

# SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

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January 23, 2009

## Revised Application Summary

(For Commission consideration on February 5, 2009)

**Number:** BCDC Permit Application No. 2-06  
**Date Filed:** November 14, 2008  
**90th Day:** February 12, 2009  
**Staff Assigned:** Karen Wolowicz (415/352-3669, karenw@bcdc.ca.gov)

### Summary

- Applicant:** California Department of Corrections and Rehabilitation (CDCR)
- Location:** In the Bay and within the shoreline band, at and adjacent to San Quentin State Prison (Prison), in an unincorporated area of Marin County. The Prison lies south of the City of San Rafael, east of State Route Highway 101 and the City of Larkspur, north of San Francisco Bay, and west of the Richmond-San Rafael Bridge and the unincorporated neighborhood of San Quentin Village (Exhibit A).



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**Project:** The proposed project would involve constructing a Condemned Inmate Housing Project on approximately 40-acres in the southwestern portion of the Prison property (Exhibits A, B and C). Several residences of Prison employees and Sir Francis Drake Boulevard lie immediately north of the proposed project site. The proposed project involves constructing three maximum-security housing units for 1,152 condemned male inmates, an in-patient correctional treatment building serve the entire Prison population, associated support buildings, and a parking lot (Exhibit D). The proposed site is planned to accommodate a fourth housing unit, if needed, at a future date. None of the above described buildings or site improvements are located within the Commission's jurisdiction.

Within the Commission's shoreline band jurisdiction, the proposed project would include a guard tower, a gun locker building, a construction staging area to remain in place for approximately two years, portions of a resurfaced road and paving, and a security perimeter fence. A stormwater outfall would be constructed in the Bay.

The applicant's proposal consists of two public access components: (1) the construction of a public access area and associated improvements east of San Quentin Village, including a two to three-car parking area with a viewing platform, and a maintenance road and trail to the Bay; and (2) a \$900,000 monetary contribution to the Marin Transportation Authority (TAM) to partially fund Phase One of the Central Marin Ferry Connection located in the general vicinity of Corte Madera Creek and Larkspur Landing (Exhibit E).

**Issues Raised:**

The staff believes that the application raises three primary issues: (1) whether the project would provide maximum feasible public access consistent with the project; (2) whether the project is consistent with the *San Francisco Bay Plan* (Bay Plan) appearance, design, and scenic views policies; and (3) whether the proposed outfall is consistent with the McAteer-Petris Act and Bay Plan policies regarding fill.

### Project Background

San Quentin State Prison began operating in 1854. In 1934, the condemned inmate facilities were constructed for a population of 68 inmates. Currently, the Prison houses over 600 condemned inmates, with a projected rate of increase of 25 new inmates a year. Existing housing conditions for the Prison's condemned inmate population are severely overcrowded, resulting in space limitations for recreation yards and support service areas. The purpose of the proposed

project is to meet Prison needs to house new inmates and to meet the requirements of the California Penal Code and the Thompson Decree, which mandates condemned inmates to reside at San Quentin. The applicant states that the proposed project would address the current and projected shortages of housing for condemned inmates. Space constraints have also created operational concerns including inadequate security for both inmates and staff, inadequate maintenance of aged buildings, limited space for double electric perimeter fencing, narrow walkways along the cells, and limited or obstructed visibility of the cells.

The project site also has a minimum security inmate complex housing 250 inmates, an abandoned wastewater treatment facility, an abandoned detergent factory, a materials recycling and salvage facility, maintenance and storage areas, workshops, and a parking lot. The project site has been graded, developed, or otherwise altered as a result of prior construction and operation of the Prison and associated facilities. No previously undisturbed natural plant communities are present at the site and a large portion of the site is located on a former landfill used during the early 20<sup>th</sup> century. Views to the Bay presently exist across the project site from SFO Boulevard, but there has been no public access to or along the shoreline at the project site for more than a century due to security issues.

