

# SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

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June 13, 2008

**TO:** Commissioners and Alternates

**FROM:** Will Travis, Executive Director (415/352-3653 [travis@bcdc.ca.gov](mailto:travis@bcdc.ca.gov))  
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**SUBJECT:** **Staff Recommendation on BCDC Permit Application No. 5-07, Application of Keech Properties, LLC, to develop The Preserve at Redwood Shores, in the City of Redwood City, San Mateo County**  
(For Commission consideration on June 19, 2008)

## Recommendation Summary

The staff recommends that the Commission approve BCDC Permit Application No. 5-07, application of Keech Properties, LLC to develop The Preserve at Redwood Shores, which, as conditioned, would result in the following on a 114-acre parcel (only 1.5 acres are within the Commission's jurisdiction) adjacent to Belmont Slough, in the City of Redwood City:

1. Creating a mitigation bank by restoring a variety of tidal wetland habitats on approximately 92 acres;
2. Constructing an elementary school on approximately seven acres;
3. Constructing 158 townhomes;
4. Replacing approximately 1,700 feet of existing required public access with a 1,700-foot combined sidewalk, bike path along Shearwater Parkway, approximately 2,400 feet of new public access trail, a 3.0-acre neighborhood park and expanding an existing public access parking, lot to accommodate 25-30 vehicles; and
5. Protection of natural resources and water quality during construction and maintenance of the restoration project.

Work in the Commission's jurisdiction includes: constructing a small portion of a 3.0-acre public park, installing landscaping, constructing a portion of several private residential porches, breaching the existing perimeter levee by removing approximately 800 cubic yards of material, lowering the existing perimeter levee height by removing approximately 10,000 to



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15,000 cubic yards of material and re-using the material onsite, outside the Commission's jurisdiction, and installing a 54 inch-in-diameter pipe to improve tidal circulation in the restored tidal marsh. The applicant plans to ultimately donate the restored tidal marsh to the U.S. Fish and Wildlife Service. The existing trail that would be relocated was part of an alternative inland public access trail system that the Commission required (BCDC Permit No. 6-94) in order to offset the loss of public access that previously existed on the perimeter levee.

### **Staff Recommendation**

The staff recommends that the Commission adopt the following resolution:

#### **I. Authorization**

- A. Subject to the conditions stated below, the permittee, Keech Properties, LLC, is hereby granted permission to construct the Preserve at Redwood Shores Project, located on the north side of Marine Parkway and Shearwater Parkway, at the northeastern edge of the Redwood Shores Peninsula in the City of Redwood City, San Mateo County. Authorized work includes the following:

#### **In the Bay and within the 100-foot shoreline band:**

1. Create a 130-foot-wide breach in an existing levee to restore tidal action to a diked historic wetland by removing approximately 800 cubic yards of material at the breach location (part of Phase 2);
2. Install markers and barriers at the levee breach locations to prevent boaters from entering the site (Phase 2);
3. Remove approximately 100 cubic yards of material from the existing levee to allow for the installation of an approximately 54 inch-in-diameter concrete pipe (Phase 2); and
4. Install, use and maintain an approximately 54 inch-in-diameter concrete pipe to increase tidal circulation to a portion of the restored tidal wetlands (Phase 2).

#### **Within the 100-foot shoreline band:**

1. Construct, use and maintain the following public access improvements: (a) an approximately 25,000-square-foot portion of a 3.0-acre neighborhood park; (b) approximately 900 feet of public access paths on top of the existing perimeter levee; (c) approximately 1,000 square feet of a new, 2,500-foot-long, 10-foot-wide public access trail on the new levee separating the proposed new development from Area H; (d) an approximately 1,700-foot-long section of a relocated, 12-foot-wide bike trail/sidewalk along Shearwater Parkway; (e) approximately ten public access and way finding signs; and (f) approximately 32,400 square feet of new landscaping at the public access areas (part of Phase 1);
2. Excavate approximately 10,000 to 15,000 cubic yards of material from the exterior levee to lower it approximately three feet, using the excavated material to raise elevations and create wave breaks in the area to be restored to tidal marsh and excavate an approximately 100-foot-long segment of a proposed new tidal channel (Phase 2);

3. Construct, use, and maintain portions of porches and sidewalks for approximately 12 new townhomes (Phase 1); and
  4. Create and maintain an approximately 82-acre portion of tidal wetland restoration site, of which approximately 62 acres may be used as a mitigation bank (Phase 2).
- B. This authority is generally pursuant to and limited by the application dated February 8, 2008, including all accompanying and subsequently submitted correspondence and exhibits, but subject to the modifications required by conditions hereto.
- C. Construction work authorized herein must commence prior to December 1, 2009, or this permit will lapse and become null and void. Such work must also be diligently pursued to completion and completed by December 1, 2012, unless an extension of time is granted by amendment of the permit. However, in-kind replacement or maintenance of authorized public access facilities, as limited by Special Condition II-B-5 herein, is authorized as long as the authorized facilities exist.
- D. The project will result in the removal of 15,900 cubic yards of earthen material from the excavation of an approximately 130-foot-wide levee breach, the lowering of levees, and the removal of approximately 100 cubic yards of material for the installation of a 54 inch-in-diameter concrete pipe. The project will also result in the placement of a 54 inch-in-diameter concrete pipe, a small portion of which would be in the Bay. Thus, the project will result in a negligible amount of fill in the Bay to enhance water-circulation in the restored marsh.

Type of Fill (sq ft)	Removed	New	Total Net Fill (sq ft)
Solid	0 cy	30 cy	30 cy
Floating			
Pile-Supported			
Cantilevered			
<b>Total (cubic yards)</b>	0 cy	30 cy	30 cy

The project would provide new public access areas and improvements as follows: (a) relocating approximately 1,700 feet of existing public access path required as part of the alternative inland access trail in BCDC Permit No. 6-94; (b) constructing approximately 2,300 feet of 10-foot-wide public access trail within a 40-foot-wide public access corridor located atop the new levee system; (c) constructing approximately 1,700 feet of new public access consisting of a 12-foot wide sidewalk/bike path along Shearwater Parkway; and (d) constructing a new approximately 3.0-acre public park, including public paths, benches, landscaping, parking for approximately 25-30 vehicles, and public tennis courts.

