

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

50 California Street • Suite 2600 • San Francisco, California 94111 • (415) 352-3600 • Fax: (415) 352-3606 • www.bcdc.ca.gov

December 30, 2008

Application Summary

(For Commission consideration on January 15, 2009)

Number: BCDC Permit Application No. 1-08
Date Filed: December 5, 2008
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Staff Assigned: Ming Yeung (415/ 352-3616 mingy@bcdc.ca.gov)

Summary

Applicants: San Francisco Bay Area Water Emergency Transportation Authority (WETA) and San Mateo County Harbor District (Harbor District).

Location: Oyster Point Marina, located at the intersection of Oyster Point Boulevard and Marina Boulevard, in the City of South San Francisco, San Mateo County (Exhibits A and B).



Making San Francisco Bay Better

Project: The proposed South San Francisco Ferry Terminal project would be carried out in four consecutive phases within the east basin of the Oyster Point Marina and involve removing two recreational floating docks (Docks 9 and 10) and floats at the end of three docks (Docks 11, 12 and 13), dredging approximately 19,300 cubic yards of new material to accommodate the ferries, placing approximately 13,320 square feet of pile-supported and floating fill to construct a ferry terminal and 17 cubic yards of rock riprap for shoreline protection, and constructing public access near the site (Exhibits C, D, E, and F). The proposed ferry terminal would consist of a 3,000-square-foot pile-supported public access viewing terrace which would serve as the entryway to the terminal, a 3,400-square-foot pile-supported ferry pier, a 920-square-foot gangway, and a 5,200-square-foot boarding float for two berths (Exhibit D). The proposed ferry terminal would provide service to the East Bay (either Harbor Bay, Alameda Point or Jack London Square) initially, and to San Francisco in the future.

The proposed public access improvements include a public access viewing terrace, a portion of the ferry pier during ferry operating hours, improvements to an existing approximately 565-foot-long north-south public access pathway to improve pedestrian circulation to and from the ferry terminal, up to 12 bike lockers, five public access parking spaces, public access signs and landscaping (Exhibits F and G).

Issues Raised: The staff believes that the application raises six primary issues: (1) whether the project is consistent with the San Francisco Bay Plan's (Bay Plan) waterfront park priority use designation for the site; (2) whether the proposed fill for the project is consistent with the McAteer-Petris Act and the Bay Plan policies on fill and safety of fills; (3) whether the proposed public access is the maximum feasible consistent with the project and consistent with the Bay Plan policies on appearance, design and scenic views; (4) whether the project is consistent with the Bay Plan policies on natural resources including fish, other aquatic organisms and wildlife; (5) whether the project is consistent with the Bay Plan policies regarding dredging; and (6) whether the project is consistent with the Bay Plan policies regarding transportation.

Background

The proposed project site is located at the Oyster Point Marina (Oyster Point), located approximately 1.5 miles east of Highway 101, two miles north of the San Francisco International Airport and ten miles south of the City of San Francisco (Exhibit A). Several office complexes surround the project site, including the Oyster Point Business Park to the north and a United Parcel Service (UPS) facility and the Genentech campus to the south. Oyster Point is an approximately 46-acre facility built on a capped landfill that includes a 33-acre park, a 2.5-acre sandy beach, a boat launch ramp, fishing pier, boat storage and sales, offices, picnic facilities, and parking for approximately 580 cars (Exhibit B). The marina is divided into an east and west basin where approximately 600 small craft boat slips are located. BCDC Permit No. 1-77, issued to the Harbor District, authorizes the current marina uses and associated maintenance dredging of the marina to a depth of -8 feet MLLW with a two-foot over-dredge allowance. An approximately 1,920-foot-long, ten-foot-wide paved, public access pathway runs along the entire shoreline of Oyster Point. At the center of Oyster Point, an approximately four-foot-wide, unimproved, north-south trail connects the north and south Bay Trail segments. The proposed ferry terminal would be located within the east basin of the marina where Docks 9 and 10 currently lie (Exhibit F).

Oyster Point is owned by the City of South San Francisco and operated by the Harbor District under a Joint Powers Agreement with the City. The City is exploring opportunities to redevelop Oyster Point to increase the intensity and variety of uses at the site. Such redevelopment would include raising the elevation of the site to address settlement and subsidence issues. The U.S. Army Corps of Engineers (Corps) is currently reconfiguring the marina breakwater to reduce wave activity within the marina basin and improve navigational safety, reliability and efficiency of vessels entering the marina.

Project Description

Project

Details:

The applicants, the San Francisco Bay Area Water Emergency Transportation Authority (WETA) and San Mateo County Harbor District (Harbor District), describe the project as follows:

In the Bay:

- a. Remove two recreational docks (Docks 9 and 10) and floats at the end of three docks (Docks 11, 12 and 13), totaling approximately 80 square feet (145 cubic yards) of solid fill (pilings), 17,400 square feet of floating fill (boat berths) and 1,400 square feet of cantilevered fill (gangways);
- b. Install, use and maintain nine, 16-inch-square concrete piles to reconstruct

end ties at Docks 11, 12 and 13;

- c. Construct, use and maintain an approximately 3,400-square-foot ferry pier, supported by ten piles (three, 42-inch-in-diameter and seven, 36-inch-in-diameter);
- d. Construct, use and maintain an approximately 920-square-foot gangway and a 5,200-square-foot boarding float, secured by four, 42-inch-in-diameter piles;
- e. Construct, use and maintain four, 42-inch-in-diameter dolphin piles, ringed by a floating donut fender, to prevent vessel collision with structures (one at the fuel station, one at the end of Dock 11 and two at the end of the ferry boarding float);
- f. Place, use and maintain approximately 17 cubic yards of rock riprap over a 450-square-foot-area around the ferry terminal; and
- g. Dredge an approximately 215,500-square-foot (4.9-acre) area of the marina channel and ferry terminal area to -10 feet mean low or low water (MLLW) and 22,800-square-foot (0.52-acre) area of the ferry berthing area to -12 feet MLLW, as shown on Exhibit E, plus a two-foot over-dredge allowance, resulting in a total of approximately 19,300 cubic yards of new material, and place the material at the Alcatraz (SF-11) disposal site.

In the Bay and Within the 100-foot Shoreline Band:

- a. Construct, use and maintain a 3,000-square-foot public access viewing terrace with benches, trashcans, and signs, supported by 16, 20-inch-square piles (13 in the Bay and three within the shoreline band) and three concrete hinged slabs connecting the terrace to the shoreline.

Within the 100-foot Shoreline Band:

- a. Install, use and maintain 12 bike lockers, five public access parking spaces, up to four public access signs and other related public access improvements; and
- b. Install, use and maintain landscaping adjacent to the public access viewing terrace.

Bay Fill:

The proposed project would remove a total of 18,880 square feet of Bay fill: 80 square feet (145 cubic yards) of solid fill from piles, 17,400 square feet of floating fill from the removal of Docks 9 and 10, and 1,400 square feet of cantilevered fill from the removal of related ramps and gangways. The proposed project would place a total of 13,980 square feet of Bay fill: 660 square feet (149 cubic yards) of new solid fill for piles and riprap, 6,000 square feet of new floating fill for the boarding float and donut fenders, 6,400 square feet of new pile-supported fill for the viewing terrace and pier, and 920 square feet of new cantilevered fill for the gangway. The project would increase the amount of solid and pile-supported fill in the Bay but would reduce the amount of cantilevered and floating fill. In total, the proposed project would result in a net increase of 4,900 square feet of Bay surface area.

Type of Fill (sq ft)	Removed	New	Total Net Fill (sq ft)
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Solid	-80	660	580
Floating	-17,400	6,000	-11,400
Pile-Supported		6,400	6,400
Cantilevered	-1,400	920	-480
Total (sq ft)	-18,880	13,980	-4,900

**Public
Access:**

The existing public access at the site includes an approximately 1,920-foot-long, ten-foot-wide paved, public access pathway along the entire peninsula shoreline with six benches, six trashcans, two picnic tables, signs, and a windsurfer launch ramp on the south side of the peninsula, as required in BCDC Permit No. 1-77, issued to the Harbor District for the construction of the marina and associated facilities. In addition, the site includes a 2.5-acre sandy beach at the northwest portion of the site, and a fishing pier and a public boat launch ramp near the east basin of the marina (Exhibit F). The proposed public access for the project would include: (1) a 3,000-square-foot raised public access viewing terrace that would serve as the entryway to the ferry terminal with 12 benches and two trashcans; (2) an approximately 2,300-square-foot section of the 3,400-square-foot ferry pier, that would be available to the public during ferry operating hours estimated to be from 6 a.m. to 8 p.m., Monday through Friday; (3) repaving and widening from four to ten feet, an approximately 565-foot-long existing north-south pathway outside of the Commission's jurisdiction, and adding high visibility crosswalks to improve pedestrian and bike circulation from the ferry terminal to the adjacent offices; and (4) up to 12 bike lockers near the ferry terminal, five public access parking spaces, landscaping and public access signs (Exhibits G and H).

Type of Public Access	Square Feet	Acres	Shoreline Length (miles)
On-Site (new)	5,300	0.12	0.03
Off-Site (new)	0	0	0
Protected or Maintained	6,630	0.15	0.1
Total	11,930	0.27	0.13

**Schedule
and Cost:**

WETA and the Harbor District propose to begin construction in June 2009 and complete the ferry terminal project in November 2010. Within six months of the completion of the ferry terminal, improvements to the public access pathway and landscaping would take place. WETA and the Harbor District estimate the total project cost to be \$30 million. Based on the current State budget fiscal crisis, it is unclear at this time whether construction will be able to occur in 2009.

Staff Analysis

- A. **Issues Raised:** The staff believes that the application raises six primary issues: (1) whether the project is consistent with the Bay Plan's waterfront park priority use designation for this area; (2) whether the proposed fill for the project is consistent with the McAteer-Petris Act and the Bay Plan policies on fill and safety of fills; (3) whether the proposed public access is the maximum feasible public access consistent with the project and consistent with the Bay

Plan policies on appearance, design and scenic views; (4) whether the project is consistent with the Bay Plan policies on natural resources including fish, other aquatic organisms and wildlife; (5) whether the project is consistent with the Bay Plan policies regarding dredging; and (6) whether the project is consistent with the Bay Plan policies regarding transportation.

1. **Park Priority Use.** The San Francisco Bay Plan Map No. 5 designates a portion of the Oyster Point shoreline as a waterfront park, beach priority use area. The policy note for the site states, "Preserve and improve marina and shoreline park. Preserve picnicking, swimming, boating, hiking, windsurfing, and fishing opportunities. Possible ferry terminal. Allow if compatible with park and marina use; serve with bus public transit to reduce traffic and parking needs. Some fill may be needed. Provide signage regarding fish consumption advisories for anglers." Policy 9 of the Bay Plan policies on Recreation state, "Ferry terminals may be allowed in waterfront park priority use areas and marinas and near fishing piers and launching lanes, provided the development and operations of the ferry facilities do not interfere with current or future park and recreational uses, and navigational safety can be assured. Terminal configuration and operation should not disrupt continuous shoreline access. Facilities provided for park and marina patrons, such as parking, should not be usurped by ferry patrons. Shared parking arrangements should be provided to minimize the amount of shoreline area needed for parking."

The proposed ferry terminal project would be located within the east basin of the marina and replace two recreational boat docks (Docks 9 and 10) with approximately 124 boat berths. Although the loss of these boat berths would represent approximately 20% of the total number of berths at the marina, based on the vacancy rates at the marina, the applicants have indicated that any displaced boats would be adequately accommodated and relocated to other berths at the marina. Aside from the loss of these recreational boat docks, the proposed project would not disturb existing recreational facilities or uses at Oyster Point although there will be an increase in activity during commute hours. All existing recreational facilities at the marina, including picnic facilities, the public boat launch ramp, windsurfing ramp, and fishing pier, would be preserved. The proposed project would improve the marina and shoreline park by providing a public access viewing terrace and ferry pier with spectacular views of the Bay and by improving and widening the existing public access pathway connecting the north and south San Francisco Bay Trail segments at the site. The proposed project would also improve access to the Oyster Point marina by providing an alternative transportation option for those wishing to visit Oyster Point to utilize the park and recreational facilities.