#### **Prior Commission Discussion of the Project**

On December 18, 2008, the Commission held a public hearing for this project. The applicant's proposal included contributing up to \$932,000 to fund one, or combination of three public access projects. Public comments included concerns about the removal of Dairy Hill, which is entirely outside the Commission's jurisdiction, the need for formalized bicycle and pedestrian access on Sir Francis Drake Boulevard adjacent to the prison, and potential security and maintenance issues at the proposed Main Street public access area in San Quentin Village. The Commission closed the public hearing, and discussed the merits of the three public access proposals.

On January 15, 2009, the Commission considered a staff recommendation on the project, which included some site improvements to Main Street in San Quentin Village and a \$900,000 monetary contribution to the Transportation Authority of Marin for funding Phase One of the Central Marin Ferry Connection. Some Commissioners questioned whether the project authorized in the staff recommendation provided maximum feasible public access and whether a portion of the site would be better served as a ferry / transit terminal. The Commission postponed its vote, and asked its staff and the applicant to review the public access proposal and to further investigate the viability of the future development of a ferry terminal at San Quentin.

In reviewing this revised summary, the Commission should pay particular attention to the Priority Use section (p. 5) and the issues raised in the Public Access section (p. 6). The Commission will hold a public hearing and vote on this project at the February 5, 2009 Commission meeting.

At the time of mailing this revised Staff Summary, the CDCR informed Commission staff that it is presently working with the State administration, including the Department of Finance, to determine its authority for increasing the monetary contribution for its public access proposal, but that it has not yet resolved as to whether additional funds would be available for this purpose. The CDCR anticipates that this issue may possibly be resolved prior to the Commission public hearing scheduled for February 5, 2009, and, if so, will be raised in that forum.

### Project Description

**Project  
Details:**

The CDCR describes the project as follows (Exhibits F and G):

1. **In the Bay:**

- a. Place, use, and maintain in-kind approximately 2,613 square feet (329 cubic yards) of solid fill for a new stormwater outfall.

2. **Within the 100-foot shoreline band:**

- a. Construct, use and maintain a 170-square-foot guard tower and a 130-square-foot gun locker building;
- b. Place, use and maintain a 4,500-square-foot portion of a paved road and a 1,025-foot-long section of a 14.5-foot-high lethal electrified security perimeter fence;
- c. Establish and use a 109,000-square-foot (2.5 acre) construction staging area and remove at project completion (approximately two years after project commencement date); and
- d. Construct, use and maintain a public access viewing area consisting of: (1) a two to three-car parking area with one ADA-compliant space; (2) a viewing platform with a bench, interpretive signage, and native landscaping; (3) a 15-foot-wide, 50-foot-long gravel maintenance road, an adjoining path, a security barrier to prevent access to the maintenance road, a small seating area, and (4) a security gate to block access to the historic water system jetty.

**Fill:** The proposed project would involve placing 329 cubic yards of fill covering 2,613 square feet of Bay surface to construct a new outfall structure in the Bay.

**Public  
Access:**

Public access is not available at or through the Prison site due to public and inmate security restrictions. When the project was first proposed to Commission staff in May 2006, it included public access area at a nearby hillside and improvement to the Main Street area (both on prison grounds) at a cost esti-

mated at \$932,000. CDCR withdrew the public access proposal due to concerns regarding cost, ADA-compliance, and security. Since that time the CDCR sought other public access opportunities costing approximately \$932,000. At the December 18, 2008, Commission public hearing for the project, the CDCR proposed contributing up to \$932,000 to fund one or a combination of three public access options. Since that time the CDCR has revised its public access proposal to include:

1. **Main Street Improvements.** The creation of a public access viewing area at the east end of Main Street adjacent to the historic San Quentin State Prison Saltwater Pumphouse, that would consist of a two to three-car parking lot, a viewing platform, associated landscaping, and a maintenance road with an adjacent path. Interpretive signs would be installed to provide a narrative and photos of the historic water system, the Saltwater Pumphouse, and other nearby features. Fencing would be installed at the historic water system jetty and Saltwater Pumphouse as these structures have been determined to be unsafe for the public.
2. **TAM Improvements.** A monetary contribution of \$900,000 to the Transportation Authority of Marin (TAM) for Phase One of the Central Marin Ferry Connection (CMFC). The TAM project is a two-phase project to connect the Cal Park Hill multi-use path located north of Sir Francis Drake Boulevard to Wornum Drive to the south near Corte Madera Shopping Village in the City of Larkspur. Phase One would extend the Cal Park Hill multi-use pathway by constructing an ADA accessible path to Sir Francis Drake, a bridge over Sir Francis Drake Boulevard to the south side of Sir Francis Drake Boulevard, and improvements along an existing multi-use pathway at the south side of Sir Francis Drake Boulevard to connect to the Larkspur Ferry Terminal (Exhibit E). The estimated cost of Phase One is \$11.7 million, with \$10.7 million already obtained. The CDCR proposes contributing \$900,000 to TAM towards Phase One.

**Priority  
Use:**

The proposed project is located in an area which is not designated for a priority use. However, Sir Francis Drake Boulevard, which borders the project site, is designated as a scenic drive in the Commission's Bay Plan Map No. 4. Bay Plan Map No. 4 contains the following suggestion: "If and when the site is not needed by the State of California for a prison facility, a portion of the site should be considered for a possible commuter ferry terminal." Bay Plan Map suggestions are advisory only. The California Department of Corrections and Rehabilitation intends to continue using the project site as a Prison facility.

The Commission's authority, at this time, is limited to the CDCR proposal in this Staff Summary. Further, the applicant has conducted an initial study on the viability of incorporating a commuter ferry terminal on-site, and they have concluded that the ferry terminal is in direct conflict with the proposed project. The applicant has stated that locating a ferry terminal, with a large number of commuters, adjacent to a maximum-security prison with a lethal electrified fence, creates a number of unintended land use conflicts. First, the proposed high-rise residential structures in the shared-use proposal could have direct views of prison grounds and potentially be in line of fire from perimeter towers; second, the proposal does not address the loss of on-site employee housing, nor does it address the public safety zone needed for the perimeter security fence.

And finally, the proposal would either delay the construction of the new facilities on-site or force the facilities to be built at an unidentified alternative site; the anticipated costs of both would be much greater than the budget currently authorized.

**Schedule  
and Cost:**

The applicant proposes to begin construction in Spring 2009, and complete construction by Spring 2011. The total estimated project cost is approximately \$350 million.

### Staff Analysis

A. **Issues Raised:** The staff believes that the application raises three primary issues: (1) whether the project would provide maximum feasible public access consistent with the project; (2) whether the project is consistent with the Bay Plan's appearance, design, and scenic views policies; and (3) whether the proposed outfall is consistent with the McAtter-Petris Act and Bay Plan policies regarding fill.

1. **Public Access.** Section 66602 of the McAtter-Petris Act states that "...existing public access to the shoreline and waters of the...[Bay] is inadequate and that maximum feasible public access, consistent with a proposed project, should be provided." The Bay Plan Public Access Policy 1 states: "[a] proposed fill project should increase public access to the Bay to the maximum extent feasible, in accordance with the policies for Public Access to the Bay." The Bay Plan Public Access Policy 2 states, in part: "...maximum feasible access to and along the waterfront and on any permitted fills should be provided in and through every new development in the Bay or on the shoreline, whether it be for housing, industry, port, airport, public facility, wildlife area, or other use, except in cases where public access would be clearly inconsistent with the project because of public safety considerations or significant use conflicts, including unavoidable, significant adverse effects on Bay natural resources. In these cases, in lieu access at another location preferably near the project should be provided." The Bay Plan Public Access Policy 5 states, in part: "[w]henver public access to the Bay is provided as a condition of development, on fill or on the shoreline, the access should be permanently guaranteed." The Bay Plan Public Access Policy 6 states, in part: "[p]ublic access improvements provided as a condition of any approval should be consistent with the project and the physical environment...and provide for the public's safety and convenience. The improvements should be designed and built to encourage diverse Bay-related activities and movement to and along the shoreline should permit barrier free access for the physically handicapped to the maximum feasible extent, include an ongoing maintenance program, and should be identified with appropriate signs." The Bay Plan Public Access Policy 8 also states, in part: "[a]ccess 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." The Bay Plan Public Access Policy 10 states, "[f]ederal, state, regional and local jurisdictions, special districts, and the Commission should cooperate to provide appropriately sited, designed and managed public access, especially to link the entire series of shoreline parks, regional trail systems (such as the San Francisco Bay Trail) and existing public access areas to the extent feasible." The Bay Plan Policy 11 also states that, "[t]he Public Access Design Guidelines should be used as a guide to siting and designing public access consistent with a proposed project. The Design Review Board should advise the Commission regarding the adequacy of the public access proposed."