Type of Public Access	Square Feet	Acres	Shoreline Length (Linear feet)	Amount (US\$)	Yes/No
On-Site (new)	490,680	11.26	4,200		
Off-Site (new)					

Protected or Maintained			900		
Monetary Contribution					
View Corridor					No
Total	<u>490,680</u> sq. ft.	<u>11.26</u> ac.	<u>5,100</u> lf.		

## II. Special Conditions

The authorization made herein shall be subject to the following special conditions, in addition to the standard conditions in Part IV:

### A. Specific Plans and Plan Review

1. **Plan Review.** No work within the Commission's jurisdiction, or work on required public access areas or on the marsh restoration site, whatsoever shall be commenced pursuant to this authorization until final precise site, public access, marsh restoration, landscaping, demolition, engineering, architectural, grading, and best management practices plans and any other relevant criteria, specifications, and plan information for that portion of the work have been submitted to, reviewed, and approved in writing by or on behalf of the Commission. The staff will determine the specific drawings and information required. To save time, preliminary drawings should be submitted and approved prior to final drawings.
  - a. **Site, Public Access, Marsh Restoration, Grading, Landscaping and Architectural Plans.** Site, demolition, public access, marsh restoration, grading, landscaping and architectural plans shall include and clearly label the shoreline (Mean High Water or the inland edge of marsh vegetation up to 5 feet above Mean Sea Level if marsh is present), the line 100 feet inland of the line of the shoreline, property lines, the boundaries of all areas to be reserved for public access purposes and open space, grading, and details showing the location, types, dimensions, and materials to be used for all structures, irrigation, landscaping, drainage, seating, parking, signs, lighting, fences, paths, trash containers, utilities and other proposed improvements. The site plan shall provide a dimension line which marks the minimum distance between a proposed structure authorized by this permit and the Mean High Water Line (or, if marsh is present, the inland edge of marsh vegetation up to 5 feet above Mean Sea Level NGVD (National Geodetic Vertical Datum)). Additional dimension lines shall be provided, as necessary, to locate where this minimum dimension occurs in relation to either the property line, the top of bank, or some other fixed point upon the site.
  - b. **Engineering Plans.** Engineering plans shall be provided for levee work only and shall include a complete set of contract drawings and specifications and design criteria. The design criteria shall be appropriate to the nature of the project, the use of any structures, soil and foundation conditions at the site, and potential earthquake-induced forces. Final plans shall be signed by the professionals of record and be accompanied by:

- (1) Evidence that the design complies with all applicable codes; and
- (2) Evidence that a thorough and independent review of the design details, calculations, and construction drawings has been made.

Plans submitted shall be accompanied by a letter requesting plan approval, identifying the type of plans submitted, the portion of the project involved, and indicating whether the plans are final or preliminary. Approval or disapproval shall be based upon:

- (1) completeness and accuracy of the plans in showing the features required above, particularly the shoreline (Mean High Water Line or the inland edge of marsh vegetation up to 5 feet above Mean Sea Level if Marsh is present), property lines, and the line 100-feet inland of the shoreline, and any other criteria required by this authorization;
- (2) consistency of the plans with the terms and conditions of this authorization;
- (3) the provision of the amount and quality of public access to and along the shoreline and in and through the project to the shoreline required by this authorization; but limited to ensuring: (1) the public's use and enjoyment of the access area; (2) public safety; (3) accessibility for persons with disabilities; (4) sufficient durability and maintenance; and (5) the access is clear and continuous and encourages public use;
- (4) consistency with legal instruments reserving public access and open space areas;
- (5) assuring that any fill in the Bay does not exceed this authorization and will consist of appropriate shoreline protection materials as determined by or on behalf of the Commission;
- (6) consistency of the plans with the recommendations of the Design Review Board; and
- (7) assuring that appropriate provisions have been incorporated for safety in case of seismic event.

Plan review shall be completed by or on behalf of the Commission within 45 days after receipt of the plans to be reviewed.

2. **Conformity with Final Approved Plans.** All work, improvements, and uses shall conform to the final approved plans. No noticeable changes shall be made thereafter to any final plans or to the exterior of any constructed structure, outside fixture, lighting, landscaping, signage, parking area, or shoreline protection work without first obtaining written approval of the change(s) by or on behalf of the Commission. No work whatsoever shall be commenced pursuant to this authorization until final precise site, public access, marsh restoration, landscaping, grading, demolition, engineering, and best management practices plans and any other relevant criteria, specifications, and plan information for that portion of the work have been submitted to, reviewed, and approved in writing by or on behalf of the Commission.
3. **Discrepancies between Approved Plans and Special Conditions.** In case of any discrepancy between final approved plans and Special Conditions of this authorization or legal instruments approved pursuant to this authorization, the

Special Condition or the legal instrument shall prevail. The permittee is responsible for assuring that all plans accurately and fully reflect the Special Conditions of this authorization and any legal instruments submitted pursuant to this authorization.

4. **Appeals of Plan Review Decisions.** Any plan approval, conditional plan approval or plan denial may be appealed by the permittee(s) or any other interested party to the Design Review Board or, if necessary, subsequently to the Commission. Such appeals must be submitted to the Executive Director within 30 days of the plan review action and must include the specific reasons for appeal. The Design Review Board shall hold a public hearing and act on the appeal within 60 days of the receipt of the appeal. If subsequently appealed to the Commission, the Commission shall hold a public hearing and act on the appeal within 90 days of the receipt of the subsequent appeal.