The proposed ferry terminal is expected to operate primarily as a commuter ferry for employees working in the South San Francisco area who live in the East Bay. A shuttle service provided by the Peninsula Traffic Congestion Relief Alliance (Alliance) would connect the ferry terminal to employers in the vicinity, including Genentech, Cushman and Wakefield and Exelis. The Alliance currently provides shuttle service from the peninsula BART and Caltrain stations to existing employment centers. Commuters would also be able to connect to existing nearby businesses on foot or by bike using the improved and existing Bay Trail pathways. The applicants have indicated that they will discuss with SamTrans possible bus service to or near Oyster Point as the project gets closer to completion.

Currently, there are approximately 580 parking spaces serving the Oyster Point Marina, with approximately 223 spaces within the east basin lot. In addition to the marked parking spaces, there are also a number of large paved areas at Oyster Point that are unmarked and sometimes used for parking. The marina is required to provide one parking space per boat slip as a condition of its business insurance requirements, which is greater than the amount recommended by the Department of Boating and Waterways which is 0.6 parking space per recreational boat slip. According to the project's Environmental Impact Report (EIR), the existing marina parking lot is approximately 35 percent utilized (200 parking spaces full) on typical weekdays. During peak boat berth occupancy, estimated to be at 85 percent (500 berths occupied), no shortage of parking has been observed at the marina. With the removal of the boat berths at Docks 9 and 10, 124 parking spaces would become available. Because the ferry terminal is expected to operate primarily as a commuter ferry for East Bay residents, the project's EIR concluded that the impact on parking at the site would be less than significant. Based on ridership forecasts, the EIR estimated that the proposed ferry terminal would require less than 40 parking spaces. Of this total, approximately 25 parking spaces would serve possible riders in the reverse direction (from Oyster Point to the East Bay) in the morning, while an additional 10 parking spaces would be reserved for employees and short-term parking for ferry passenger pick-up vehicles. The proposed project includes striping 56 parking spaces for the ferry terminal use, 16 more than the project EIR estimated would be needed. Since the removal of Docks 9 and 10 would create a net increase in parking spaces at the site, the 56 parking spaces proposed for the ferry terminal would not impact parking for existing marina uses.

The Commission should consider whether the proposed project would be consistent with the Bay Plan policies regarding waterfront park priority use and recreation.

2. **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: (a) the public benefits from fill must clearly exceed the public detriment from the loss of water areas, and fill should be limited to water-oriented uses, including public assembly; (b) no alternative upland location exists for the fill; (c) the fill should be the minimum amount necessary; (d) the fill should minimize harmful effects to the Bay including the water volume, circulation, and quality, and fish and wildlife resources; (e) the fill should be constructed in accordance with sound safety standards; and (f) the fill should be authorized when the applicant has valid title to the affected property.
 - a. **Public Benefit v. Public Detriment and Water-Oriented Use.** The proposed South San Francisco ferry terminal would provide a transportation alternative to relieve traffic congestion and to serve as a critical link in the event that roads, bridges or tunnels become disabled in a disaster. According to the project's EIR, the City of South San Francisco anticipates employment uses near the Oyster Point area to double by the year 2020. The South San Francisco ferry terminal would serve these employment uses, as well as the many existing office and biotech companies in the area, by connecting the ferry terminal to these offices with proposed shuttle buses and improved bike and pedestrian paths. The ferry terminal would serve the East Bay initially and San Francisco in the future. The proposed project would also result in a net decrease of 4,900 square feet of Bay fill.

The Commission should determine whether the public benefits associated with the fill for the ferry terminal exceed the public detriment from the placement of that fill and

whether the fill serves a water-oriented use.

- b. **No Alternative Upland Location.** Because the ferry must be located at the Bay's edge to serve its function, there is no alternative upland location for the uses for which this fill would be placed. The public access viewing terrace was designed to be pile-supported over the riprapped shoreline to minimize impacts to the Bay and avoid driving foundations into the upland portion of Oyster Point, a capped landfill, which could expose the Bay to leachate.
- c. **Minimum Amount of Fill.** As described above, the project would result in an overall net reduction of 4,900 square feet of Bay fill. While the amount of solid and pile-supported fill would be increased, floating and cantilevered fill would be reduced and the overall Bay fill footprint decreased. According to the applicants, the ferry terminal pier was designed with a single-pile support to minimize fill in the Bay and to create an elegant and simple design. The applicants have stated that the fill is the minimum amount necessary to accommodate a two-berth ferry terminal for the estimated number of users at the site, to provide public access, and to avoid construction upland that could potentially puncture the capped landfill.
- d. **Minimizing Impacts.** The proposed project would involve driving up to 40 steel and concrete piles in the Bay and placing up to 17 cubic yards of riprap along the shoreline, resulting in an increase of 580 cubic yards of solid Bay fill. As discussed more fully in the "**Natural Resources Policies**" section below, the measures incorporated into the project minimize the fill impacts to the Bay including the water volume, circulation and quality, and fish and wildlife resources. NOAA's National Marine Fisheries Service (NMFS) determined that the project is not likely to adversely affect listed anadromous salmonids or the North American green sturgeon nor the essential physical or biological features associated with designated critical habitat. On December 5, 2008, the Regional Water Quality Control Board (RWQCB) issued a water quality certification for the dredging element of the project.

The Commission should consider whether the proposed fill minimizes harmful effects to the Bay including the water volume, circulation, and quality and fish and wildlife resources.

- e. **Sound Safety Standards.** Policy 1 of the Bay Plan Safety of Fills section states, in part: "The Commission has appointed the Engineering Criteria Review Board...to: (a) establish and revise safety criteria for Bay fills and structures thereon; (b) review all except minor projects for the adequacy of their specific safety provisions, and make recommendations concerning these provisions..." Policy 4 states: "To 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." Policy 5 states, in part: "To minimize the potential hazard to Bay fill projects and bayside development from subsidence, all proposed developments should be sufficiently high above the highest estimated tide level for the expected life of the project..."

The Commission's Engineering Criteria Review Board (ECRB) reviewed the proposed project for seismic and engineering design safety on September 11, 2008. The ECRB requested additional information regarding the soil and slope stability of the area where the public access viewing terrace piles would be placed and the impact of an earthquake on the piles. The applicants submitted this information to

the ECRB on October 2, 2008. The Board reviewed the material and was satisfied with the engineering criteria used in the design of the proposed project.

Oyster Point is a capped landfill that continues to settle and subside. The applicants estimate that without any extensive new fill on Oyster Point, the area is expected to settle approximately 16 inches in 50 years. To avoid further subsidence of Oyster Point, the applicants designed the ferry terminal to be pile-supported over the Bay to avoid placing structures on land that could cause further land settlement. The applicants plan to re-grade a portion of the Bay Trail adjacent to the proposed ferry terminal an additional foot above existing grade and construct concrete hinge slab ramps to connect the Bay Trail to the public access viewing terrace and ferry terminal. The hinge slabs would allow the ferry terminal to remain accessible even as the landside portion of Oyster Point settles (Exhibits H and I).

The ferry terminal would be pile-supported three feet above the prevailing landside grade at an elevation of 13 feet MLLW (Exhibit I). The applicants estimate mean high water at Oyster Point to be approximately 6.73 feet MLLW. According to a 1984 Corps study, the 100-year highest estimated tide at the site was observed at 10.35 feet MLLW. Based on the highest rate of sea level rise of 0.33 inch per year, predicted by the California Climate Action Team Reports on Climate Change, the elevation of the proposed ferry terminal would accommodate the highest projections for sea level rise over a 50-year period under both the estimated mean high water level and the Corps' 100-year highest estimated tide at the site.

According to the applicants, the City of South San Francisco has future plans to redevelop the upland portion of Oyster Point that would include raising the elevation of the site to address settlement and sea level rise, and is currently undergoing a planning study for the area. The design of the ferry terminal would allow the ferry terminal to remain accessible and usable even with future placement of fill on Oyster Point.

The Commission should consider whether the proposed fill would be constructed in accordance with sound safety standards, consistent with Bay Plan policies regarding safety of fills.

- f. **Valid Title of Project Site.** Oyster Point is owned by the City of South San Francisco and operated by the Harbor District pursuant to a Joint Powers Agreement dated July 6, 1977. The Harbor District has leased the portion of Oyster Point where the proposed project would be located to WETA pursuant to a lease agreement dated December 28, 2007.

The Commission should determine whether the fill proposed for the project is consistent with the Commission's law and related policies.

3. **Public Access.** Section 66602 of the McAteer-Petris Act states that "...maximum feasible public access, consistent with a proposed project, should be provided." In assessing whether a project provides maximum feasible public access consistent with the project, the Commission relies on the McAteer-Petris Act, the policies of the San Francisco Bay Plan, and also relevant court decisions. In assessing whether a proposed *public* project, such as the South San Francisco ferry terminal, would provide the maximum feasible public access consistent with the project, the Commission should evaluate whether the proposed public access is *reasonable* given the scope of the project.

Policy 1 and Policy 6 of the Bay Plan policies on Public Access state that “a proposed fill project should increase public access to the Bay to the maximum extent feasible” and that the public access 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 to the maximum extent feasible, should include an ongoing maintenance program, and should be identified with appropriate signs.” Policy 8 states “access to and along the waterfront should be provided by walkways, trails, or other appropriate means to connect the nearest public thoroughfare where convenient parking or public transportation may be available” and Policy 11 states that, “the Design Review Board should advise the Commission regarding the adequacy of the public access proposed.” Policy 2 of the Bay Plan’s Appearance, Design and Scenic Views section state that “all bayfront development should be designed to enhance the pleasure of the user or viewer of the Bay” and that “maximum efforts should be made to provide, enhance, or preserve views of the Bay and shoreline, especially from public areas, from the Bay itself, and from the opposite shore.” Policy 10 goes on to state, “towers, bridges, or other structures near or over the Bay should be designed as landmarks that suggest the location of the waterfront when it is not visible...”

BCDC Permit No. 1-77, last amended on August 23, 2007 (Amendment No. 15), was issued to the Harbor District and authorizes the existing marina facilities and maintenance dredging at Oyster Point. Additionally, that permit requires public access that includes an approximately ten-foot-wide, 1,920-foot-long, paved public access pathway along the Oyster Point shoreline, an approximately 2,100-square-foot windsurfer launch ramp, and the placement of six benches, six trash cans, two picnic tables, at least two public access signs and Bay Trail signs, and landscaping (Exhibit F).

The proposed public access associated with the ferry terminal project includes: (1) a 3,000-square-foot public access viewing terrace with 12 benches, two trashcans, and lighting (Exhibit H); (2) approximately 2,300 square feet of the enclosed ferry pier, available to the public during ferry operating hours, estimated to be from 6 a.m. to 8 p.m., Monday through Friday (Exhibit J); (3) repaving and widening from four to ten feet, an approximately 565-foot-long north-south pathway, outside of the Commission’s jurisdiction, and adding high-visibility crosswalks at roadways, to connect the Bay Trail shoreline paths and improve public access to adjacent businesses (Exhibit G); and (4) providing up to 12 bike lockers near the ferry terminal, five public access parking spaces, four public access signs, and landscaping (Exhibit G).

The Design Review Board (DRB) reviewed the project’s proposed public access on January 7, 2008, and overall, supported the project and the proposed public access. The DRB recommended installing bike lockers at the site and landscaping near the public access viewing terrace, which the applicants have agreed to incorporate into the project. According to the applicants, “existing public access would be enhanced by the proposed project as well as by the new ferry service that would open up visibility and access to the larger bay and the regional shoreline.” Currently, views north from the Bay Trail near the project site are of the Bay, recreational boats berthed in Docks 9 and 10, and large office buildings in the distance. After project completion, the views from the shoreline would be primarily of the ferry terminal structure and berthed ferries (Exhibit J). Although views from the shoreline would change, according to the applicants, the proposed project would provide new vantage points for viewing the Bay. Because the

ferry terminal would be elevated approximately three feet above the current landside grade, views of the Bay from both the public access viewing terrace and the ferry pier would be improved. The viewing terrace would be ADA-accessible, open to the public at all times, and would provide seating and signs to create a visually attractive entryway into the ferry terminal. The portion of the enclosed ferry pier that would be accessible during ferry operation would also provide seating opportunities along the seatwalls within the pier, new vantage points of the Bay, and a sheltered area for passengers and the public seeking refuge from inclement weather. The applicants state that the ferry terminal was designed to be simple and elegant and to provide a visually attractive identity for the new ferry service.