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 Bay Plan, and also relevant court decisions. In assessing whether a proposed *public* project, such as the San Quentin Condemned Inmate facility, 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.

Since the site is a maximum-security prison, it has not been accessible to the public for more than a century. The CDCR contends that providing access through the prison grounds, which includes the shoreline, would be infeasible because of public safety considerations and obvious use conflicts. For these reasons, from the beginning of Commission staff discussions with the applicant, the focus has been to develop a public access proposal off-site, preferably as close to San Quentin as possible.

When the proposed project was first discussed with Commission staff in May 2006, three possible areas for public access were considered. These public access opportunities included: (1) improving an area at the prison's west gate that is heavily used by windsurfers (i.e., improving parking, lay-down areas, and access to the Bay shoreline); (2) improving access to California Department of Fish and Game's Corte Madera Ecological Preserve in Marin County lying south of Corte Madera Creek (i.e., improving parking, and providing trails and marsh overlooks); and (3) constructing two view overlooks, one on the hillside above San Quentin Village and the other on Main Street in San Quentin Village.

The applicant determined that improvements to the windsurfing area presented major safety issues to the public and security issues for the prison. Due to the proximity of the informal windsurfer launch to the prison, windsurfers often are blown onto the Prison shoreline, close to the perimeter fence, creating safety concerns. The Prison rescues the windsurfers landing on its property, but does not want to improve windsurfer access out of concern that increased windsurfer use would increase the number of stranded windsurfers along the Prison's shoreline, thereby adding to existing security and safety concerns.

Consideration of improving access at the Corte Madera Ecological Preserve was dropped when discussions with the Department of Fish and Game (DFG), which manages the Corte Madera Ecological Preserve, indicated that DFG had neither the staff resources nor interest in providing, policing or maintaining increased public access to the ecological preserve.

For these reasons, the applicant focused developing a public access proposal on prison property east of San Quentin Village. Its initial proposal involved constructing two overlooks, one on the hill overlooking the approach to the Richmond-San Rafael Bridge, the other near the historic Saltwater Pumphouse on Main Street. Conceptual plans were developed for these overlooks and it was determined that constructing both would cost approximately \$932,000. After further evaluation, however, the applicant decided not to pursue the overlook on the hill because of: (1) the difficulty of making the hillside viewing area and associated trail ADA-compliant; (2) the expense of stabilizing the hillside and grading and maintaining the trail to the overlook; (3) security concerns associated with the proximity of the view overlook to the Prison's drinking water reservoir; and (4) opposition from San Quentin Village residents regarding potential access above their homes.

In May 2007, the CDCR returned to the Commission staff with a revised public access proposal consisting of a public viewing overlook and associated parking near the Saltwater Pumphouse, and a sidewalk along Main Street. The Commission's Design Review Board (DRB) found this public access proposal to be "modest." Subsequently, the applicant modified its public access proposal so that it involved contributing \$932,000 to improve public access in the project vicinity. The funds likely would have been used to construct the Main Street viewing platform or some other public access project approved by the Commission.