**B. Public Access**

1. **Area.** The approximately 230,000-square-foot area, along approximately 1,450 linear feet of new shoreline proposed for Belmont Slough (new levee path) and the approximately 130,000-square-foot (3-acre) public park, and the approximately 2,700-linear-foot of new levee and public path located within a 40-foot-wide public access corridor inland of the wetland restoration site, as generally shown on Exhibit A, shall be made available to the public for unrestricted public access for walking, bicycling, sitting, viewing, nature study, fishing, picnicking, and related purposes. If the permittee wishes to use the public access area for any activity other than public access purposes, it must obtain prior written approval by or on behalf of the Commission.
2. **Permanent Guarantee.** Prior to the commencement of any grading or construction activity, in areas within the Commission's jurisdiction or within required public access areas, or within the area to be restored to tidal marsh (or prior to the sale of the first residential unit) the permittee shall, by instrument or instruments acceptable to counsel for the Commission, dedicate to a public agency or otherwise permanently guarantee such rights for the public to the public access areas described above, as shown on Exhibit A. The instrument(s) shall create rights in favor of the public, which shall commence no later than after completion of construction of any public access improvements required by this authorization, or by September 1, 2010, whichever occurs first. Such instrument shall be in a form that meets recordation requirements of San Mateo County and shall include a legal description of the property being restricted and a map that clearly shows the shoreline (Mean High Water Line or the inland edge of marsh vegetation up to 5 feet above Mean Sea Level if marsh is present), the property being restricted for public access, the legal description of the property and of the area being restricted for public access, and other appropriate landmarks and topographic features of the site, such as the location and elevation of the top of bank of any levees, any significant elevation changes, and the location of the nearest public street and adjacent public access areas. Approval or disapproval of the instrument shall occur within 30 days after submittal for approval and shall be based on the following:
  - a. Sufficiency of the instrument to create legally enforceable rights and duties to provide the public access area required by this authorization;
  - b. Inclusion of an exhibit to the instrument that clearly shows the area to be reserved with a legally sufficient description of the boundaries of such area; and
  - c. Sufficiency of the instrument to create legal rights in favor of the public for public access that will run with the land and be binding on any subsequent purchasers, licensees, and users.
3. **Recordation of the Instrument.** Within 30 days after approval of the instrument, the permittee shall record the instrument on all parcels affected by this instrument and shall provide evidence of recording to the Commission. No changes shall be made to the instrument after approval without the express written consent by or on behalf of the Commission.
4. **Improvements Within the Total Public Access Area.** Prior to the sale of the first townhome described herein or by September 1, 2010, whichever occurs first, the

permittee shall install the following public access improvements, as generally shown on attached Exhibit A:

- a. Construct an approximately 2,300-foot, 10-foot-wide public access trail atop the new levee system within a 40-foot-wide public access corridor;
- b. Construct an approximately 1,700-foot, 12-foot-wide sidewalk/bike path along Shearwater Parkway; and
- c. Construct a new approximately 3.0-acre public park, with public paths, benches, landscaping, parking for approximately 25-30 vehicles, and public tennis courts.

All public access improvements shall be Americans with Disabilities Act (ADA)-accessible and shall be consistent with the plans approved pursuant to Special Condition II-A of this authorization and substantially conform to the plans entitled "The Preserve at Redwood Shores, Keech Properties, LLC Sheets 1-21," dated May 2, 2008, prepared by Callander Associates.

5. **General Maintenance.** The areas and improvements within the public access areas authorized herein shall be permanently maintained by and at the expense of the permittee or its assignees. Such maintenance shall include, but is not limited to, repairs to all paths, overlooks, landscaping parking lot surfaces, levees, fencing, park furniture, any public access amenities such as signs, periodic cleanup of litter and other materials deposited within the access areas, removal of any encroachments into the access areas, and assuring that public access signs remain in place and visible. Within 30 days after notification by staff, the permittee shall correct any maintenance deficiency noted in a staff inspection of the site.
6. **Maintenance Required As A Result of Flooding.** The permittee shall be responsible for repairs to any public access areas or improvements that are damaged by future storms and/or flooding, including raising land elevations or redesign public access features to protect and ensure the usability of the public access areas and improvements, where appropriate.
7. **Assignment.** The permittee may transfer maintenance responsibility to a public agency or another party acceptable to the Commission at such time as the property transfers to a new party in interest but only provided that the transferee agrees in writing, acceptable to counsel for the Commission, to be bound by all terms and conditions of this permit.
8. **Reasonable Rules and Restrictions.** The permittee may impose reasonable rules and restrictions for the use of the public access areas to correct particular problems that may arise. Such limitations, rules, and restrictions shall have first been approved by or on behalf of the Commission upon a finding that the proposed rules would not significantly affect the public nature of the area, would not unduly interfere with reasonable public use of the public access areas, and would tend to correct a specific problem that the permittee has both identified and substantiated. Rules may include restricting hours of use and delineating appropriate behavior.
9. **Fencing.** Prior to installing any fencing bordering public access areas, the permittee shall submit preliminary design concepts for the fencing to the Commission staff, pursuant to Special Condition II-A. All new fencing shall be designed and sited to be as visually transparent as possible and to preserve the maximum feasible views of the Bay.

#### C. Marsh Restoration Plans and Work

Prior to performing any work to implement the tidal marsh restoration element of the project the permittee shall submit and receive approval by or on behalf of the Commission, pursuant to Special Condition II-A, of a marsh-restoration plan to be approved by or on behalf of the Commission for the restoration of approximately 92-acres of tidal flats, tidal marsh, and upland transition and grass land habitats. The restoration plan for the site shall generally conform to the "Wetlands Restoration and Management Plan for Area H" dated May 2008 and prepared by Huffman-Broadway Group, Inc. The approved plan shall encompass a 5-year post-construction monitoring period and, at a minimum, shall include the following:

1. **Site Conditions and Modifications.** A topographic map of the site at one-foot contour intervals showing the proposed modifications. All elevations shall be relative to National Geodetic Vertical Datum (NGVD) or North American Vertical Datum (NAVD). The map shall include typical cross-sections showing the proposed marsh plain elevations after fill placement, any channels, and any high spots, such as wind breaks and upland refuges. The map shall show: (1) figures for the ratios of typical horizontal to vertical slopes for proposed marsh surface, channels, and sloughs, particularly for areas where either grading, excavation, or fill will take place; (2) expected plant species along the cross-sections according to their expected zone of growth; (3) the elevation of adjacent surrounding levees; and (4) estimated Mean Higher High Water, Mean High Water, Mean Lower Low Water, Mean Sea Level, the maximum predicted tide, and the 100-year tide. To promote positive drainage, constructed elevations shall grade gently toward constructed channels, the breach or the concrete pipe. To promote natural sedimentation and colonization of the site, constructed elevations for the marsh plain shall generally be six to twelve inches lower than target elevations. The breaching of the exterior levee shall be coordinated with the invasive spartina control project to limit the introduction of invasive spartina to the restoration site.
2. **Earth Moving Schedule.** A schedule indicating when excavation, fill and/or grading will occur and the time to be allowed for settlement before levees are breached.
3. **Sedimentation.** Provisions for monitoring sedimentation in the restoration area using sedimentation pins or plates and staff gauges.
4. **Erosion.** A plan for monitoring the effects of the project on increasing erosion and scour within adjacent channels, fringe marsh and surrounding areas.
5. **Water Quality.** A water-quality monitoring program that shall, at a minimum, monitor pH, salinity, dissolved oxygen, turbidity and temperature in the restoration area.
6. **Vegetation.** Provisions for monitoring vegetation establishment in the areas returned to tidal action. Vegetation monitoring shall include an estimate of the percentage of the site revegetated, plant survival, approximate percentage representation of different plant species, including undesirable exotic vegetation, and a qualitative assessment of plant growth rates for the tidal restoration area, including adjacent transitional and upland habitats.
7. **Reference Site.** The permittee shall identify two suitable reference sites, which include tidal wetlands and tidal flat habitats, which shall be evaluated as part of the monitoring program and shall provide a reference for evaluating the progress of the restoration site. Monitoring shall begin for these sites at the same time that

monitoring is initiated at the restoration site and shall continue during each year of the 5-year monitoring period.