In addition to the public access provided on the viewing terrace and ferry pier, the applicants are proposing pathway improvements to connect the ferry terminal with the existing Bay Trail paths and adjacent businesses. Bike lockers, public access parking spaces, signage, landscaping, and on-going maintenance of the public access areas would also be provided, consistent with the Bay Plan policies on public access.

The project's EIR predicts that the ferry would serve approximately 936 daily passengers by year 2025. The bulk of these riders would consist of commuters during commute hours. However, it is likely that the public may also use the ferry to travel during off-peak hours to visit the East Bay or Oyster Point. The proposed public access improvements would accommodate the likely increase in use of the public access by new ferry users. The improvements to the Bay Trail connections and bike lockers would accommodate commuters traveling to adjacent businesses as well as visitors to Oyster Point. The public access viewing terrace would provide a useful waiting area for ferry commuters as well as a spectacular viewing and resting spot for the public.

The Commission should determine whether the applicants' proposed public access improvements are the maximum feasible consistent with the project and reasonable given the scope of the project.

4. **Natural Resources Policies.** Policy 1 of the Bay Plan policies on Subtidal Areas state: "Any proposed filling or dredging project in a subtidal area should be thoroughly evaluated to determine the local and Bay-wide effects of the project on: (a) the possible introduction or spread of invasive species; (b) tidal hydrology and sediment movement; (c) fish, other aquatic organisms and wildlife; (d) aquatic plants; and (e) the Bay's bathymetry. Projects in subtidal areas should be designed to minimize and, if feasible, avoid any harmful effects." Policy 2 of the Bay Plan policies on Fish, Other Aquatic Organisms, and Wildlife state, in part: "Specific habitats that are needed to conserve, increase, or prevent the extinction of any native species, species threatened or endangered...should be protected..." Policy 4 states that the Commission should "...consult with the California Department of Fish and Game and the U.S. Fish and Wildlife Service or [NMFS] whenever a proposed project may adversely affect an endangered or threatened...species" and "...Give appropriate consideration to the recommendations of the [state and federal resource agencies] in order to avoid possible adverse effects of a proposed project on fish, other aquatic organisms and wildlife habitat." Policy 1 of the Bay Plan policies on Water Quality state, "Bay water pollution should be prevented to the greatest extent feasible..." and policy 2 states that, "...the policies, recommendations, decisions, advice and authority of the State Water Resources Control Board and the Regional Board, should be the basis for carrying out the Commission's water quality responsibilities."

According to the applicants and the project's EIR, the project site does not contain lands designated as critical habitat for any threatened or endangered terrestrial species. Routine dredging at the marina to maintain operational depth prevents benthic vegetation, like eelgrass, from becoming established. Therefore, the marina sea floor is likely comprised of Bay mud that has been colonized by small invertebrates. Aquatic species that may occur in the project site area include Central California Coast steelhead and North American green sturgeon. The project is also located within an area identified as essential fish habitat for groundfish, pelagic and salmon species. In addition to these species, live native oysters have been observed at Oyster Point. Native oysters are a valuable component of the San Francisco Bay ecosystem, increasing the quality of essential fish habitat for groundfish, pelagic, and salmon species through habitat complexity, increased prey items, and potentially improved water quality.

On June 6, 2006, the Federal Transit Administration (FTA) initiated consultation with NMFS pursuant to Section 7 of the Endangered Species Act and the Essential Fish Habitat provisions of the Magnuson Stevens Fishery Conservation and Management Act. On September 25, 2006, NMFS found that, based on the measures incorporated into the project, the project is not likely to adversely affect listed anadromous salmonids or the North American green sturgeon nor the essential physical or biological features associated with designated critical habitat.

The applicants propose to use a vibratory hammer rather than an impact hammer to install the proposed steel piles to minimize the effects associated with elevated underwater sound levels during pile driving. If geotechnical studies indicate that an impact hammer is necessary due to unforeseen hard driving conditions, the applicants would use an air bubble curtain to attenuate sound levels from the steel piles. NMFS found that by encapsulating the steel piles with a curtain of air bubbles during impact driving, sound levels could be significantly reduced. NMFS also concluded that the installation of the concrete piles for the public access viewing deck and the end ties at Docks 11, 12 and 13, is not likely to injure fish.

The applicants propose to dredge the marina basin using a clamshell dredge during the months of June through September, which coincides within the work windows established by the *Long Term Management Strategy (LTMS) for the Placement of Dredged Material in the San Francisco Bay Region*. According to NMFS, this time period would avoid the migration seasons of listed anadromous salmonids, and will not affect year-round green sturgeon.

With respect to potential adverse effects to essential fish habitat, NMFS found that the proposed dredging and operation of the ferries are expected to result in adverse effects from turbidity and scouring that could affect the native oyster population and recommended that an oyster-monitoring program be implemented. Under the monitoring program, surveys for oyster densities, settlement rates, and water quality (temperature, salinity and turbidity) would be conducted one year pre-construction and one year post-construction with an additional year beyond the one-year post-construction period if NMFS determines that adverse impacts to live native oysters have occurred based on the results of the pre- and post-construction surveys. In addition, NMFS recommended that if pre-construction surveys find oysters present in the proposed dredging footprint, within 53 feet adjacent to either side of the proposed ferry terminal, and/ or on the underside of the floating docks that would be removed to complete the ferry terminal, the applicants should mitigate for the loss of native oysters with the placement of a

NMFS-approved substrate in an area outside of direct impact by the project. The applicants have agreed to incorporate these recommendations into the proposed project.

On December 5, 2008, the RWQCB issued a water quality certification for the project. The water quality certification included conditions based on NMFS's recommendations for essential fish habitat, requiring the applicant to conduct oyster monitoring and to place an NMFS-approved substrate if oysters are found at or near the project site.

The Commission should determine whether the proposed project, with the incorporation of NMFS's and the RWQCB's recommendations, would be consistent with the Bay Plan policies regarding fish, other aquatic organisms, and wildlife, and water quality.

5. **Dredging.** Policies 1 and 2 of the Bay Plan policies on dredging state that, "dredging and dredged material disposal should be conducted in an environmentally and economically sound manner" and that "dredging should be authorized when the Commission can find: (a) the applicant has demonstrated that the dredging is needed to serve a water-oriented use or other important public purpose...; (b) the materials to be dredged meet the water quality requirements of the [RWQCB]; (c) important fisheries and Bay natural resources would be protected through seasonal restrictions established by the California Department of Fish and Game, the U.S. Fish and Wildlife Service and/ or [NMFS]...; (d) the siting and design of the project will result in the minimum dredging volume necessary for the project; and (e) the materials would be disposed of in accordance with Policy 3." Policy 3 states, "Dredged materials should, if feasible, be reused or disposed outside the Bay and certain waterways...[D]redged material should not be disposed in the Bay and certain waterways unless disposal outside these areas is infeasible and the Commission finds: (a) the volume to be disposed is consistent with applicable dredger disposal allocations and disposal site limits adopted by the Commission by regulation; (b) disposal would be at a site designated by the Commission; (c) the quality of the material disposed of is consistent with the advice of the [RWQCB] and the inter-agency Dredged Material Management Office (DMMO); and (d) the period of disposal is consistent with the advice of the California Department of Fish and Game, the U.S. Fish and Wildlife Service and/ or [NMFS]."

BCDC Permit No. 1-77 (Amendment No. 15), issued to the Harbor District, authorizes maintenance dredging within the east basin of the marina to a depth of -8 feet MLLW, plus a two-foot over-dredge allowance. The proposed project would deepen the marina channel and ferry terminal area, using a clamshell dredge, to -10 feet MLLW and the immediate ferry berthing area to -12 feet MLLW, both with a two-foot over-dredge allowance, to accommodate the deeper drafts of the ferry vessels (Exhibit E). The estimated total of new dredging would be 19,300 cubic yards, with disposal at a disposal site designated by the Commission, the Alcatraz site (SF-11). The dredging would be for a water-oriented use and an alternative transportation option for commuters to South San Francisco. According to the applicants, the amount of new dredged material, 19,300 cubic yards, is the minimum necessary to deepen the marina channel and ferry berthing area to safely accommodate the drafts of the ferries. The disposal amount was approved by the DMMO as consistent with the allocations for in-Bay disposal.

The RWQCB, in conjunction with the DMMO, reviewed the report characterizing the suitability of dredged sediments for aquatic disposal in San Francisco Bay: *Sampling and Testing of Sediments, South San Francisco Ferry Terminal, Oyster Point Marina East Basin Demolition and Dredging*, dated November 2007. On December 12, 2007, the DMMO

determined that disposal of the dredged sediments at the Alcatraz disposal site (SF-11) would be appropriate based on a SUAD determination (Suitable for Unconfined Aquatic Disposal). On December 5, 2008, the RWQCB issued a water quality certification for the project based on this determination. As discussed above in the “**Natural Resources Policies**” section, NMFS has determined that because the dredging would occur within the LTMS work windows of June through September, the project would not likely adversely affect listed species or designated critical habitat and recommended that an oyster monitoring program be implemented and that a NMFS-approved substrate be placed if oysters are found at or near the project site. The applicants have agreed to these recommendations.

The Commission should consider whether the proposed dredging would be consistent with the Bay Plan’s dredging policies.

6. **Transportation.** Policy 1 of the Bay Plan policies on transportation state that, “...the Commission should continue to take an active role in Bay Area regional transportation and related land use planning affecting the Bay, particularly to encourage alternative methods of transportation...” Policy 4 states that, “transportation projects on the Bay shoreline...should include pedestrian and bicycle paths that will either be a part of the Bay Trail or connect the Bay Trail with other regional and community trails.” Policy 5 states that, “ferry terminals should be sited at locations that are near navigable channels...” and wherever possible, “near higher density, mixed-use development served by public transit.”

The proposed project would introduce ferry service to South San Francisco to alleviate congested roads and highways, to provide an alternative mode of transportation for employees working in the South San Francisco area and to provide an alternative route for emergency service. Oyster Point is near a mixture of industrial, office, service, recreational, and commercial uses. Nearby employers include Genentech, United Parcel Service, Cell Genesys, Amgen and Raven Pharmaceuticals. Commuters arriving to the terminal would be predominantly connected to offices by employer-sponsored shuttle service provided by the Peninsula Traffic Congestion Relief Alliance, as well as by bicycle and on foot. Improvements will be made to improve circulation for all these transit modes. According to the project’s EIR and the applicants, the proposed project is located near an existing navigable channel, which historically has not rapidly filled with sediment. The proposed ferry terminal would be constructed within an existing marina that has been periodically dredged to maintain a navigable channel for recreational boats and that would be deepened another two to four feet to allow for the drafts of the ferries. The Corps is reconfiguring the existing breakwater at the marina to reduce wave activity within the marina basin and improve navigational safety, reliability and efficiency of vessels entering the marina. Although the immediate Oyster Point area is not currently occupied by high-density mixed-use development, the City of South San Francisco plans to develop the site with a mixture of office, residential and commercial uses in the future and there is a high-density of office uses in the nearby vicinity. In addition, because the ferry terminal is expected to operate as a commuter ferry for employees working in the South San Francisco area and would be connected to these businesses with a shuttle service, there is no expected increase in demand for parking at the site.

The Commission should consider whether the proposed project would be consistent with its Bay Plan policies regarding transportation.