Shortly thereafter, the applicant withdrew its application, resubmitting it in Fall 2008. The resubmitted application proposed a \$932,000 contribution to a public access project of the Commission's choosing as described in the staff summary dated December 5, 2008. CDCR identified three public access projects near San Quentin where the money could potentially be used: (1) a public viewing area near the Saltwater Pumphouse (described in detail in the Staff Summary with an estimated cost of \$810,000); (2) Phase One of the Central Marin Ferry Connection, which would construct a bike/pedestrian trail from the southern end of the Cal Park Hill tunnel, over Sir Francis Drake Boulevard connecting to an existing bicycle/pedestrian trail along Sir Francis Drake Boulevard, to the Ferry Terminal to the east, and to the Village at Corte Madera shopping center to the west. With an estimated cost of \$11.7 million, completion of Phase One would provide a final bicycle/pedestrian link from the San Rafael Transit Center to the Larkspur Ferry Terminal; and (3) an extension of the bicycle trail along Sir Francis Drake Boulevard from its existing terminus (near Remillard Park), inland around the Prison and along a 0.4 mile section of Highway 580 to Main Street and the eastern gate of San Quentin Village.

In response to Commission and public concerns and questions about the public access proposed described in the first Staff Summary for the subject project, the applicant initially revised its public access proposal to include a more modest set of public access improvements near the Saltwater Pumphouse on Main Street in San Quentin Village, and a \$900,000 monetary contribution to the Transportation Authority of Marin for Phase One of the Central Marin Ferry Connection. The earlier proposed extension of a bicycle trail along Sir Francis Drake Boulevard adjacent to the Prison was no longer an option. While the proposal would have provided bicycle and pedestrian access adjacent to the shoreline of the Prison, the County of Marin has received only enough funding to develop an initial project scope. A project description and cost estimate has yet to be formulated, and according to the County of Marin and the Associated Bay Area Governments, the start-up date for this project is not set nor imminent.

The applicant believes that its current proposal for off-site public access on Main Street near the Saltwater Pumphouse, while modest, effectively enhances the public access area by providing a view platform and access down to the water, and secures the site from vandalism through the installation of gates. By proposing an ADA-compliant parking space and view platform, the proposed Main Street improvements would provide barrier free parking near the Bay, which would also be permanently guaranteed. While this proposal was not reviewed by the Design Review Board, a similar proposal was reviewed by the DRB in Spring 2007.

The Transportation Authority of Marin has stated that Phase One of the Central Marin Ferry Connection environmental review and engineering plans are currently under development. Phase One is estimated to be completed in 2012, and would be the final link to an essential bicycle/pedestrian path to the north of the City of Larkspur.

Following the Commission meeting on January 15, 2009, at which the Commission considered the CDCR's public access proposal, including a \$900,000 contribution to implement the TAM Phase One of the Central Marin Ferry Connection project, and decided to postpone its vote on the new Condemned Inmate Facility Project, the CDCR and Commission staff discussed potential revisions to the public access proposal, including an increase in the monetary contribution to improve access at an off-site location. At the time of mailing this revised Staff Summary, the CDCR informed Commission staff that it is presently working with the State administration, including the Department of Finance, to determine its authority for increasing the monetary contribution for its public access proposal, but that it has not yet resolved as to whether additional funds would be available for this purpose. The CDCR anticipates that this issue may possibly be resolved prior to the Commission public hearing scheduled for February 5, 2009, and, if so, will be raised in that forum.

In evaluating the consistency of the CDCR's public access proposal with the Commission's law, policy and past practices, the CDCR's proposal is compared with other large projects where in-lieu public access was required. For example, the Fifth Avenue Highway 880 project (BCDC Permit No. 3-05 to Caltrans) involved retrofitting a segment of Highway 880 at an estimated cost of \$110 million. The retrofit included placing a 19,217-square-foot (0.44 acres) pile-supported highway deck in the Lake Merritt Channel, part of the Bay. The project would interrupt the public's use of an existing public access trail below the highway during construction. Caltrans initially proposed replacing the access disturbed during construction, extending it to better connect to nearby streets, and contributing \$500,000 for public access improvements in the project area. The Commission approved the project but the in-lieu public access contribution was increased to \$1 million for public access improvements in the City of Oakland.