8. **Invasive Plant Control.** Monitoring reports submitted to the Commission pursuant to the approved monitoring plans shall report on all eradication efforts conducted on the site for invasive plant species such as non-native *Spartina*, broom and thistle as well as any efforts to control other invasive plant species on site. The project team shall work with the San Francisco Estuary Invasive *Spartina* Project to monitor and control introduced and invasive *Spartina*, in order to ensure regional coordination. The permittee shall completely control nonnative *spartina* species, and reasonably control (coverage of less than five percent of their expected zone of growth) during the 5-year monitoring period such undesirable nonnative species as star thistle and broom. Reasonable efforts shall be made to eradicate and/or control invasive species such as pampas grass, giant reed, and various species of broom for the duration of the monitoring period where feasible. Other invasive species of concern, such as *Lepidium*, wild radish, etc., shall be monitored and if eradication and/or control attempts are deemed appropriate, eradication and/or control attempts shall be implemented over the course of the monitoring period.
  9. **Monitoring Reports.** Monitoring reports describing the data collected pursuant to the approved restoration plan shall be submitted annually beginning on July 31<sup>st</sup>, after each monitoring year (years 1 through 5). The first annual monitoring report shall be submitted following the first full year of monitoring. These reports shall generally conform to the reporting requirements of the "Wetlands Restoration and Management Plan for Area H" dated May 2008 and prepared by Huffman-Broadway Group, Inc. The project's wetland scientist shall review the protocol and results of the monitoring program annually and suggest adjustments made to the monitoring procedures in the annual monitoring report. Any proposed adjustments to the monitoring protocols shall be approved by or on behalf of the Commission upon consultation with other resource agencies such as USFWS, NOAA Fisheries, CDFG, and RWQCB.
- D. **Mitigation Bank Agreement with the Commission.** Should the permittee desire to sell credits in the mitigation bank to project proponents needing mitigation to satisfy Commission mitigation requirements, the permittee shall establish an MOU agreement with the Commission, detailing how the mitigation credits may be used, describing the financial mechanisms to ensure success of the bank, assigning responsibility for the ecological success of the bank, outlining scientifically defensible methods for determining the timing and amount of credit withdrawals, and providing for the long-term maintenance, management, and protection of the bank site.
  - E. **Biological Opinion with the USFWS.** Prior to commencing any work, the permittee shall provide the Commission's staff with a copy of the (USFWS) Biological Opinion (BO). If the BO requires a reduction in the size of the required public access area, or a significant relocation or modification to the public access required by this permit, as determined by or on behalf of the Commission, no work may commence until the permittee obtains an amendment to this authorization. Any such amendment shall not result in a diminution in the size or quality of the public access area.
  - F. **Requirement of BCDC Permit No. 6-94 Permit Amendment.** With the issuance of this permit, the permittee shall coordinate with the City of Redwood City to have the City amend their BCDC Permit No. 6-94, by July 1, 2009, to reflect the changes to the

alternative inland public access authorized and required herein.

#### G. Marsh Construction Practices

1. **Best Management Practices.** All construction operations shall be performed to prevent construction materials from falling, washing, or blowing into tidal waters of the Bay. In the event that such material escapes or is placed in an area subject to tidal action of the Bay, the permittee shall immediately retrieve and remove such material at their expense. The permittee shall also employ best management practices, such as compaction, soil fences, jute matting, etc., to assure that excavated or stockpiled material will not erode into Belmont Slough after placement.
2. **Marsh and Upland Plant Protection During Construction.** The work authorized by this permit shall be performed in a manner that will prevent, avoid, or minimize to the extent possible any significant adverse impact on any tidal marsh, other sensitive wetland resources, and existing native upland vegetation. The permittee shall employ mitigation measures to minimize impacts to wetland areas, such as: (1) minimizing all traffic in marsh/mudflat areas; and (2) using areas that will later be excavated as channels as transportation corridors for construction equipment.
3. **Protection of Water Quality.** All construction debris and any uncovered excavated material shall be removed from the project site for proper disposal outside the Commission's jurisdiction. Some excavated material may be used as fill material as portions of the site are reconfigured to support a variety of wetlands habitats. Excavated debris or material may be temporarily stored within the Commission's jurisdiction, provided measures are employed to assure that such material does not wash or erode into the surrounding marsh or waterways. In the event that any such material is placed in any area within the Commission's jurisdiction for an extended period (i.e., more than 60 days), the permittee, its assigns, or successors in interest, or the owner of the improvements, shall remove such material, at their expense, within ten days after they have been notified by the Executive Director of such placement. Any equipment or vehicles driven and/or operated within or adjacent to the site shall be cleaned of all external oil, grease, and materials that, if introduced to water, could be deleterious to aquatic life or wildlife habitat. Stationary equipment such as motors, pumps, generators, and welders, located within or adjacent to any existing or proposed tidal wetlands shall be positioned over drip pans.
4. **Protection of Special Status Animal Species.** The permittee shall take all precautions to avoid adverse impacts to the California clapper rail and salt marsh harvest mouse. The permittee shall employ the mitigation measures outlined in its permit application and subsequent submittals, and the pending U.S. Fish and Wildlife Service's (USFWS) Biological Opinion for Formal Consultation under Section 7 of the Endangered Species Act with the U.S. Army Corps of Engineers (Corps).

In addition, a qualified biologist shall be present to monitor construction activities during the California clapper rail breeding season (between February 1 and September 1) when such construction activities would occur in areas within 500 feet (or such distance specified in the BO prepared for this project) of habitat known to be occupied by the endangered California clapper rail. The biologist shall be responsible to survey (using survey methods approved by the USFWS) for the

presence of the clapper rail and shall have the authority to require additional wildlife protective measures such as fencing and noise buffers or to stop work. If individual California clapper rails or nests are found within 500 feet (or such distance specified in the BO prepared for this project), the USFWS shall be contacted and consultation shall be reinitiated.