B. Review Boards

1. **Engineering Criteria Review Board.** The Commission's Engineering Criteria Review Board (ECRB) reviewed the proposed project for seismic and engineering design safety on September 11, 2008. The ECRB requested additional information regarding the soil and slope stability of the area where the public access viewing terrace piles would be placed and the impact of an earthquake on the piles. The applicants submitted this information to the ECRB on October 2, 2008. The Board reviewed the material and was satisfied with the engineering criteria used in the design of the proposed project.
2. **Design Review Board.** On January 7, 2008, the Commission's Design Review Board (DRB) reviewed the project with a public access proposal that included the public access viewing terrace at the ferry terminal and three options for improving public access trails at Oyster Point, including the north-south pathway that is proposed as part of the project. An ABAG Bay Trail Project representative commented that improvements to the proposed north-south pathway would be the preferred option. The DRB recommended installing bike lockers at the site and landscaping near the public access viewing terrace, which the applicants have agreed to incorporate into the proposed project. Overall, the DRB supported the project and the proposed public access.

- C. **Environmental Review.** On November 27, 2006, WETA, the lead agency, certified an EIR/ Environmental Assessment (EA) for the proposed project in accordance with the California Environmental Quality Act (CEQA).

D. Relevant Portions of the McAteer-Petris Act

1. Section 66605
2. Section 66602

E. Relevant Portions of the San Francisco Bay Plan

1. Bay Plan Map 5
2. Bay Plan Policies on Fish, Other Aquatic Organisms, and Wildlife (pages 16)
3. Bay Plan Policies on Water Quality (pages 17)
4. Bay Plan Policies on Subtidal Areas (pages 27-28)
5. Bay Plan Policies on Safety of Fills (pages 32-33)
6. Bay Plan Policies on Dredging (pages 38-40)
7. Bay Plan Policies on Transportation (pages 47-48)
8. Bay Plan Policies on Recreation (pages 53-57)
9. Bay Plan Policies on Public Access (pages 59-60)
10. Bay Plan Policies on Appearance, Design, and Scenic Views (pages 62-63)

Exhibits

- A. Vicinity Map
- B. Oyster Point Site Plan
- C. Proposed Demolition and Construction Plan
- D. Proposed Ferry Terminal Site Plan

- E. **Proposed Dredging Plan**
- F. **Existing and Improved Bayfront Public Access**
- G. **Proposed Public Access Plan**
- H. **Proposed Public Access Viewing Terrace**
- I. **Section of Proposed Public Access Viewing Terrace**
- J. **View Northwest of Proposed Ferry Terminal**

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

50 California Street • Suite 2600 • San Francisco, California 94111 • (415) 352-3600 • FAX: (415) 352-3606 • www.bcdc.ca.gov

January 9, 2009

TO: Commissioners and Alternates

FROM: Will Travis, Executive Director (415/ 352-3653, travis@bcdc.ca.gov)
Ming Yeung (415/ 352-3616, mingy@bcdc.ca.gov)

SUBJECT: **Staff Recommendation on BCDC Permit Application No. 1-08, South San Francisco Ferry Terminal Project at Oyster Point Marina**
(For Commission consideration on January 15, 2009)

Recommendation Summary

The staff recommends that the Commission approve the San Francisco Bay Area Water Emergency Transportation Authority's (WETA) and San Mateo County Harbor District's (Harbor District) BCDC Permit Application No. 1-08, which, as conditioned, will result in the following:

1. Removing two recreational docks at the Oyster Point Marina (Docks 9 and 10) and floats at the end of three docks (Docks 11, 12 and 13), resulting in the removal of 18,800 square feet of floating and cantilevered fill and 80 square feet of solid fill from the Bay;
2. Constructing the South San Francisco Ferry Terminal, consisting of a pile-supported public access viewing terrace, pile-supported ferry pier, gangway, and boarding float for two berths, and placing rock riprap, resulting in a total of 13,320 square feet of new floating, pile-supported and cantilevered fill and 660 square feet of new solid fill in the Bay;
3. Dredging up to 19,300 cubic yards of new material from an 215,500-square-foot (4.9-acre) area from the east basin of the marina, channel and ferry terminal area to -10 feet mean lower low water (MLLW), and from a 22,800-square-foot (0.52-acre) area of the ferry berthing area to -12 feet MLLW, plus a two-foot over-dredge allowance, with disposal of the dredged material at the Alcatraz (SF-11) disposal site; and
4. Improving and widening to ten feet, where necessary, an approximately 565-foot-long public access pathway, and installing bike lockers, public access parking, signage and



landscaping at the marina.

Staff Recommendation

The staff recommends that the Commission adopt the following resolution:

I. Authorization

A. Subject to the conditions stated below, the permittees, the San Francisco Bay Area Water Transportation Authority and the San Mateo County Harbor District, are hereby granted permission to construct the following at the Oyster Point Marina located at the end of Marina Boulevard, in the City of South San Francisco, San Mateo County:

1. In the Bay:

- a. Remove two recreational docks (Docks 9 and 10) and floats at the end of three docks (Docks 11, 12 and 13), totaling approximately 80 square feet (145 cubic yards) of solid fill (pilings), 17,400 square feet of floating fill (boat berths), and 1,400 square feet of cantilevered fill (gangways);
- b. Install, use and maintain nine, 16-inch-square concrete piles to reconstruct end ties at Docks 11, 12 and 13;
- c. Construct, use and maintain an approximately 3,400-square-foot ferry pier, supported by ten piles (three 42-inch-in-diameter piles and seven 36-inch-in-diameter piles);
- d. Construct, use and maintain an approximately 920-square-foot gangway and a 5,200-square-foot boarding float, secured by four, 42-inch-in-diameter piles;
- e. Construct, use and maintain four, 42-inch-in-diameter dolphin piles, ringed by a floating fender, (one at the fuel station, one at the end of Dock 11, and two at the end of the ferry boarding float);
- f. Place, use and maintain approximately 17 cubic yards of rock riprap over a 450-square-foot-area around the ferry terminal; and
- g. Dredge a total of 19,300 cy of new material from: (1) a 215,500-square-foot (4.9 acres) area of the east basin of the marina to a depth of minus 10 feet mean lower low water (MLLW) with 2 feet of over dredge depth allowance (Subarea 1 and 2); and (2) a 22,800-square-foot (0.52 acres) ferry berthing area (Subarea 3) as shown in Exhibit B to a depth of minus 12 feet MLLW with 2 feet of over dredge depth allowance, with disposal of the dredged sediment at the state- and federally-authorized Alcatraz disposal site, the San Francisco Deep Ocean Deep Ocean Disposal Site or an authorized upland location.

2. In the Bay and Within the 100-foot Shoreline Band:

- a. Construct, use and maintain a 3,000-square-foot public access viewing terrace largely over the riprapped bank with benches, trashcans, and signs, supported by 16, 20-inch-square piles (13 in the Bay and three within the shoreline band) and three concrete hinged slabs connecting the terrace to the shoreline.

3. Within the 100-foot Shoreline Band:

- a. Install, use and maintain 12 bike lockers, five public access parking spaces, a minimum of four public access signs and other related public access improvements; and
 - b. Install, use and maintain landscaping adjacent to the public access viewing terrace.
- B. This authority is generally pursuant to and limited by the application dated March 5, 2008, including all accompanying and subsequently submitted correspondence and exhibits, but subject to the modifications required by conditions hereto.
- C. Work authorized herein must commence prior to June 1, 2012, or this permit will lapse and become null and void. All work authorized herein must be diligently pursued to completion and must be completed within four years of commencement or by June 1, 2016, whichever is earlier, unless an extension of time is granted by amendment of the permit.
- D. The project involves removing a total of 18,880 square feet (0.43 acres) of Bay fill: 80 square feet (145 cubic yards) of solid fill from piles, 17,400 square feet of floating fill from the removal of Docks 9 and 10, and 1,400 square feet of cantilevered fill from the removal of related ramps and gangways. The project involves placing a total of 13,980 square feet (0.32 acres) of Bay fill: 660 square feet (149 cubic yards) of new solid fill for piles and riprap, 6,000 square feet of new floating fill for the boarding float and donut fenders, 6,400 square feet of new pile-supported fill for the viewing terrace and pier, and 920 square feet of new cantilevered fill for the gangway. In total, the project will result in a net increase of 4,900 square feet of Bay surface area as summarized in the table below.

Type of Fill (sq ft)	Removed	New	Total Net Fill (sq ft)
Solid	-80	660	580
Floating	-17,400	6,000	-11,400
Pile-Supported		6,400	6,400
Cantilevered	-1,400	920	-480
Total (sq ft)	-18,880	13,980	-4,900

- E. The project will create approximately 5,300 square feet of new public access in the Commission’s jurisdiction, and improve a 6,630-square-foot area outside the Commission’s jurisdiction by repaving and widening, where necessary, a 565-foot-long public access trail from four to ten feet, installing high-visibility crosswalks at roadways, and providing an approximately two-foot landscaping buffer along both sides of the 245-foot-long portion of the public access trail between the two crosswalks. The public access improvements include the new public access viewing terrace, a portion of the new ferry pier (available to the public during ferry operating hours), improvements to the pathway, bike lockers, public access parking, signage, and landscaping.

Type of Public Access	Square Feet	Acres	Shoreline Length (miles)

On-Site (new)	5,300	0.12	0.03
Enhanced Existing	6,630	0.15	0.1
Total	11,930	0.27	0.13

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. **Construction.** The final plans submitted pursuant to this condition shall generally conform to the plans entitled "South San Francisco Ferry Terminal; Permit Set" prepared by ROMA Design Group and dated March 2008. Final plans for the construction of the structures authorized herein shall be prepared and submitted for BCDC review as described below. No changes to the design of the project shall be made without the prior written approval of the BCDC staff.
2. **Plan Review.** No work whatsoever shall be commenced pursuant to this authorization until final precise site, demolition, engineering, architectural, grading, landscaping, 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 specific drawings and information required will be determined by the staff. To save time, preliminary drawings should be submitted and approved prior to final drawings.
 - a. **Site, Architectural, Grading, and Landscaping Plans.** Site, demolition, architectural, grading, public access, and landscaping plans shall include and clearly label the shoreline (Mean High Water Line), 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, grading, 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 improvements.
 - b. **Engineering Plans.** Engineering plans 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.
 - c. **Preliminary and Final Plans.** 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), 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;
- (4) consistency with legal instruments reserving public access 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;
- (7) assuring that appropriate provisions have been incorporated for safety in case of seismic event;
- (8) assuring that the placement of fill in the Bay will avoid or minimize impacts to subtidal marsh and wetland habitat; and
- (9) assuring that appropriate elevations have been met to prevent overtopping, flooding, and 100-year storm events in all public access areas.

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

3. **Conformity with Final Approved Plans.** All work, improvements, and uses shall conform to the final approved plans. Prior to any use of the facilities authorized herein, the appropriate design professional(s) of record shall certify in writing that, through personal knowledge, the work covered by the authorization has been performed in accordance with the approved design criteria and in substantial conformance with the 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, landscaping, parking area, or shoreline protection work without first obtaining written approval of the change(s) by or on behalf of the Commission.
 4. **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 permittees are 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.
 5. **Appeals of Plan Review Decisions.** Any plan approval, conditional plan approval or plan denial may be appealed by the permittees 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.** Within six months of the completion of the ferry terminal, or by June 1, 2016, whichever is earlier, the following areas, as generally shown on Exhibit A, shall be

made available exclusively to the public for unrestricted public access for walking, running, bicycling, sitting, viewing, picnicking, and related purposes. If the permittees wish to use the public access area for other than public access purposes, they must obtain prior written approval by or on behalf of the Commission:

- a. An approximately 3,000-square-foot public access viewing terrace at the head of the ferry pier (in the Commission's jurisdiction);

- b. An approximately 2,300-square-foot area of the 3,400-square-foot ferry pier available for use by the public during ferry operating hours (generally from 6 a.m. to 8 p.m., Monday through Fridays) (in the Commission's jurisdiction); and
 - c. An approximately 6,630-square-foot segment of an existing north-south pathway, south of the ferry terminal at Oyster Point (outside of the Commission's jurisdiction).
2. **Recordation of the Instrument.** Within 30 days after approval of the instrument, the permittees shall record the instrument on all parcels affected by this permit 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.
3. **Improvements Within the Total Public Access Area.** Prior to the use of any structure authorized herein, the permittees shall install the following improvements, as generally shown on Exhibit A:
 - a. An approximately 3,000-square-foot pile-supported viewing terrace at the head of the ferry pier, with up to 12 benches, two trashcans, two public access signs and landscaping;
 - b. Repaving and widening, where necessary, an existing 565-foot-long, north-south pathway from four to ten feet, and installing high-visibility crosswalks across roadways, an approximately two-foot-wide landscaping buffer on both sides of the pathway between the two crosswalks, and up to two public access signs along the entire length of the pathway;
 - c. Installing up to 12 bike lockers adjacent to the ferry terminal; and
 - d. Striping and providing signs to designate up to five public access parking spaces.