In 2002 and 2005, the Commission approved two Caltrans' applications to expand two different sections of Highway 101. One project (BCDC Permit No. 3-02) located in the City of Larkspur, Marin County, included placing 16,469-square-feet of fill in Corte Madera Creek to widen Highway 101 to include HOV lanes at an estimated total project cost of \$52 million. The project interrupted use of a popular bicycle and pedestrian route along Corte Madera Creek during construction. The permit required replacing the section of the trail lost to construction, extending the trail to improve connections to nearby trails, adding 33,080 square feet to expand the public access area along Corte Madera Creek, and contributing \$400,000 to be used for public access improvements in the project vicinity.

BCDC Permit No. 7-04 authorized the expansion of Highway 101 along a 4.4-mile stretch in San Mateo County (in the Cities of Burlingame and San Mateo) with an estimated project cost of \$75 million. An approximately 2,300-foot-long, 6.88-acre (299,693 square feet) section of the highway would be constructed within the shoreline band. The Commission authorized the project, which included construction of a new Class 1 bike/pedestrian overcrossing over the freeway (connecting existing Bayshore access with inland neighborhoods), and improved bike/pedestrian access on a reconstructed portion of an existing freeway overcrossing. The estimated cost of these public access improvements was \$2.6 million.

The following table summarizes the above-referenced Commission decisions. The last row of the table summarizes the proposed public access related to the subject San Quentin Condemned Inmate facility:

Project	Total Project Cost	Amount of Work in BCDC Jurisdiction	Public Access Improvements	Monetary Contribution	Percentage of project in the Commission's Jurisdiction	Total Public Access Cost
Caltrans Highway 880 Retrofit (City of Oakland), BCDC Permit No. 3-05	\$110 million	Bay fill for pile supported highway deck: 0.44 acres. Plus, the closing of an existing 656-foot-long public access path.	52,302 square feet of pedestrian and bicycle access	\$1 million	~50 to 70%	Not Available (Over 1million)
Caltrans Highway 101 HOV lane gap closure (City of Larkspur), BCDC Permit No. 3-02	\$150 million	Permanent Bay fill for widening HOV lane: 0.38 acres Temporary Bay fill: 0.68 acres Replacement Bay Fill: 0.26 acres Total: 1.1 acres	33,080 square feet of improved bicycle and pedestrian lanes and connections	\$400,000	~47%	Unknown
Highway 101 expansion (Cities of Millbrae and Burlingame, San Mateo County), BCDC Permit No. 7-04	\$75 million	Shoreline band fill for installing auxiliary lanes and associated improvements: 6.88 acres	Trail improvements and a new pedestrian and bicycle overpass (sq. footage unknown)	\$0	~20%	2.6 million
Port of Oakland International Airport M04-01	114.6 million	Shoreline band fill for a road, parking and generators: 1,792 square feet	Improvements at existing public access, a Class 1 Bicycle Lane on Ron Cowan Parkway, and a connection to Oyster Bay Shoreline Park Bridge	None		681,000
San Francisco International Airport BCDC Permit No. 2-96	Not Available (Over 10 million)	Bay Fill: 0.16 acres Dredging~ 245,000 cubic yards Shoreline Band Fill: ~10 acres	0.5 acres at Bay Front Park. Costing ~250,000	\$850,000 for a Bay Trail Link	14.7%	1- 1.1 million
Department of Corrections and Rehabilitation Proposed San Quentin Condemned Inmate Facility- Marin County BCDC Application No. 2-06	\$337 million	Bay fill for an outfall: 0.06 acres Shoreline band fill for a guard tower, fencing, gun locker and paving: 0.45 acres	Main Street Improvements, including a view platform, parking, and seating (~3,500)	\$900,000	0.89%	1 million

While the overall proposed project would cost approximately \$350 million, the applicant has estimated that the proposed improvements within the Commission's jurisdiction would cost roughly \$3 million to complete, and the public access improvements have been estimated at \$1 million.

The Commission should determine if the proposed in-lieu public access proposal is reasonable given the scope of the project and if the proposal provides maximum feasible public access, consistent with the project, as required by the McAteer-Petris Act and the San Francisco Bay Plan.