- H. **Expanded BCDC Jurisdiction.** Notice is hereby given that, under Section 66610(a) of the McAteer-Petris Act, once the new restoration site authorized herein has been opened to tidal action, the Commission's "Bay" jurisdiction will extend to the areas newly subject to tidal action. Jurisdiction will extend to all areas of the new edge of the Bay (the inland edge of marsh vegetation up to five feet above Mean Sea Level) and the corresponding 100-foot shoreline band established by the excavation work and breaching of levees. Thus, any future work proposed in areas that become subject to the Commission's jurisdiction as a result of the project, even if they are not currently with the Commission's jurisdiction, will require authorization by or on behalf of the Commission.

- I. **Hold Harmless and Indemnify.** The permittee shall hold harmless and indemnify the Commission, all Commission members, Commission employees, and agents of the Commission from any and all claims, demands, losses, lawsuits, and judgments accruing or resulting to any person, firm, corporation, governmental entity, or other entity who alleges injuries or damages caused by work performed in accordance with the terms and conditions of this permit. This condition shall also apply to any damage caused by flooding of or damage to property that is alleged to be caused as a result of some action or lack of action by the Commission growing out of the processing of and issuance of this permit.
- J. **Responsibility for Flooding.** The Commission shall not be responsible for any flooding that may occur as a result of undertaking this project.
- K. **Notice of Assignment**
1. **Notice to Buyers.** Prior to entering into any agreement to transfer any interest in any property subject to this permit, the permittee(s), or any assignee(s) of this permit or any part of it, shall provide the third party with a copy of this permit and shall call his or her attention to any provisions regarding public access or open space or the need to obtain approval of construction plans prior to the commencement of any construction.
  2. **Assignment of Permit.** No more than ten days after transferring any interest in any property subject to this permit to another party, the transferor(s) shall (a) notify the Commission of the nature of the transfer, the name, address, and telephone number of the transferee, and the effective date of the transfer, and (b) shall also submit an assignment of this permit for the area transferred that has been executed by the transferor and the transferee and that indicates that the transferor has transferred the permit as it applies to the property that was transferred and that the transferee has read, understood, and has agreed to be bound by the terms and conditions of this permit.
  3. **Assignment of Public Access Maintenance Responsibility.** Prior to assigning any portion of this permit, the permittee shall submit for approval by or on behalf of the Commission a legal instrument that establishes a single entity responsible for maintaining all public access areas, improvements, and landscaping. The Executive Director shall approve the instrument only if it demonstrates to the Executive Director's satisfaction that the entity can and will meet the responsibilities for maintaining all of the public access areas, improvements, and landscaping required herein.

If the permittee proposes to establish an entity that has a membership, such as a homeowners' association, the instrument shall also: (1) establish the authority of the entity to impose charges on its members to assure that the entity has sufficient financial resources to maintain all of the public access improvements and landscaping; (2) provide that the entity has the legal authority to take any and all actions necessary to maintain all of the public access improvements and landscaping; (3) provide that each and every member is jointly and severally responsible with each and every other member to maintain all of the public access improvements and landscaping pursuant to this permit; (4) provide that the Commission may serve all notices, including notices on any members, on the entity

only; and (5) provide that the entity has the authority to accept a partial assignment of the amended permit for the purposes described above.

- L. **Notice to Contractor.** The permittee shall provide a copy of this permit to any contractor or person working in concert with the permittee to carry out the activities authorized herein and shall point out the special conditions contained herein.
- M. **Recording.** The permittee shall record this permit or a notice specifically referring to this permit on all parcels affected by this permit with San Mateo County within 30 days after execution of the permit issued pursuant to this authorization and shall, within 30 days after recordation, provide evidence of recordation to the Commission.

### III. Findings and Declarations

This authorization is given on the basis of the Commission's findings and declarations that the work authorized herein is consistent with the McAteer-Petris Act, the *San Francisco Bay Plan*, the California Environmental Quality Act, and the Commission's amended coastal zone management program for San Francisco Bay for the following reasons:

- A. **Priority Use Designation.** The proposed project is located in an area designated as Waterfront Park/Beach in Bay Plan Map No. 6. The project is consistent with the priority use designation for the site as it will restore approximately 90 acres of tidal marsh and associated transitional and upland habitats and will provide public access and recreational opportunities appropriate to its primary function as a wildlife area.

The Commission, therefore, finds that the project will be consistent with the Bay Plans policies on Waterfront Park/Beach Priority Use Areas.

- B. **Bay Fill.** The Commission may allow fill only when it meets the fill requirements identified in Section 66605 of the McAteer-Petris Act which states, in part, that: (a) [f]urther filling of San Francisco Bay...should be authorized only when public benefits from fill clearly exceed public detriment from the loss of the water areas and should be limited to water-oriented uses (such as ports, water-related industry, airports, bridges, wildlife refuges, water-oriented recreation and public assembly, water intake and discharge lines for desalinization plants and power generating plants requiring large amounts of water for cooling purposes) or minor fill for improving shoreline appearance or public access to the Bay; (b) [t]hat fill in the Bay...for any purpose should be authorized only when no alternative upland location is available for such purposes; (c) [t]hat the water area authorized to be filled should be the minimum necessary to achieve the purpose of the fill; and (d) [t]hat the nature, location and extent of any fill should be such that it will minimize harmful effects to the Bay Area, such as the reduction or impairment of the volume surface area or circulation of water, water quality, fertility of marshes or fish or wildlife resources...."

The San Francisco Bay Plan policies on water surface area and volume state that, "[w]ater circulation in the Bay should be maintained, and improved as much as possible. Any proposed fills, dikes or piers should be thoroughly evaluated to determine their effects on water circulation and then modified as necessary to improve circulation or at least to minimize any harmful effects."

The project will involve placing an approximately 54 inch-in-diameter concrete pipe partially in the Bay and partially within the 100-foot shoreline band to increase tidal circulation in the southwest corner of the tidal restoration area. The pipe will be located underneath the 900-foot spur trail along Belmont Slough. The applicant states that without adequate circulation in this area, the water circulation coming from the

large levee breach may be insufficient to achieve the goals of restoring tidal marsh to the site outlined for restoration and could potentially create stagnant water.