Such improvements shall be fully consistent with the plans approved pursuant to Special Condition II.A of this authorization and substantially conform to Exhibit A and the plans entitled "South San Francisco Ferry Terminal, Bay Trail Enhancement," prepared by ROMA Design Group and dated March 2008.

4. **Maintenance.** The areas and improvements within the 11,930-square-foot public access area described above shall be permanently maintained by and at the expense of the permittees or their assignees. Such maintenance shall include, but is not limited to: repairs to all path surfaces; replacement of any trees or other plant materials that die or become unkempt; repairs or replacement as needed of any public access amenities such as signs, benches, trash containers, and lights; periodic cleanup of litter and other materials deposited within the access areas; removal of any encroachments into the access areas; assurance that the public access signs remain in place and visible; and repairs to any public access areas or improvements that are damaged by future subsidence, uneven settlement, or flooding, or inundation caused by sea level rise, including raising land elevations or redesigning public access features to protect and ensure the usability of the public access areas and improvements at all times. Within 30 days after notification by staff, the permittees shall correct any maintenance deficiency noted in a staff

inspection of the site. The permittees shall obtain approval by or on behalf of the Commission of any maintenance that involves more than in-kind repair and replacement.

5. **Assignment.** The permittees shall 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.
6. **Reasonable Rules and Restrictions.** The permittees 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 will not significantly affect the public nature of the area, will not unduly interfere with reasonable public use of the public access areas, and will tend to correct a specific problem that the permittees have both identified and substantiated. Rules may include restricting hours of use and delineating appropriate behavior.
7. **Future Public Access.** If future redevelopment of Oyster Point causes the north-south pathway and its improvements in Sections B-1-c and B-3-b of this permit to be relocated, the permittees shall provide an equivalent north-south connection from the ferry terminal to the southern Bay Trail connection, approved by or on behalf of the Commission.
8. **Construction in Existing Public Access Areas.** If construction occurs within existing public access areas, the permittees shall establish a clearly marked and continuous pathway around the construction site in order to re-route the public around any portion of a public access pathway that may be occupied by construction. The permittees shall post clearly marked signs at and near the construction site to notify the public of any temporarily closed public access areas, the length of time that the access path will be closed, and the location of a temporary detour.

C. Dredging

1. **Five-Year Permit for Dredging.** The approximately 19,300 cubic yards of new dredging authorized herein shall be completed within five years of the date of issuance of this permit. No further dredging is authorized.
2. **Limits on Dredging.** This permit authorizes new dredging only within the areas shown on Exhibit B which includes: the east basin of the marina, marina channel and ferry terminal area to an authorized project depth of -10 feet MLLW plus a two-foot allowable over-dredge depth and the ferry berthing area to an authorized depth of -12 feet MLLW plus a two-foot allowable over-dredge depth. No dredging in other areas is authorized. Maintenance dredging for this area to these depths is not authorized by this permit. Maintenance dredging can be authorized by amendment to this or BCDC Permit No. 1-77.
3. **Dredging and Disposal Activity**
 - a. **Pre- Dredging and Disposal Report and Notice.** At least 45 days before the commencement of any dredging and disposal episode authorized herein, the permittees shall submit to the Commission's Executive Director:
 - (1) A bathymetric map showing the location of all areas authorized to be dredged, the authorized depth including over-dredge depth based on

MLLW, the volume of material proposed to be dredged, and the approximate date of project commencement. At least two (2) weeks prior to the scheduled date of commencement of any dredging episode, the permittees shall notify the Commission staff by telephone or in writing or, if the date of commencement changes, provide an updated schedule.

- (2) A written statement to the Executive Director that contains: (a) the proposed disposal site and quantity of material to be disposed, and dates within which the disposal episode is proposed; (b) if applicable, a discussion as to how the volume proposed for disposal is consistent with in-Bay disposal allocations and disposal site limits; (c) if applicable, the results of chemical and biological testing of sediment proposed for disposal; and (d) if applicable, an alternatives analysis to explain why ocean disposal, upland disposal or beneficial reuse of dredged material is infeasible.

b. Post-Dredging Requirements

- (1) Within (30) days of completion of the dredging authorized herein, the permittees shall submit to the Commission a bathymetric map showing the actual area(s) and depths dredged, including over-dredge depth based on MLLW, any dredging that occurred outside the area or below the depths authorized herein, and a written statement indicating the total volume of material dredged and disposed and the disposal location.
- (2) If a dredging episode stops for longer than six consecutive months, the permittees must submit, before the dredging episode resumes, notification to the Commission that dredging will begin again. If a dredging episode is suspended for more than six months, the Commission may require the permittees to complete: (a) new sediment characterization, (b) a re-survey of the dredge area, and/ or (c) a revised alternative disposal option analysis.
- (3) If the dredging episode continues longer than one year, whether dredging is continual throughout the year or is fragmented within the episode, the permittees must provide the Commission with the following dredging report: (a) the actual areas and the depth dredged based on MLLW, and any dredging that occurred outside the area dredged; (b) the actual volume of the material dredged; and (c) the volume and location of the material disposed. The dredging report must be submitted no later than one year after the commencement of the episode, and must be submitted every six months thereafter throughout the life of the permit or until the episode is complete. The Commission may require additional sediment characterization, bathymetric surveys, and/ or alternative disposal analyses at the commencement of the next episode. Within 30 days of the completion of the episode, the permittees must submit a dredging report as described in Special Condition 2a above.

- 4. **Seasonal Limitations for Dredging and Disposal.** Except as provided below, all dredging and disposal activities shall be confined to the work window, between June 1 and November 30 of any year, to minimize disturbance to the following endangered and special status species:

Species of Concern	Work Window Period	Consulting Agency
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Central California Coast steelhead	June 1 st – November 30 th	NMFS
Pacific herring	March 1 st – November 30 th	CDFG

NMFS - NOAA Fisheries; CDFG - California Department of Fish and Game

This work window between June 1st and November 30th is consistent with Tables F-1 and F-2 of Appendix F, “In-Bay Disposal and Dredging” and Figures 3.2 and 3.3 of the *Long-Term Management Strategy (LTMS) Management Plan 2001*. No work inconsistent with the time and location limits contained in these tables may be conducted without the approval of the Executive Director, provided that such approval may only be issued after: (a) consultation between the U.S. Army Corps of Engineers (Corps) and the U.S. Fish and Wildlife Service (FWS) and/ or NOAA’s National Marine Fisheries Service (NMFS) has occurred; and (b) the Executive Director has determined that dredging and disposal outside of the work window will be consistent with the Commission’s laws and policies.

To protect the herring fishery, no dredging shall occur between December 1st and February 28th of any year without the written approval of the Executive Director, provided that such approval may only be issued: (a) after the permittees’ representative requests from the California Department of Fish and Game (CDFG) that they be allowed to dredge outside of the work window, discussions between the permittees’ representative and the CDFG has occurred and the outcome of those discussions has been provided to the Commission staff; and (b) the Executive Director has determined that dredging and disposal outside of the work window will be consistent with the Commission’s laws and policies.

5. **Barge Overflow Sampling and Testing.** Results of any effluent water quality or other testing required by the California Regional Water Quality Control Board, San Francisco Bay Region shall be submitted in writing to Commission staff at the same time such testing is submitted to the Regional Board.
6. **Monitoring and Enforcement.** The permittees shall allow the Commission staff or representatives of other state or federal agencies to come aboard the dredge or barge associated with any dredging or disposal episode subject to reasonable safety and operational considerations, and observe the operation(s) to ensure that these activities are consistent with pre-dredging reports required herein and other terms and conditions of this permit. Further, the Commission reserves the right to have post-dredging reports inspected by a reliable third party familiar with bathymetric mapping in order to verify the contents of these reports. If a third party selected by or on behalf of the Commission indicates that a post-dredging report is inaccurate, the Commission reserves the right to require the permittees to submit a revised report that meets the conditions of this permit. If the Commission determines that the post-dredging report indicates that work has occurred beyond that authorized by this permit, such violation may result in the initiation of enforcement action by or on behalf of the Commission.
7. **Long-Term Management Strategy Program.** If, at any time during the effective life of this permit, the Commission’s laws, Bay Plan policies, or regulations change and are in effect regarding dredging, dredged material disposal, and beneficial reuse consistent with the multi-agency Long-Term Management Strategy Program (LTMS), this permit shall become null and void unless the permittees agree to

amend this authorization to meet the new laws, policies, or regulations in a manner specified by or on behalf of the Commission.

- D. **Pile-Driving Restrictions.** The permittees shall use a vibratory hammer to install all steel piles in the Bay to avoid potential impacts to fish species from elevated underwater sound pressure levels. If geotechnical studies indicate that an impact hammer is necessary due to unforeseen hard driving conditions, the permittees shall inform the Commission in writing that an impact hammer is needed, shall use an air bubble curtain to attenuate sound levels from the steel piles, or shall assure that sound pressure levels generated from the pile-driving do not exceed the maximum decibels and accumulated sound pressure levels established by NMFS. A qualified biologist shall monitor pile driving to ensure that the air curtain is functioning properly and project-generated sound waves do not exceed these thresholds.
- E. **Oyster Monitoring.** The permittees shall conduct a native oyster-monitoring program that, at a minimum, contains the following elements:
1. Oyster surveys shall be conducted one year prior to the construction activities authorized herein and one year after construction is completed. These surveys shall be submitted to the Commission for review within three months of completing the surveys. If post-construction surveys indicate that impacts to oysters have occurred, surveys shall be conducted for an additional year after the one-year post-construction period;
 2. The surveys shall include information on oyster populations within the marina and include information on distribution within the marina, relative patch densities, oyster densities, settlement rates, and water quality (temperature, salinity and turbidity); and
 3. If pre-construction surveys determine that oysters are present in the footprint of the area to be dredged, or within 53 feet adjacent to either side of the new ferry terminal, or on the underside of the floating docks to be removed for the ferry terminal, the permittees shall mitigate for the loss of oyster habitat by placing NMFS-approved substrate in an area outside of direct impact of the project. The placement of substrate shall require an amendment to this authorization.
- F. **Riprap**
1. **Riprap Material.** Riprap material shall be either quarry rock or specially-cast or carefully selected concrete pieces free of reinforcing steel and other extraneous material and conforming to quality requirements for specific gravity, absorption, and durability specified by the California Department of Transportation or the U. S. Army Corps of Engineers. The material shall be generally spheroid-shaped. The overall thickness of the slope protection shall be no more than three feet measured perpendicular to the slope. Use of dirt, small concrete rubble, concrete pieces with exposed rebar, large and odd shaped pieces of concrete, and asphalt concrete as riprap is prohibited. All rebar, asphalt, and large, odd shaped pieces of concrete shall be removed and disposed at an authorized location.
 2. **Riprap Placement.** Riprap material shall be placed so that a permanent shoreline with a minimum amount of fill is established by means of an engineered slope not steeper than two (horizontal) to one (vertical). The slope shall be created by the placement of a filter layer protected by riprap material of sufficient size to

withstand wind- and wave-generated forces at the site.

