

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

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May 1, 2009

TO: Commissioners and Alternates

FROM: Will Travis, Executive Director (415/352-3653 travis@bcdc.ca.gov)
Karen Wolowicz, Permit Analyst, (415/352-3669, karenw@bcdc.ca.gov)

SUBJECT: **Staff Recommendation on Material Amendment No. One to BCDC Permit No. M06-8, East Bay Regional Park District**
(For Commission consideration on May 7, 2009)

Recommendation Summary

The staff recommends that the Commission approve the East Bay Regional Park District's (EBRPD) application for Material Amendment No. One to BCDC Permit No. M06-8 to construct a recreational boating facility with storage, launching and training facilities for non-motorized boating activities and associated public access along the shoreline of the Oakland Estuary, east of the High Street Bridge, in the City of Oakland, Alameda County. Approval of the recommendation, as conditioned, will result in the following:

1. Three new buildings, including a 6,200-square-foot building and a 3,500-square-foot building to store kayaks and canoes, a 3,000-square-foot building for a park district meeting room and a park district residence, and a 3,130-square-foot, secure outdoor storage area within the shoreline band;
2. An approximately 18,500-square-foot public access area ranging from 12 to 25 feet wide (average width of 17 feet) along 460 feet of shoreline, and approximately 11,400 square feet of an entry plaza;



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3. Approximately 6,395 square feet of floating and cantilevered fill in the Bay for a boat dock and for two gangways, 9,000 square feet of solid fill for new riprap, and approximately 8,000 square feet of solid fill riprap already placed in the Bay by the permittee;
4. New dredging of approximately 3,800 cubic yards from an approximately 16,000-square-foot (0.37 acres) area, with disposal of the material at Winter Island, outside of the Commission's jurisdiction; and
5. Two stormwater outfalls, and approximately 870 square feet of riprap, already placed by the permittee in the shoreline.

The project will provide a variety of non-motorized boating opportunities for youth, including rowing, kayaking and canoeing. Classes and interpretive sessions will also be offered. The permittee proposes to partner with the Oakland Strokes (a youth rowing club), Save the Bay and Cal Adventures in certain activities and events held at the site.

Staff Note

Because the project involves a material amendment to an existing administrative permit, the format of the recommendation is different than recommendations for new permit applications. The recommendation includes the language of the existing administrative permit as well as the changes proposed by the amendment. Language to be deleted from the original permit has been ~~struck through~~ and language to be added to the amended permit has been underlined. Language that has neither been ~~struck through~~ nor underlined is language of the existing permit that will remain unchanged with the adoption of Amendment No. One.

Staff Recommendation

The staff recommends that the Commission adopt the following resolution:

I. Authorization

- A. Subject to the conditions stated below, the permittee, East Bay Regional Park District, is hereby authorized to do the following:
 1. **In the Bay:**
 - a. Replace, use and maintain approximately 920 cubic yards of riprap covering approximately 9,000 square feet (0.20 acres), and approximately 820 cubic yards of existing riprap on an approximately 8,000-square-foot (0.18 acres) area (after-the-fact authorization);
 - b. Dredge approximately 3,800 cubic yards from an approximately 16,000-square-foot (0.37 acres) area with disposal at Winter Island located outside of the Commission's jurisdiction; and