The Commission finds that the very small amount of authorized fill is for a water-oriented use (wildlife enhancement of an area that will be eventually conveyed to the U. S. Fish and Wildlife Service as part of its south Bay wildlife refuge), is the minimum necessary to improve water circulation, and that no feasible upland alternative exists. The Commission, therefore, finds that the authorized fill is consistent with the fill requirements of the McAteer-Petris Act and Bay Plan.

- C. **Public Access.** The proposed project will require the replacement of 1,700 feet of an existing public access trail along Shearwater Parkway that was previously required by BCDC Permit No. 6-94. That permit was issued to the City of Redwood City and authorized raising the exterior levee to meet U.S. Army Corps of Engineer standards for providing flood protection to the entire Redwood Shores peninsula. Prior to the issuance of that permit, the public had access to the entire perimeter levee. However, USFWS expressed serious concerns regarding that project's potential for adversely impacting the endangered California clapper rail and the salt marsh harvest mouse. USFWS stated that the strengthened levees would not only protect existing development, but would also allow future development which would lead to increased human disturbance, increased predator pressure, a reduction in the ability to control predators, and habitat loss that would jeopardize the continued existence of these two endangered species in the tidal marshes outboard of the project levees. As a result of the USFWS's recommendations, public access on the perimeter levee was suspended and an alternative inland public access route was developed bordering open space areas (a key requirement of the alternative inland public access route), but no longer bordering the Bay. A 1,700-foot portion of that inland trail system runs through this project site and will be relocated as a result of the project authorized herein. This trail segment will be replaced by a new 1,700-foot, 12-foot-wide combined bike trail/sidewalk along Shearwater Parkway (this segment will not border open space areas, but will connect to existing street pedestrian and bicycle access), and a new 2,400-foot, 10-foot-wide path along the top of the new levee that would be constructed between the proposed project and the 92-acre tidal restoration area (this segment will border an area that will, when the levee is breached, be part of San Francisco Bay). In addition, the applicant proposes to provide a 3.0-acre neighborhood park and three viewing areas along the levee top trail, improve an existing 900-foot spur trail along a segment of the exterior levee, and expand an existing public shore parking lot to accommodate 25-30 parking spaces.

1. **Maximum Feasible Public Access.** Section 66602 of the McAteer-Petris Act states that "...existing public access to the shoreline and waters of the...[Bay]...is inadequate and that maximum feasible public access, consistent with a proposed project, should be provided." While only a small portion of this project is within the Commission's jurisdiction, the project would effectively eliminate potential future public access on the perimeter levee, over which the Commission expressly required In BCDC Permit No. 6-94 that public access rights on the levee not be extinguished, but simply suspended. The Commission reserved its right to reopen access on this levee pending the Commission's review of the status of the California clapper rail and the salt marsh harvest mouse. The ability to have access on the exterior levee will be significantly diminished with the breaching and lowering of the levee. In addition, a 1,700-foot segment of the access that the Commission required to offset the suspension of access on the perimeter levee (nearly all of which is outside of the Commission's jurisdiction) will be relocated and expanded as a result of this project as described above. With construction of

the authorized project, however, the public will still have continuous trail access along open-space areas and, when the tidal restoration project is completed, along a new wetland area of San Francisco Bay. In addition, this authorization requires a number of new public access amenities, such as observation areas, expanded public parking, seating areas, landscaping, a new 3.0 acre neighborhood park, and improved signage. While some of the new townhomes will intrude on the open space experience, the fact that the trail will be on the levee top will provide some separation between private and public areas, and the adjacent homes provide additional security for public trail users.

2. **Minimize Impacts to Wildlife.** The Bay Plan Public Access policies state in part, “[p]ublic access to some natural areas should be provided to permit study and enjoyment of these areas. However, some wildlife are sensitive to human intrusion. For this reason, projects in such areas should be carefully evaluated in consultation with appropriate agencies to determine the appropriate location and type of access to be provided...” (Policy No. 3.) The policies further state, “...[p]ublic access should be sited, designed and managed to prevent significant adverse effects on wildlife...” and “...[p]ublic access improvements provided as a condition of any approval should be consistent with the project and the physical environment, including protection of the Bay natural resources, such as aquatic life, wildlife and plant communities, and provide for the public’s safety and convenience. The improvements should be designed and built to encourage diverse Bay-related activities and movement to and along the shoreline, should permit barrier free access for the physically handicapped, and should be identified with appropriate signs.” (Policy No. 6). Finally, the policies state, “[p]ublic access should be integrated early in the planning and design of Bay habitat restoration projects to maximize public access opportunities and to avoid significant adverse effects on wildlife” (Policy No. 4).

The proposed public access areas and facilities adjacent to the restored wetlands have been designed in consultation with the USFWS. The applicant’s original proposal for public access adjacent to wetland areas has been modified to reflect the USFWS concerns regarding the project’s potential to impact the endangered California clapper rail and salt marsh harvest mouse. However, the Biological Opinion (BO) for this project has not yet been issued, so there is some potential that the final recommendations of the USFWS may lead to further revisions to the public access areas and improvements. Some of the project design features that have been incorporated to reduce potential impacts on fish and wildlife species include: (1) lowering and breaching the outer levee to prevent access to sensitive habitat; (2) creating a 7:1 exterior slope on the new levee that would provide approximately 50feet of upland habitat adjacent to the restored tidal wetlands; (3) installing a 5-foot-high chain-link-fence at the inland edge of the upland buffer to create a physical barrier to sensitive wetlands and wildlife; (4) creating an additional 20 feet of buffer landscaping between the fence and the public access path on top of the levee; and (5) installing interpretive signs at overlooks to educate the public about the history, ecology, and sensitive nature of the Bay’s natural resources. This authorization includes a condition requiring the permittee to provide the Commission with the BO prior to beginning any work and to apply for a permit amendment if the BO requires modifications to the public access required herein, and requires that any such amendment not result in the

diminution of the public access area or the quality of the public access experience.

3. **Appearance, Design and Views.** The Bay Plan's public access policies further state that "[a]ccess to and along the waterfront should be provided by walkways, trails, or other appropriate means and connect to the nearest public thoroughfare..." (Policy No. 8). "The Public Access Design Guidelines state that, "access areas are utilized most if they provide direct connections to public rights-of-way such as streets and sidewalks..." and "should be planned in collaboration with local governments to provide for future connections." The Guidelines further state that this may be accomplished by "providing connections perpendicular to the shoreline at regular intervals...to maximize the opportunities for accessing and viewing the Bay." The Guidelines also recommend "locating buildings, structures...and landscaping...such that they enhance and dramatize views of the Bay and the shoreline from public thoroughfares and other public spaces" and "organizing shoreline development to allow Bay views and access between buildings."

