERO to verify recovery of fossil.	Considered complete when fossil has been salvaged and prepared for curation.

IMPROVEMENT MEASURES FOR THE 301 MISSION STREET PERIMETER PILE UPGRADE PROJECT				
	Implementation Responsibility	Mitigation Schedule	Monitoring/Reporting Responsibility	Monitoring Actions/Schedule and Verification of Compliance
Geology & Soils Improvement Measure				
Improvement Measure I-GE-1: Sponsor Reimbursement for Engineering Design Review Team Review of Construction and Post-Construction Monitoring Data. The project sponsor should cooperate with the Department of Building Inspection (building department) in its engagement of the Engineering Design Review Team (peer review team) convened during review and evaluation of the monitoring data collected for the project during and post construction. The project sponsor should reimburse the building department for the costs of the monitoring data review and evaluation by the peer review team.	Department of Building Inspection (building department) to invoice the project sponsor for reimbursement of the cost for each of the Engineering Design Review Team's (peer review team's) review and evaluation of the construction and post-construction monitoring data for the project. The project sponsor shall pay the invoice within 60 days of receipt of the peer review team's findings for a particular review and the invoice for such review from the building department.	For the duration of the 10-year monitoring program.	Department of Building Inspection to invoice project sponsor for the cost of each of the peer review team's review and evaluation of construction and post-construction monitoring data and project sponsor to provide timely reimbursement to the city.	Considered complete upon payment by the project sponsor to the Department of Building Inspection Director or designee of the final invoice for the final data review letter from the peer review team with its findings at the conclusion of the post-construction monitoring program.