3. **Riprap Plans**

- a. **Design.** Professionals knowledgeable of the Commission's concerns, such as civil engineers experienced in coastal processes, should participate in the design of the shoreline protection improvements authorized herein.
- b. **Plan Review.** No work whatsoever shall be commenced on the shoreline protection improvements authorized herein until final riprap plans have been submitted to, reviewed, and approved in writing by or on behalf of the Commission. The plans shall consist of appropriate diagrams and cross-sections that (1) show and clearly label the 6.73-foot (MLLW) contour line (the mean high tide line), property lines, grading limits, and details showing the location, types, and dimensions of all materials to be used, (2) indicate the source of all materials to be used, and (3) indicate who designed the proposed shoreline protection improvements and their background in coastal engineering and familiarity with the Commission's concerns. Approval or disapproval of the plans shall be based upon: (1) completeness and accuracy of the plans in showing the features required above, (2) consistency of the plans with the terms and conditions of this permit, (3) assuring that the proposed fill material does not exceed this permit, (4) the appropriateness of the types of fill material and their proposed manner of placement, and (5) the preparation of the plans by professionals knowledgeable of the Commission's concerns, such as civil engineers experienced in coastal processes. All improvements constructed pursuant to this permit shall conform to the final approved plans. No changes shall be made thereafter to any final plans or to the constructed shoreline protection improvements without first obtaining written approval of the change(s) by or on behalf of the Commission.

4. **Maintenance.** The shoreline protection improvements authorized herein shall be regularly maintained by, and at the expense of the permittees, any assignee, lessee, sublessee, or other successor in interest to the project. Maintenance shall include, but not be limited to, collecting any riprap materials that become dislodged and repositioning them in appropriate locations within the riprap covered areas, replacing in-kind riprap material that is lost, repairing the required filter fabric as needed, and removing debris that collects on top of the riprap. Within 30 days after notification by the staff of the Commission, the permittees or any successor or assignee shall correct any maintenance deficiency noted by the staff.

G. **In-Kind Repairs and Maintenance.** Any in-kind repairs and maintenance of all areas shall only use construction material that is approved for use in San Francisco Bay. Construction shall only occur during current approved months during the year to avoid potential impacts to fish and wildlife. BCDC staff should be contacted to confirm current restrictions. Repair and maintenance work shall be confined to existing structural footprints and shall not result in the enlargement of the existing pier, gangway or dock structures.

H. **Creosote Treated Wood.** No pilings or other wood structures that have been pressure treated with creosote shall be used in any area subject to tidal action in the Bay or any certain waterway, in any salt pond, or in any managed wetland within the Commission's jurisdiction as part of the project authorized herein.

I. Water Quality

1. **Waste Discharge.** There shall be no discharge of any solid or liquid wastes, including grey water, bilge water or sewage into the Bay.
 2. **Waste Facilities.** At any time during the operation of the ferry service, the Executive Director may, by or on behalf of the Commission, require the permittees to install suitable facilities for receiving and disposing of bilge water, oily waste, and sewage from the ferry boats at the ferry terminal if he/ she determines that the existing pumpout facilities at the Oyster Point marina are not being used or do not have adequate capacity to serve the ferry boats.
- J. Minimizing Impacts to Waterbirds.** The permittees shall, to the extent feasible and subject to the requirements of other government agencies, adopt the recommendations found in the study currently being prepared by the United States Geological Service (USGS), Takekawa, et al., on the impacts of ferry vessel traffic on waterbirds. Preliminary recommendations include, keeping ferry routes in deep water channels as often as possible, avoiding areas where waterbirds are typically present or foraging, and confining ferry routes to as small an area as possible to minimize the effects of the ferry traffic on waterbirds and allowing waterbirds to habituate to ferry disturbance, but additional recommendations may be included in the final report.

- K. **Construction Operations and Debris Removal.** All construction operations shall be performed to prevent construction materials from falling, washing or blowing into the Bay or drifting and becoming a navigation or pollution hazard. In the event that such material escapes or is placed in an area subject to tidal action of the Bay, the permittees shall immediately retrieve and remove such material at its expense. All construction debris shall be removed to an authorized location outside the jurisdiction of the Commission. In the event that any such material is placed in any area within the Commission's jurisdiction, the permittees, their assignees, or successors in interest, or the owners of the improvements, shall remove such material, at their expense, within ten days after it has been notified by the Executive Director of such placement.
- L. **Notifying NOAA to update Nautical Charts.** Within 30 days of the completion of the project authorized by this permit, the permittees shall provide written verification to the Commission that it has submitted to the Nautical Data Branch of the National Oceanic and Atmospheric Administration (NOAA) the following: (1) (a) as-built drawings, blueprints or other plans that correctly depict the completed development or, if the project involves the removal of an existing development; (b) a list of the existing development(s) that have been removed and a statement from a qualified engineer or professional salvage company certifying which portions of the development have been removed; (2) the geographic coordinates of the project using a differential geographic positioning system (DGPS) unit or other comparable equipment suitable for providing location on a Nautical Chart; and (3) the permittees' name and contact information (such as a mailing address, telephone number, fax number and/ or e-mail address).
- M. **Recording.** The permittees shall record this permit or a notice specifically referring to this permit on all parcels affected by this permit with the 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.
- N. **Certification of Contractor Review.** Prior to commencing any grading, demolition, or construction, the general contractor or contractors in charge of that portion of the work shall submit written certification that s/ he has reviewed and understands the requirements of the permit and the final BCDC-approved plans, particularly as they pertain to any public access or open space required herein, or environmentally sensitive areas.
- O. **Abandonment.** If, at any time, the Commission determines that the improvements in the Bay authorized herein, have been abandoned for a period of two years or more, or have deteriorated to the point that public health, safety or welfare is adversely affected, the Commission may require that the improvements be removed by the permittees, its assignees or successors in interest, or by the owner of the improvements, within 60 days or such other reasonable time as the Commission may direct.

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* (Bay Plan), the California Environmental Quality Act (CEQA), and the Commission's amended coastal zone management program for San Francisco Bay for the following reasons:

- A. **Park Priority Use.** The San Francisco Bay Plan Map No. 5 designates a portion of the

Oyster Point shoreline, including the project site, as a waterfront park, beach priority use area. The policy note for the site states, “[p]reserve and improve marina and shoreline park. Preserve picnicking, swimming, boating, hiking, windsurfing, and fishing opportunities. Possible ferry terminal. Allow if compatible with park and marina use; serve with bus public transit to reduce traffic and parking needs. Some fill may be needed. Provide signage regarding fish consumption advisories for anglers.” Policy 9 of the Bay Plan policies on Recreation state, “Ferry terminals may be allowed in waterfront park priority use areas and marinas and near fishing piers and launching lanes, provided the development and operations of the ferry facilities do not interfere with current or future park and recreational uses, and navigational safety can be assured. Terminal configuration and operation should not disrupt continuous shoreline access. Facilities provided for park and marina patrons, such as parking, should not be usurped by ferry patrons. Shared parking arrangements should be provided to minimize the amount of shoreline area needed for parking.”

The South San Francisco Ferry Terminal project will be located in the east basin of the Oyster Point Marina. It’s construction will result in the elimination of two recreational boat docks (Docks 9 and 10) with a total of approximately 124 boat berths. The loss of these berths represent approximately 20% of the total number of berths at the marina. However, based on the vacancy rates at the marina, the permittees have indicated that any displaced boats will be adequately accommodated and relocated at other berths in the marina. Aside from the loss of these recreational boat docks, the project will not disturb existing recreational facilities or uses at Oyster Point although there will be an increase in activity during commute hours and waiting ferry patrons may use some of the existing public access facilities. All existing recreational facilities at the marina, including picnic facilities, the public boat launch ramp, windsurfing ramp, and fishing pier, will be preserved. The project will improve the marina and shoreline park by providing a public access viewing terrace and ferry pier with spectacular views of the Bay and by improving and widening an existing public access pathway connecting the north and south San Francisco Bay Trail segments at the site and providing an improved connection from the ferry terminal to nearby offices. These public access improvements will also improve access to the Oyster Point Marina by providing an alternative transportation option for those visiting the Oyster Point park and recreational facilities.

The ferry terminal is expected to operate primarily as a commuter ferry for employees working in the South San Francisco area who live in the East Bay. A shuttle service provided by the Peninsula Traffic Congestion Relief Alliance (Alliance) will connect the ferry terminal to employers in the vicinity, including Genentech, Cushman and Wakefield, and Exelis. The Alliance currently provides shuttle service from the peninsula BART and Caltrain stations to existing employment centers. Ferry commuters will also be able to connect to existing nearby businesses on foot or by bike using the improved and existing Bay Trail pathways. The permittees plan to discuss with SamTrans, possible bus service to or near Oyster Point, as the project gets closer to completion.

Currently, there are approximately 580 parking spaces serving the Oyster Point Marina, with approximately 223 spaces in the east basin lot near the ferry pier. In addition to these spaces, there are a number of large paved areas at Oyster Point that are unmarked and sometimes used for parking. The marina is required to provide one

parking space per boat slip as a condition of its business insurance requirements, which is greater than the number recommended by the California Department of Boating and Waterways (0.6 parking space per recreational boat slip.) According to the project's Environmental Impact Report (EIR), the existing marina parking lot is approximately 35 percent utilized (200 parking spaces full) on typical weekdays. During peak boat berth occupancy, estimated at 85 percent (500 berths occupied), no shortage of marina parking has been observed. With the removal of the boat berths at Docks 9 and 10, 124 parking spaces that will no longer be needed for berth tenants, will become available for others using the marina. Because the ferry terminal is expected to operate primarily as a commuter ferry for East Bay residents, the project's EIR concluded that the impact on parking at the site is less than significant. Based on ridership forecasts, the EIR estimated that the ferry terminal will require less than 40 parking spaces. Of this total, approximately 25 parking spaces will serve possible riders in the reverse direction (from Oyster Point to the East Bay) in the morning, while an additional 10 parking spaces will be reserved for employees and short-term parking for ferry passenger pick-up vehicles. The project will involve striping 56 parking spaces for ferry terminal use, 16 more than the project EIR estimated is needed. In addition, up to five of these spaces will be reserved for public access parking and signed accordingly. Since the removal of Docks 9 and 10 will create an excess of approximately 120 parking spaces at the site, and the marina provides more parking than the California Department of Boating and Waterways estimates is needed for recreational marinas, the 56 parking spaces for the ferry terminal will not impact parking for existing marina uses.

For these reasons, the Commission finds the project consistent with the Bay Plan policies regarding waterfront park priority use and recreation.

- B. Bay Fill.** The Commission may allow Bay fill only when it meets the fill requirements identified in Section 66605 of the McAteer-Petris Act, which states, in part: (a) the public benefits from fill must clearly exceed the public detriment from the loss of water areas, and fill should be limited to water-oriented uses, including public assembly; (b) no alternative upland location exists for the fill; (c) the fill should be the minimum amount necessary; (d) the fill should minimize harmful effects to the Bay including the water volume, circulation, and quality, and fish and wildlife resources; (e) the fill should be constructed in accordance with sound safety standards; and (f) the fill should be authorized when the applicant has valid title to the affected property.

1. **Public Benefit v. Public Detriment and Water-Oriented Use.** The South San Francisco ferry terminal will provide a transportation alternative to relieve traffic congestion and to serve as a critical link in the event that roads, bridges or tunnels become disabled in a disaster. According to the project's EIR, the City of South San Francisco anticipates jobs in the Oyster Point area to double by the year 2020. The South San Francisco ferry terminal will serve these employment uses, as well as the many existing commercial and biotech companies in the area, by connecting the ferry terminal to these offices with shuttle buses and improved bike and pedestrian paths. The ferry service will run to the East Bay initially and to San Francisco in the future. The project will also result in a net decrease of 4,900 square feet of Bay fill.

The Commission finds that fill for a ferry terminal is a water-oriented use and that the public benefits associated with the project exceed the public detriment from the placement of fill and provides opportunity for public assembly.

2. **No Alternative Upland Location.** Because a ferry terminal must be located in the Bay to serve its function, there is no alternative upland location for the uses for which this fill will be placed. The public access viewing terrace is designed to be pile-supported over the riprap shoreline to minimize impacts to the Bay to provide users an opportunity to get closer to the Bay, and to avoid driving pilings into the uplands of Oyster Point, a capped landfill. Pilings penetrating the landfill cap could lead to leachate from the former landfill entering the Bay.

For these reasons, the Commission finds that there is no alternative upland location for the project.