When completed, the project would provide continuous public access along the shoreline and would connect to the existing Bay Trail to the east and west. The new trail on top of the levee will afford views of a 92-acre tidal wetland, a new part of San Francisco Bay. Two major local streets (Shearwater Parkway and Marine Parkway) adjoin the project and provide convenient vehicular access and an existing public parking lot will be expanded to accommodate up to 30 cars. The Design Review Board suggested that two view corridors be provided through the development to increase the public's awareness of the shoreline trail system and the Bay beyond (at the school site and approximately midway through the townhome development), but were aware that these locations were outside the Commission's jurisdiction. The applicant relocated the proposed day care center at the school and revised the planting plan to provide the two view corridors suggested by the DRB.

For these reasons, the Commission finds that the proposed project, as conditioned to fully relocate the existing alternative inland access trail to a new area on top of a levee bordering a restored wetland area of San Francisco Bay, and with additional public access amenities, provides the maximum feasible public access consistent with the project, has been designed to minimize impacts to wildlife, and is consistent with the Bay Plan's policies on appearance, design and views.

- D. **Mitigation.** The Bay Plan mitigation policies state that: "[t]o encourage cost effective compensatory mitigation programs, especially to provide mitigation for small fill projects, the Commission may extend credit for certain fill removal and allow mitigation banking provided that any credit or resource bank is recognized pursuant to written agreement executed by the Commission. Mitigation bank agreements should include: (a) financial mechanisms to ensure success of the bank; (b) assignment of responsibility for the ecological success of the bank; (c) scientifically defensible methods for determining the timing and amount of credit withdrawals; and (d) provisions for long-term maintenance, management and protection of the bank site. Mitigation banking should only be considered when no mitigation is practicable on or proximate to the project site."

The proposed project involves little work in the Bay and will impact an unknown, but relatively small (probably less than 1,000 square feet) area of tidal marsh and tidal flats

when the levee is breached to restore tidal action to the 92-acre restoration site. This authorization has not required mitigation for these small project impacts, largely because the impacts will occur as part of the restoration of 92 acres of tidal wetlands. The permittee shall establish a wetland mitigation bank and proposes to sell credits in the proposed tidal restoration area. Other resource agencies are still currently reviewing the applicant's proposal and working out the specific details of the mitigation bank and the financial assurances for the proposed tidal restoration project. It is anticipated that a final agreement will be reached by early fall of 2008. When the final agreement is completed, the applicant may seek a mitigation agreement with the Commission. Special Condition II-D requires the permittee to enter an MOU agreement with the Commission if it intends to use the mitigation bank for impacts to tidal marshes within the Commission's jurisdiction. This special condition lays out the parameters of such an MOU, following the exact guidelines of the *San Francisco Bay Plan*.

The Commission, therefore, finds that the project as conditioned, will be consistent with the Bay Plan policies on mitigation.

- E. **Sea Level Rise and Safety of Fills.** The Bay Plan policies on the safety of fills state in part that, “[t]o prevent damage from flooding, structures on fill or near the shoreline should have adequate flood protection including consideration of future relative sea level rise as determined by competent engineers.” Additionally, the policies state that, “[t]o minimize the potential hazard to Bay fill projects and bayside development from subsidence, all proposed development should be sufficiently high above the highest estimated tide level for the expected life of the project or sufficiently protected by levees....”

Further, the policies state that, “[l]ocal governments and special districts with responsibilities for flood protection should assure that their requirements and criteria reflect future relative sea level rise and should assure that new structures and uses attracting people are not approved in flood prone areas or in areas that will become flood prone in the future, and that structures and uses that are approvable will be built at stable elevations to assure long-term protection from flood hazards.”

While the proposed project involves only a negligible amount of Bay fill associated with wetland restoration, it will provide public access on exterior levees, as well as schools and townhomes inboard of the exterior levee.

The applicant states that “[o]f particular concern in the design of The Preserve is flood protection for the community. Redwood City and the COE determined in the 1990s that the current perimeter levee system, with a crest height of 7-8 feet above mean sea level (MSL), did not provide adequate protection from coastal flooding hazards. Phase 1 of this project would construct a new, interior levee around the new school and townhomes and along the eastern boundary of the site to replace the existing levee. The new levees would be constructed with a crest height of 11.5 feet above MSL initially, allowing for approximately 2 feet of settlement to achieve a post-settlement crest elevation at or above 9.2 feet above MSL. Additionally, the outboard slope of the levee would be 7:1 to resist wave run-up. These design parameters are based on the findings of a recently completed coastal hazards study prepared by Moffatt & Nichol and a geotechnical study prepared by Treadwell and Rollo. This new levee would then serve as the primary flood protection for The Preserve when the exterior levee is breached during Phase 2.” It is unclear at this time whether these elevations would provide sufficient flood protection under various scenarios of anticipated sea level rise. However, if the levees at the project site fail, or are too low to preclude extreme high tides, the entire Redwood Shores Peninsula would flood.

Analyzing the impacts of future sea level rise on an individual project site is still an imprecise science with many unknown variables. The Commission did not independently evaluate the design of the proposed levee, or the potential impact of restoring the 92-acre restoration site on levee stability. Special Condition II-B-6 is included in the authorization to ensure that the maximum feasible public access consistent with the project is maintained and endures for the life of the project. This condition requires the permittee to assure that the required public access areas are not inundated by rising sea levels. Special Conditions II-I and II-J are included to ensure that the Commission is not responsible for property damage related to future flooding.

The Commission finds, therefore, that with this permit’s special conditions that require maintenance of public access on the site with rising sea level, and the protection of the

Commission from liability should the project's levees fail, the project is consistent with the Bay Plan's policies on sea level rise and safety of fills.

- F. **Review Boards.** The Design Review Board reviewed the proposed project on February 11, 2008. The Board emphasized the importance of having appropriate connections between the proposed public access trail and existing adjacent access areas. The Board further suggested that there could be a better relationship between the finished floor elevations of the homes and the height of the levee, suggesting that the applicant investigate whether it would be possible to raise the elevation of townhomes fronting the exterior levee to create a better relationship between the townhomes and the public access area on the levee, thereby increasing the sense of security for users of the public access area by being more visible from the residents. The Board also wanted to see the view corridors strengthened within the project boundaries. In response to this recommendation, the permittee provided two view corridors through the project - one through the school by relocating the day care center, and one through the townhomes by revising the planting plan to relocate trees. Overall, the Board supported the project
- G. **Environmental Review.** The City of Redwood City, the lead agency for the proposed project, prepared, circulated, and on December 18, 2007, adopted a Final Environmental Impact Report for the project.