2. **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) fill in the Bay should be limited to water-oriented uses, such as wildlife refuges or minor fill for improving shoreline appearance or for public access; (b) no alternative upland location exists for the fill; (c) the public benefits from fill must clearly exceed the public detriment from the loss of water areas; (d) the fill should be the minimum amount necessary to achieve the project purpose; and (e) the nature, location, and extent of any fill should minimize harmful effects to the Bay including the water volume, circulation, and quality, fish and wildlife resources, and marsh fertility.

The only fill associated with the proposed project would involve the construction of an outfall that would total 329 cubic yards of solid fill and would result in the loss of approximately 2,613 square feet of Bay surface area. The CDCR states that the fill for the outfall structure would be a water-oriented use with no alternative upland location since it would be needed to drain stormwater into the Bay. Further, because the outfall would be located where drainage naturally occurs at the site, it would be more costly and not practical to direct drainage to an alternative location. CDCR further states that the fill would be the minimum amount necessary for an outfall sufficient to drain anticipated runoff and, moreover, Bay resource impacts would be negligible because the fill would be placed in a shoreline already altered by riprap. The Regional Water Quality Control Board granted the applicant a Water Quality Certification on December 14, 2005, for the stormwater outfall.

The Commission should determine whether the project, as proposed, is consistent with the policies on fill in the Bay and if it has been designed to minimize harmful impacts as a result of fill placement.

3. **Appearance, Design and Scenic Views.** The Bay Plan Appearance, Design, and Scenic Views Policy 1, states, in part: "[t]o enhance the visual quality of development around the Bay and to take maximum advantage of the attractive setting it provides, the shores of the Bay should be developed in accordance with the Public Access Design Guidelines." The Bay Plan Appearance, Design, and Scenic Views Policy 2, states, in part: "...[m]aximum 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." The Bay Plan Appearance, Design, and Scenic Views Policy 4, states, in part: "[s]tructures and facilities that do not take advantage of or visually complement the Bay should be located and designed so as not to impact visually on the Bay and shoreline. In particular, parking areas should be located away from the shoreline. However, some small parking areas for fishing access and Bay viewing maybe allowed in exposed locations." The Bay Plan Appearance, Design, and Scenic Views Policy 12, states, in part: "[i]n order to achieve a high level of design quality, the Commission's Design Review Board ...should review, evaluate, and advise the Commission on the proposed design of developments that affect the appearance of the Bay...."

A small portion of the proposed Condemned Inmate Housing Project would be located within the 100-foot shoreline band, namely a guard tower, a gun locker building, and portions of a paved road and a security fence. The overall proposed project including the new condemned inmate housing facility would alter views of the Bay from Sir Francis Drake Boulevard, Paradise Drive, and Highway 101, and views of the shoreline from the Bay. However, nearly all of these improvements would be located outside the Commission's jurisdiction. Nonetheless, the applicant attempted to design the building height and mass to maximize public views of the Bay from Sir Francis Drake Boulevard, which the Bay Plan designates as a scenic route. Further, the applicant altered the design of the proposed buildings to visually complement views to and from the Bay, and reduced the height and the glare of the on-site lighting system since receiving comments on the Draft Environmental Impact Report (EIR) for the Prison facility and from the Commission's Design Review Board in April 2007. The proposed two-to-three vehicle public access parking lot serving the Main Street area would constitute a small parking area for Bay viewing and visiting the Bay.

At the Commission's public hearing on December 18, 2008, concern was expressed about removing Dairy Hill, which currently shields homeowners on the Greenbrae Boardwalk from directly viewing the prison. The applicant states that the EIR for the project considered preserving Dairy Hill, and that it evaluated alternative design schemes that would preserve the hill. However, it was determined that preserving on-site historic employee housing was more important than preserving the hill. Preserving the hill would have also resulted in taller Prison building profiles further impacting views from Sir Francis Drake Boulevard to the Bay.