3. **Minimum Amount of Fill.** The removal of existing boat berths and the construction of the ferry terminal will result in an overall net reduction of 4,900 square feet of Bay fill. While the amount of solid and pile-supported fill will increase, floating and cantilevered fill will be reduced. The ferry terminal pier was designed with a single-pile support to minimize fill in the Bay and to create an elegant and simple design. The permittees stated that the fill is the minimum amount necessary to accommodate a two-berth ferry terminal for the estimated number of users at the site, to provide public access, and to avoid construction in upland areas that could potentially puncture the capped landfill.

For these reasons, the Commission finds that the fill is the minimum necessary to complete the project.

4. **Minimizing Impacts.** The project will involve driving up to 40 steel and concrete piles in the Bay and placing up to 17 cubic yards of riprap along the shoreline, resulting in an increase of 580 cubic yards of solid Bay fill. As discussed more fully in Section III-D “Natural Resources Policies” below, the measures incorporated into the project minimize potential fill impacts to the Bay, including those to water volume, circulation and quality, and fish and wildlife resources. NOAA’s National Marine Fisheries Service (NMFS) determined that the project is not likely to adversely affect listed anadromous salmonids or the North American green sturgeon nor the essential physical or biological features associated with designated critical habitat. Further, on December 5, 2008, the San Francisco Bay Regional Water Quality Control Board (RWQCB) issued a water quality certification for the dredging element of the project.

For these reasons, the Commission finds that, as conditioned, the project minimizes harmful effects to the Bay including the water volume, circulation, and quality and fish and wildlife resources.

5. **Sound Safety Standards.** Policy 1 of the Bay Plan Safety of Fills section states, in part: “The Commission has appointed the Engineering Criteria Review Board [ECRB]...to: (a) establish and revise safety criteria for Bay fills and structures thereon; (b) review all except minor projects for the adequacy of their specific safety provisions, and make recommendations concerning these provisions...” Policy 4 states: “To 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”. Policy 5 states, in part: “To minimize the potential hazard to Bay fill projects and bayside development from subsidence, all proposed developments should be sufficiently high above the highest estimated tide level for the expected life of the project...”

The Commission's ECRB reviewed the project for seismic and engineering design safety on September 11, 2008. The ECRB requested additional information regarding the soil and slope stability of the area where the public access viewing terrace piles will be placed and the impact of an earthquake on the piles. The permittees submitted this information to the ECRB on October 2, 2008. The ECRB reviewed the material and was satisfied with the engineering criteria used in the design of the project.

Oyster Point is a capped landfill that continues to settle and subside. The permittees estimate that without any extensive new fill on Oyster Point, the area is expected to settle approximately 16 inches in 50 years. To avoid further subsidence of Oyster Point, the permittees designed the ferry terminal as a pile-supported structure over the Bay to avoid placing structures on land that could cause further land settlement. The permittees will re-grade a portion of the Bay Trail adjacent to the ferry terminal an additional foot above existing grade and construct concrete hinge slab ramps to connect the Bay Trail to the public access viewing terrace and ferry terminal. The hinge slabs will allow the ferry terminal to remain accessible even as the landside portion of Oyster Point settles.

The ferry terminal will be built three feet above the prevailing landside grade at an elevation of 13 feet MLLW. The permittees estimate mean high water at Oyster Point to be approximately 6.73 feet MLLW and, according to a 1984 Corps study, the 100-year highest estimated tide at the site was observed at 10.35 feet MLLW. Based on the highest rate of sea level rise of 0.33 inch per year, predicted by the California Climate Action Team Reports on Climate Change, the elevation of the ferry terminal will accommodate the highest projections for sea level rise over a 50-year period under both the estimated mean high water level and the Corps' 100-year highest estimated tide at the site.

According to the permittees, the City of South San Francisco is currently conducting a planning study for the future redevelopment of the upland portion of Oyster Point that would include raising the elevation of the site to address settlement and sea level rise. The design of the ferry terminal will allow the ferry terminal to remain accessible and usable even with future placement of fill at Oyster Point.

For these reasons, the Commission finds that the project will be constructed in accordance with sound safety standards, consistent with Bay Plan policies regarding safety of fills.

6. **Valid Title of Project Site.** Oyster Point is owned by the City of South San Francisco and operated by the Harbor District pursuant to a Joint Powers Agreement dated July 6, 1977. The Harbor District has leased the portion of Oyster Point where the project is located to WETA pursuant to a lease agreement dated December 28, 2007.

For all the reasons listed above, the Commission finds that the project is consistent with the Commission's law and related policies on the placement of fill.

- C. **Public Access.** Section 66602 of the McAteer-Petris Act states that "...maximum feasible public access, consistent with a proposed project, should be provided." In assessing whether a project provides maximum feasible public access consistent with the project, the Commission relies on the McAteer-Petris Act, the policies of the San Francisco Bay Plan, and also relevant court decisions. In assessing whether a proposed *public* project, such as the South San Francisco ferry terminal, would provide the maximum feasible public access consistent with the project, the Commission should evaluate whether the proposed public access is *reasonable* given the scope of the project.

Policy 1 and Policy 6 of the Bay Plan policies on Public Access state that "a proposed fill project should increase public access to the Bay to the maximum extent feasible" and that the public access 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 to the maximum extent feasible, should include an ongoing maintenance program, and should be identified with appropriate signs." Policy 5 states, "[w]henver public access to the Bay is provided as a condition of development...the access should be permanently guaranteed." Policy 8 states, "access to and along the waterfront should be provided by walkways, trails, or other appropriate means to connect the nearest public thoroughfare where convenient parking or public transportation may be available" and Policy 11 states that, "the Design Review Board should advise the Commission regarding the adequacy of the public access proposed." Policy 2 of the Bay Plan's Appearance, Design and Scenic Views section state that "all bayfront development should be designed to enhance the

pleasure of the user or viewer of the Bay” and that “maximum efforts should be made to provide, enhance, or preserve views of the Bay and shoreline, especially from public areas, from the Bay itself, and from the opposite shore.” Policy 10 goes on to state, “towers, bridges, or other structures near or over the Bay should be designed as landmarks that suggest the location of the waterfront when it is not visible...”

BCDC Permit No. 1-77, last amended on August 23, 2007 (Amendment No. 15), was issued to the Harbor District and authorizes the existing marina facilities and maintenance dredging at Oyster Point. That permit requires public access that includes an approximately ten-foot-wide, 1,920-foot-long, paved public access pathway along the Oyster Point shoreline, an approximately 2,100-square-foot windsurfer launch ramp, and the placement of six benches, six trash cans, two picnic tables, at least two public access signs and Bay Trail signs, and landscaping.

The public access associated with the ferry terminal project authorized herein includes: a public access viewing terrace at the head of the ferry pier with benches, trashcans, and lighting; a portion of the enclosed ferry pier, available to the public during ferry operating hours (estimated to be from 6 a.m. to 8 p.m., Monday through Friday), improvements to an existing pathway, outside the Commission’s jurisdiction to improve bike and pedestrian access to the ferry terminal; and bike lockers, public access parking spaces, public access signs and landscaping.

The Commission’s Design Review Board (DRB) reviewed and generally supported the project’s proposed public access on January 7, 2008. The DRB recommended installing bike lockers at the ferry terminal and landscaping near the public access viewing terrace. These improvements were subsequently incorporated into the project. According to the permittees, “existing public access would be enhanced by the proposed project as well as by the new ferry service that would open up visibility and access to the larger bay and the regional shoreline.” Currently, views north from the Bay Trail near the project site are of the Bay, recreational boats berthed in Docks 9 and 10, and office buildings in the distance. Upon project completion, the views from the shoreline will be primarily of the ferry terminal structure and berthed ferries. Although views from the shoreline will change, the project will provide new vantage points for viewing the Bay. Because the ferry terminal will be elevated approximately three feet above the current grade, views of the Bay from both the public access viewing terrace and the ferry pier will be somewhat improved. The viewing terrace will be ADA-accessible, open to the public at all times, and will provide seating and signs to create a visually attractive entryway into the ferry terminal. The portion of the enclosed ferry pier that will be accessible during ferry operation will also provide seating opportunities along the seatwalls within the pier, new vantage points of the Bay, and a sheltered area for passengers and the public seeking refuge from inclement weather and the prevailing winds. The permittees state that the ferry terminal is designed to be simple and elegant, and to provide a visually attractive identity for the new ferry service.

In addition to the public access provided on the viewing terrace and ferry pier, the permittees will improve an existing pathway that connects the ferry terminal with the existing Bay Trail paths and adjacent businesses. Bike lockers, public access parking spaces, signage, landscaping, and on-going maintenance of the public access areas will also be provided, consistent with the Bay Plan policies on public access. These public access improvements and their maintenance are required in Special Condition II-B.

The project's EIR predicts that the ferry will serve approximately 936 daily passengers by year 2025. The bulk of these riders will consist of commuters during commute hours moving to and from their place of work. Some of these commuters can be expected to use the new and existing public access facilities as they await their ferry. Also, it is likely that the public may also use the ferry to travel during off-peak hours to visit the East Bay or Oyster Point. The new and existing public access improvements will accommodate the expected increase in use of public access facilities by ferry passengers. The improvements to the Bay Trail connections and bike lockers will accommodate commuters traveling to adjacent businesses as well as visitors to Oyster Point. The public access viewing terrace will provide a waiting area for ferry commuters as well as a viewing and resting spot for the public.

For these reasons, the Commission finds that the project's public access improvements, as conditioned, are the maximum feasible consistent with the project and reasonable given the scope of the project.

- D. **Natural Resources Policies.** Policy 1 of the Bay Plan policies on Subtidal Areas state: "Any proposed filling or dredging project in a subtidal area should be thoroughly evaluated to determine the local and Bay-wide effects of the project on: (a) the possible introduction or spread of invasive species; (b) tidal hydrology and sediment movement; (c) fish, other aquatic organisms and wildlife; (d) aquatic plants; and (e) the Bay's bathymetry. Projects in subtidal areas should be designed to minimize and, if feasible, avoid any harmful effects." Policy 2 of the Bay Plan policies on Fish, Other Aquatic Organisms, and Wildlife state, in part: "Specific habitats that are needed to conserve, increase, or prevent the extinction of any native species, species threatened or endangered...should be protected..." Policy 4 states that the Commission should "...consult with the California Department of Fish and Game and the U.S. Fish and Wildlife Service or [NMFS] whenever a proposed project may adversely affect an endangered or threatened...species" and "...[g]ive appropriate consideration to the recommendations of the [state and federal resource agencies] in order to avoid possible adverse effects of a proposed project on fish, other aquatic organisms and wildlife habitat." Policy 1 of the Bay Plan policies on Water Quality state, "Bay water pollution should be prevented to the greatest extent feasible..." and policy 2 states that, "...the policies, recommendations, decisions, advice and authority of the State Water Resources Control Board and the Regional Board, should be the basis for carrying out the Commission's water quality responsibilities."

According to the permittees and the project's EIR, the project site does not contain lands designated as critical habitat for any threatened or endangered terrestrial species. The Program EIR for the Expansion of Ferry Transit Service in the San Francisco Bay Area, identified potential program-wide impacts of the proposed ferry routes on Bay wildlife and habitat. In particular, the program EIR noted potential impacts of ferries to rafting waterbirds. To address this issue, a study was undertaken by John Takekawa at the USGS on the effects of the ferry routes on rafting waterbirds in the San Francisco Bay Area. The study is complete but has not been published yet. Special Condition II-J of the permit requires the permittees to incorporate, to the extent feasible and subject to the requirements of other government agencies, the recommendations of the published study, to minimize impacts to waterbirds.

Routine dredging at the marina to maintain operational depth prevents benthic vegetation, like eelgrass, from becoming established. Therefore, the Bay substrate at the

marina is likely comprised of Bay mud that has been colonized by small invertebrates. Fish species that may occur in the project site area include Central California Coast steelhead and North American green sturgeon. The project is also located within an area identified as essential fish habitat for groundfish, pelagic and salmon species. In addition to these species, live native oysters have been observed at Oyster Point. Native oysters are a valuable component of the San Francisco Bay ecosystem, increasing the quality of essential fish habitat for groundfish, pelagic, and salmon species by increasing habitat complexity, available prey items, and improving water quality.