The City of Redwood City also adopted CEQA findings ("findings"), including the adoption of a mitigation and monitoring program and other measures that address environmental issues pertaining to activities subject to the permits granted by the Commission, RWQCB, and the U.S. Army Corps of Engineers. Those include impacts to air quality, water resources and quality, cultural resources, land use and recreation. The City adopted mitigation measures addressing these topics, implemented through the associated and approved habitat mitigation monitoring program, and found that with these mitigation measure the project would avoid or substantially lessen each potentially significant effect as identified in the EIR.

In addition, as discussed above, the Commission has also adopted and incorporated into the proposed Commission permit special conditions to address effects of the project on the Commission's jurisdiction, including impacts related to fill, public access, mitigation, and safety of fills. Based on the special conditions, the Commission finds the proposed project will not have significant adverse effects. With respect to other significant impacts identified in the EIR, the changes or alterations necessary to avoid or substantially lessen the impacts have been adopted by the City of Redwood City and incorporated into the project that is the subject of this permit. Therefore, the Commission finds that the proposed project as conditioned is consistent with the requirements of CEQA.

- H. **Conclusion.** For all the above reasons, the Commission finds, declares, and certifies that, subject to the Special Conditions stated herein, the project authorized herein is consistent with the *San Francisco Bay Plan*, the McAteer-Petris Act, the Commission's Regulations, the California Environmental Quality Act, and the Commission's Amended Management Program for the San Francisco Bay segment of the California coastal zone.

#### IV. Standard Conditions

- A. This permit shall not take effect unless the permittee executes the original of this permit and returns it to the Commission within ten days after the date of the issuance of the permit. No work shall be done until the acknowledgment is duly executed and returned to the Commission.

- B. The attached Notice of Completion and Declaration of Compliance form shall be returned to the Commission within 30 days following completion of the work.

- C. The rights, duties, and obligations contained in this permit are assignable. When the permittee transfers any interest in any property either on which the authorized activity will occur or which is necessary to the full compliance of one or more conditions to this permit, the permittee/transferor and the transferee shall execute and submit to the Commission a permit assignment form acceptable to the Executive Director (*call for a copy of the form or download it from our website*). An assignment shall not be effective until the assignee executes and the Executive Director receives an acknowledgment that the assignee has read and understands the permit and agrees to be bound by the terms and conditions of the permit, and the assignee is accepted by the Executive Director as being reasonably capable of complying with the terms and conditions of the permit.
- D. Unless otherwise provided in this permit, the terms and conditions of this permit shall bind all future owners and future possessors of any legal interest in the land and shall run with the land.
- E. Unless otherwise provided in this permit, any work authorized herein shall be completed within the time limits specified in this permit, or, if no time limits are specified in the permit, within three years. If the work is not completed by the date specified in the permit, or, if no date is specified, within three years from the date of the permit, the permit shall become null and void. If a permit becomes null and void for a failure to comply with these time limitations, any fill placed in reliance on this permit shall be removed by the permittee or its assignee upon receiving written notification by or on behalf of the Commission to remove the fill.
- F. All required permissions from governmental bodies must be obtained before the commencement of work; these bodies include, but are not limited to, the U. S. Army Corps of Engineers, the State Lands Commission, the Regional Water Quality Control Board, and the city and/or county in which the work is to be performed, whenever any of these may be required. This permit does not relieve the permittee of any obligations imposed by State or Federal law, either statutory or otherwise.
- G. Work must be performed in the precise manner and at the precise locations indicated in your application, as such may have been modified by the terms of the permit and any plans approved in writing by or on behalf of the Commission.
- H. Work must be performed in a manner so as to minimize muddying of waters, and if diking is involved, dikes shall be waterproof. If any seepage returns to the Bay, the permittee will be subject to the regulations of the Regional Water Quality Control Board in that region.
- I. Unless otherwise provided in this permit, all the terms and conditions of this permit shall remain effective for so long as the permit remains in effect or for so long as any use or construction authorized by this permit exists, whichever is longer.
- J. Any area subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission under either the McAteer-Petris Act or the Suisun Marsh Preservation Act at the time the permit is granted or thereafter shall remain subject to that jurisdiction notwithstanding the placement of any fill or the implementation of any substantial change in use authorized by this permit.
- K. Any area not subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission that becomes, as a result of any work or project authorized in this permit, subject to tidal action shall become subject to the Commission's "bay"

jurisdiction.

- L. This permit reflects the location of the shoreline of San Francisco Bay when the permit was issued. Over time, erosion, avulsion, accretion, subsidence, relative sea level change, and other factors may change the location of the shoreline, which may, in turn, change the extent of the Commission's regulatory jurisdiction. Therefore, the issuance of this permit does not guarantee that the Commission's jurisdiction will not change in the future.
- M. Except as otherwise noted, violation of any of the terms of this permit shall be grounds for revocation. The Commission may revoke any permit for such violation after a public hearing held on reasonable notice to the permittee or its assignee if the permit has been effectively assigned. If the permit is revoked, the Commission may determine, if it deems appropriate, that all or part of any fill or structure placed pursuant to this permit shall be removed by the permittee or its assignee if the permit has been assigned.
- N. Unless the Commission directs otherwise, this permit shall become null and void if any term, standard condition, or special condition of this permit shall be found illegal or unenforceable through the application of statute, administrative ruling, or court determination. If this permit becomes null and void, any fill or structures placed in reliance on this permit shall be subject to removal by the permittee or its assignee if the permit has been assigned to the extent that the Commission determines that such removal is appropriate. Any uses authorized shall be terminated to the extent that the Commission determines that such uses should be terminated.
- O. The permittee shall grant permission to any member of the Commission's staff to conduct a site visit at the subject property during and after construction to verify that the project is being and has been constructed in compliance with the authorization and conditions contained herein. Site visits may occur during business hours without prior notice and after business hours with 24-hour notice.

Exhibit A

Total Public Access Improvements

TO BE PROVIDED BY Applicant

Exhibit B

Total Dedicated Public Access

TO BE PROVIDED BY Applicant