The Commission should determine whether the project, as proposed, is consistent with the Bay Plan policies on appearance, design and scenic views of the Bay and if it has been designed to maximize views to and from the Bay.

## B. Review Boards

1. **Engineering Criteria Review Board.** The Engineering Criteria Review Board did not evaluate the proposed project because no significant structures are located on Bay fill.
2. **Design Review Board.** On April 9, 2007, Design Review Board (DRB) reviewed an earlier public access proposal involving the Main Street viewing platform and sidewalk improvements to the south of the platform. During its review, the DRB asked for more details on the proposed public access areas, expressed concern on the limited scope of the proposal, and stated that the public access plan appeared to be "modest." The DRB supported the City of Larkspur's concern regarding the architectural quality and appearance and design of the proposed Prison buildings, stating that the Prison is a visual landmark. The Board requested that the applicant look into improving the shoreline at the project site by carefully designing the landscaping, lighting, fencing, and other shoreline improvements along the Prison edge. It also suggested that the applicant prepare a comprehensive shoreline plan that described the proposed shoreline public access improvements from the CalTrans facility near the Richmond/San Rafael Bridge to Sir Francis Drake Boulevard.

The applicant responded to several of the DRB's earlier concerns. First, the applicant altered the exterior of the Prison buildings to better reflect the architectural details of the existing buildings on site. The applicant's Design Criteria Guidelines (Section 16500.200) require high-pressure sodium for exterior lighting, which is necessary for the safety of the staff and the public, but the height of the high mast lighting has been reduced from 100 feet to 60 feet, and glare shields have been incorporated.

Regarding the DRB's suggestion that the applicant prepare a plan to improve the shoreline in the general area of the project site, the applicant is constrained by a Section 10(a) federal incidental take permit, and related requirements, that were granted in 2002 for its Habitat Conservation Plan (HCP). The HCP requires the applicant to make the environments adjacent to the electrified perimeter fences as unattractive to wildlife as possible. Further, the Statewide Electrified Fence Project handbook for Reducing Wildlife Use of Prison Perimeters, dated August 1996, stipulates that the area between the Prison's patrol road and outer electrical fence, and the first 100 feet of vacant state property outside of the patrol road, should be mostly free of non-native vegetation, including weedy species. Thus, the applicant cannot provide shoreline improvements along the Prison's edge.

Since the DRB's initial project review in April 2007, the applicant changed slightly the public access proposal for Main Street, but the Commission staff felt that the changes were not substantial and did not warrant a second review by the DRB. The applicant altered the public access area to include a sidewalk between the Caltrans facility near the Richmond San Rafael Bridge and the proposed parking and view platform, rather than a sidewalk south of the parking area towards the gate at San Quentin Prison. Since that time, a public access viewing overlook just north of the Richmond San Rafael Bridge has been completed, which would be connected to the proposed sidewalk improvements along Main Street in San Quentin Village.

- C. **Environmental Review.** In May 2005, the Department of Corrections and Rehabilitation, acting as the lead agency under the California Environmental Quality Act, certified the Final Environmental Impact Report (EIR) for the project. A summary of the Final EIR is attached as Exhibit H.
- D. **Relevant Portions of the McAteer-Petris Act**
  - 1. Section 66602
  - 2. Section 66605
  - 3. Section 66632.4
- E. **Relevant Portions of the San Francisco Bay Plan**
  - 1. San Francisco Bay Plan Policies on Fill
  - 2. San Francisco Bay Plan Policies on Public Access
  - 3. San Francisco Bay Plan Policies on Appearance, Design and Scenic Views
  - 4. San Francisco Bay Plan Maps

#### Exhibits

- A. **Regional Map, Exhibit A**
- B. **Vicinity Map, Exhibit B**
- C. **Site Map, Exhibit C**
- D. **Site Plan, Exhibit D**
- E. **Transportation Authority of Marin Bay Trail Gap Closure Proposal, Exhibit E**
- F. **Main Street Public Access Site Plan, Exhibit F**
- G. **Main Street Public Access Proposal, Exhibit G**
- H. **Summary of Final EIS/EIR, Exhibit H**