On June 6, 2006, the Federal Transit Administration (FTA) initiated consultation with NMFS pursuant to Section 7 of the Endangered Species Act and the Essential Fish Habitat provisions of the Magnuson Stevens Fishery Conservation and Management Act. On September 25, 2006, NMFS found that, based on the measures incorporated into the project, the project is not likely to adversely affect listed anadromous salmonids or the North American green sturgeon nor the essential physical or biological features associated with designated critical habitat.

Special Condition II-D of the permit requires the permittees to use a vibratory hammer rather than an impact hammer to install the steel piles, to minimize the effects associated with elevated underwater sound pressure levels during pile driving. If geotechnical studies indicate that an impact hammer is necessary due to unforeseen hard driving conditions, the condition requires the permittees to use an air bubble curtain to attenuate sound levels from the steel piles or maintain sound pressure levels that have been found by NMFS to not harm fish. NMFS found that by encapsulating the steel piles with a curtain of air bubbles during impact driving, sound levels could be significantly reduced. NMFS also concluded that the installation of the concrete piles for the public access viewing deck and the end ties at Docks 11, 12 and 13, is not likely to injure fish.

Special Condition II-C of the permit requires the permittees to dredge the marina basin during the months of June through November, which coincides within the work windows established by the *Long Term Management Strategy (LTMS) for the Placement of Dredged Material in the San Francisco Bay Region*. According to NMFS, this time period will avoid the migration seasons of listed anadromous salmonids, and will not affect year-round green sturgeon.

With respect to potential adverse effects to essential fish habitat, NMFS found that the dredging and operation of the ferries are expected to result in adverse effects from turbidity and scouring that could affect the native oyster population and recommended that an oyster-monitoring program be implemented. Special Condition II-E of the permit requires the permittees to conduct an oyster monitoring program that includes surveys for oyster densities, settlement rates, and water quality (temperature, salinity and turbidity), one year pre-construction and one year post-construction with an additional year beyond the one-year post-construction period if NMFS determines that adverse impacts to live native oysters have occurred based on the results of the pre- and post-construction surveys. If pre-construction surveys find oysters present in the dredging footprint, within 53 feet adjacent to either side of the ferry terminal, and/ or on the underside of the floating docks that will be removed to complete the ferry terminal, the condition requires the permittees to mitigate for the loss of native oysters with the placement of a NMFS-approved substrate in an area outside areas directly

impacted by the project.

On December 5, 2008, the RWQCB issued a water quality certification for the project. The water quality certification included conditions based on NMFS's recommendations for essential fish habitat, requiring the permittees to conduct oyster monitoring and to place an NMFS-approved substrate if oysters are found at or near the project site.

For these reasons, the Commission finds that with the incorporation of NMFS's and the RWQCB's recommendations, reflected in Special Conditions II-C, II-D, and II-E of the permit, the project is consistent with the Bay Plan policies regarding fish, other aquatic organisms, and wildlife, and water quality.

- E. **Dredging.** Policies 1 and 2 of the Bay Plan policies on dredging state that, "dredging and dredged material disposal should be conducted in an environmentally and economically sound manner" and that "dredging should be authorized when the Commission can find: (a) the applicant has demonstrated that the dredging is needed to serve a water-oriented use or other important public purpose...; (b) the materials to be dredged meet the water quality requirements of the [RWQCB]; (c) important fisheries and Bay natural resources would be protected through seasonal restrictions established by the California Department of Fish and Game, the U.S. Fish and Wildlife Service and/ or [NMFS]...; (d) the siting and design of the project will result in the minimum dredging volume necessary for the project; and (e) the materials would be disposed of in accordance with Policy 3." Policy 3 states, "Dredged materials should, if feasible, be reused or disposed outside the Bay and certain waterways...[D]redged material should not be disposed in the Bay and certain waterways unless disposal outside these areas is infeasible and the Commission finds: (a) the volume to be disposed is consistent with applicable dredger disposal allocations and disposal site limits adopted by the Commission by regulation; (b) disposal would be at a site designated by the Commission; (c) the quality of the material disposed of is consistent with the advice of the [RWQCB] and the inter-agency Dredged Material Management Office (DMMO); and (d) the period of disposal is consistent with the advice of the California Department of Fish and Game, the U.S. Fish and Wildlife Service and/ or [NMFS]."

BCDC Permit No. 1-77 (Amendment No. 15), issued to the Harbor District, authorizes maintenance dredging within the east basin of the marina to a depth of -8 feet MLLW, plus a two-foot over-dredge allowance. The project will deepen the east basin entrance channel and a portion of the east basin, using a clamshell dredge, to -10 feet MLLW and the immediate ferry berthing area to -12 feet MLLW, both with a two-foot over-dredge allowance, to accommodate the deeper drafts of the ferry vessels. The estimated total new dredging will be 19,300 cubic yards, with disposal at the Commission-designated Alcatraz site (SF-11). The dredging will be for a water-oriented use and to provide an alternative transportation option for commuters to South San Francisco. According to the permittees, the amount of new dredged material, 19,300 cubic yards, is the minimum necessary to deepen the marina channel and ferry berthing area to safely accommodate the drafts of the ferries. DMMO and LTMS Program Managers reviewed the alternative disposal site analysis for the new work dredging and determined that in-Bay disposal was the only feasible option for this project and is consistent with the in-Bay disposal site volume limits.

The RWQCB, in conjunction with the DMMO, reviewed the report characterizing the

dredged sediments quality: *Sampling and Testing of Sediments, South San Francisco Ferry Terminal, Oyster Point Marina East Basin Demolition and Dredging*, dated November 2007, and determined that the dredged sediments were suitable for unconfined aquatic disposal at the Alcatraz disposal site. On December 5, 2008, the RWQCB issued a water quality certification for the project based on this determination.

As discussed above in Section III.D, “Natural Resources Policies” above, NMFS has determined that because the dredging will occur within the LTMS work windows of June through November, the project will not likely adversely affect listed species or designated critical habitat. Through the essential fish habitat consultation, NMFS recommended that an oyster monitoring program be implemented. Should monitoring indicate that the existing oyster population is being adversely impacted, NMFS recommended that a NMFS-approved substrate be placed outside the zone of ferry impact. These conditions have been included in Special Conditions II-C and II-E of this permit. In addition, special conditions have been included in the permit, requiring pre- and post-dredging reports and any barge overflow sampling and testing reports to be submitted to the Commission staff, and requiring the permittees to amend the permit if the Commission’s laws, policies or regulations are changed to reflect changes to the LTMS program.

For these reasons, the Commission finds that, as conditioned, the new dredging is consistent with the Bay Plan’s dredging policies.

- F. **Transportation.** Policy 1 of the Bay Plan policies on transportation state that, "...the Commission should continue to take an active role in Bay Area regional transportation and related land use planning affecting the Bay, particularly to encourage alternative methods of transportation..." Policy 4 states that, "transportation projects on the Bay shoreline...should include pedestrian and bicycle paths that will either be a part of the Bay Trail or connect the Bay Trail with other regional and community trails." Policy 5 states that, "ferry terminals should be sited at locations that are near navigable channels..." and wherever possible, "near higher density, mixed-use development served by public transit."

The project will introduce ferry service to South San Francisco to alleviate congested roads and highways, to provide an alternative mode of transportation for employees working in the South San Francisco area and to provide an alternative for emergency service. Oyster Point is near a mixture of industrial, office, service, recreational, and commercial uses. Nearby employers include Genentech, United Parcel Service, Cell Genesys, Amgen and Raven Pharmaceuticals. Ferry commuters are expected to be transported to offices predominantly by employer-sponsored shuttle service provided by the Peninsula Traffic Congestion Relief Alliance, as well as by bicycle and on foot. The project will provide improvements to facilitate circulation for all these transit modes. Special Condition II.B requires the permittees to improve an existing pedestrian and bicycle path to connect the Bay Trail with other regional and community trails. According to the project's EIR, the project is located near an existing navigable channel, which historically has not rapidly filled with sediment. The ferry terminal will be constructed within an existing marina that has been periodically dredged to maintain a navigable channel for recreational boats and that will be deepened another two to four feet to allow for the drafts of the ferries. Under BCDC Consistency Determination No. CN 6-07, the Corps is reconfiguring the existing breakwater at the marina to reduce wave activity within the marina basin and improve navigational safety, reliability and efficiency of vessels entering the marina. Although the immediate Oyster Point marina is not currently occupied by high-density mixed-use development, the City of South San Francisco plans to develop the site with a mixture of office, residential and commercial uses in the future and there are high-density office uses in the nearby vicinity. In addition, because the ferry terminal is expected to operate as a commuter ferry for employees working in the South San Francisco area and will be connected to these businesses with a shuttle service, there is no expected increase in demand for parking at the site. Given the excess of parking that will be available at the marina, there should be sufficient parking available if ferry service is expanded to San Francisco.

For these reasons, the Commission finds the project consistent with its Bay Plan policies regarding transportation.

G. Review Boards

1. **Engineering Criteria Review Board.** The Commission's ECRB reviewed the project for seismic and engineering design safety on September 11, 2008. The ECRB requested additional information regarding the soil and slope stability of the area where the public access viewing terrace piles will be placed and the impact of an earthquake on the piles. The permittees submitted this information to the ECRB on October 2, 2008. The ECRB reviewed the material and was satisfied with the engineering criteria used in the design of the project.

2. **Design Review Board.** On January 7, 2008, the Commission's DRB reviewed the project with a public access proposal that included the public access viewing terrace at the ferry terminal and three options for improving public access trails at Oyster Point, including the north-south pathway that is part of the project authorized herein. An Association of Bay Area Governments' (ABAG) Bay Trail Project representative commented that improvements to the north-south pathway (required herein) would be the preferred option. The DRB recommended installing bike lockers at the site and landscaping near the public access viewing terrace, which the permittees have incorporated into the project. Overall, the DRB supported the project and the public access.
- H. **Other BCDC Permits for Oyster Point.** BCDC Permit No. 1-77, issued to the San Mateo County Harbor District, authorizes the Oyster Point marina uses, public access at the site, and maintenance dredging at the marina to a depth of -8 feet MLLW plus a two-foot over-dredge allowance.
- I. **Public Trust.** The fill authorized herein is to provide public access and to construct a ferry terminal, a water-oriented use, which will serve the local and regional needs of the Bay Area. Therefore, the Commission finds the improvements authorized herein consistent with the public trust.
- J. **Environmental Review.** On July 10, 2003, WETA, the lead agency, certified a Program EIR for the Expansion of Ferry Transit Service in the San Francisco Bay Area and on November 27, 2006, WETA certified an EIR/ Environmental Assessment (EA) for the South San Francisco Ferry Terminal project, in accordance with the California Environmental Quality Act (CEQA).
- K. **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. **Permit Execution.** This permit shall not take effect unless the permittees execute the original of this permit and return 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. **Notice of Completion.** 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. **Permit Assignment.** The rights, duties, and obligations contained in this permit are assignable. When the permittees transfer any interest in any property either on which the activity is authorized to occur or which is necessary to achieve full compliance of one or more conditions to this permit, the permittees/ transferors and the transferees shall execute and submit to the Commission a permit assignment form acceptable to the Executive Director. 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. **Permit Runs With the Land.** 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. **Other Government Approvals.** 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 or county in which the work is to be performed, whenever any of these may be required. This permit does not relieve the permittees of any obligations imposed by State or Federal law, either statutory or otherwise.
- F. **Built Project must be Consistent with Application.** 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.
- G. **Life of Authorization.** 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.
- H. **Commission Jurisdiction.** 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. 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.
- I. **Changes to the Commission's Jurisdiction as a Result of Natural Processes.** 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.
- J. **Violation of Permit May Lead to Permit Revocation.** 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 permittees or their assignees 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 permittees or their assignees if the permit has been assigned.
- K. **Should Permit Conditions Be Found to be Illegal or Unenforceable.** 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 permittees or their assignees 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.

- L. **Permission to Conduct Site Visit.** The permittees 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.