- c. Place, use and maintain an approximately 5,175-square-foot, ADA-accessible floating dock, two cantilevered gangways, one ADA-accessible, measuring a total of 1,220 square feet supported by 139-square-foot concrete abutments, and ten pilings (totaling seven cubic yards) covering approximately 18 square feet.
2. **Within the 100-foot shoreline band: As part of improvements to the existing park facilities at the project site**
- a. Install, use and maintain: (1) a 120-foot-long portion of a 470-foot-long, 10-foot-wide public access trail; (2) a 420-square-foot restroom building; (3) a 14,965-square-foot portion of a 22,735-square-foot landscaped and irrigated turf area; (4) a 225-square-foot portion of a 2,600-square foot parking lot with 50 spaces (six spaces which are ADA accessible); (5) two picnic areas with one picnic tables and one barbeque each; (6) a 2,960-square-foot portion of 22,500 square feet of new roads; and (7) 6,530-square-foot area of concrete paving (Phase One); ~~Additionally,~~
- b. Relocate a 180-foot-long, 8-foot-wide portion of an existing public access trail approximately 10 feet north of the present location to accommodate a new entry road. (Phase One);
- c. Construct, use and maintain a small, recreational boating facility consisting of: (1) two one-story, 26-foot-high boat storage buildings, one with an approximately 6,200-square-foot footprint and one with an approximately 3,500-square-foot footprint; (2) one approximately 3,000-square-foot, two-story (24-foot-high) building; and (3) an approximately 3,130-square-foot outdoor storage area;
- d. Construct, use and maintain the following public access improvements: (1) approximately 18,500 square feet of paving to construct an approximately 460-foot-long Bay Trail segment ranging from 12 to 25 feet wide with an average width of 17 feet, a 1,115-square-foot entry plaza, an approximately 3,840-square-foot and an approximately 1,900-square-foot staging area for boat launching, two vehicle parking spaces adjacent to the entry plaza and a kayak storage area; (2) an approximately 11,400-square-foot (0.26 acre) landscaped area adjacent to the buildings and the entry plaza; and (3) various public access amenities, including signs, benches, and bicycle racks; and
- e. Place, use and maintain two stormwater outfalls and approximately 100 cubic yards of riprap (after-the-fact) covering approximately 870 square feet.
- B. This authority is generally pursuant to and limited by ~~your~~ the original application dated May 1, 2007, and the request for Amendment No. One, dated January 10, 2008, including its accompanying exhibits and all conditions of this amended permit.
- C. Work authorized ~~herein must~~ in the original permit was to commence prior to June 30, 2008, or ~~this the permit will~~ was to lapse and become null and void. Such work ~~must~~ also was also required to be diligently pursued to completion and must be completed within three years of commencement, or by June 30, 2011, whichever is earlier, unless an extension of time is granted by further amendment of the original permit. Work authorized in Amendment No. One to the amended permit, must commence prior to June 30, 2011, or this amended permit will lapse and become null and void. Such work must also be diligently pursued to completion and must be completed within two years of commencement, or by June 30, 2013, whichever is earlier, unless an extension of time

is granted by further amendment of this amended permit.

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 work originally authorized (Phase One) herein shall was to be built generally in conformance with the plans entitled "Tidewater Phase 2A - Utilities and Access," prepared by East Bay Regional Park District, as revised through March 23, 2007. The work authorized in Amendment No. One (Phase Two) of this amended permit shall generally conform with the plans entitled "Plan Check Revision," prepared by the East Bay Regional Park District, as revised through June 2, 2008.
2. **Plan Review.** No work whatsoever shall be commenced pursuant to this authorization until final precise site, engineering, grading, architectural, public access, and landscaping 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, architectural, public access, grading, 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, landscaping, drainage, seating, signs, lighting, paths, trash containers, utilities and other proposed improvements. In addition to the information listed above, the site plan shall provide a dimension line which marks the minimum distance between a proposed structure authorized by this amended permit and the Mean High Water Line and the top of bank. Additional dimension lines shall be provided, as necessary, to locate where this minimum dimension occurs in relation to either the property line, or some other fixed point upon the site.
 - 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.

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:

- (a) completeness and accuracy of the plans in showing the features required above, particularly the shoreline (Mean High Water Line), property lines, and the line 100-feet inland of the shoreline, and any other criteria required by this authorization;
 - (b) consistency of the plans with the terms and conditions of this authorization;
 - (c) the provision of the amount and quality of public access to and along the shoreline and in and through the project to the shoreline required by this authorization, but limited to ensuring: (1) the public's use and enjoyment of the access area; (2) public safety; (3) accessibility for persons with disabilities; (4) sufficient durability and maintenance; and (5) the access is clear and continuous and encourages public use;
 - (d) 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; and
 - (e) consistency of the plans with the recommendations of the Design Review Board;
- 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, public access, 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 permittee is responsible for assuring that all plans accurately and fully reflect the Special Conditions of this authorization and any legal instruments submitted pursuant to this authorization.

B. **Public Access**

1. **Area.** The following public access improvements The approximately 54,610-square-foot area, along approximately 950 feet of shoreline (490 feet for Phase One, 460 feet for Phase Two, as generally shown on Exhibit A shall be made available exclusively to the public for unrestricted public access for walking, bicycling, sitting, viewing, fishing, picnicking, and related purposes for as long as the aquatic recreational facility boat launch is in operation (Exhibit A). If the permittee wishes to use the public access area for other than public access purposes, it must obtain prior written approval by or on behalf of the Commission.

The overall public access for this project includes:

New public access within the shoreline band:

Approximately 39,260 square feet

New public access outside of the shoreline band:

Approximately 15,350 square feet

2. Improvements Within the Total Public Access Area. Prior to the use of any structure authorized in Amendment No. One of this amended permit, the permittee shall install the following improvements, as generally shown on attached Exhibit A:

a. Phase One (Original Authorization)

- (1) A new 470-foot-long, 10-foot-wide asphalt public access trail connecting the existing shoreline trail to the parking lot and entry road, and ~~Additionally,~~ a new 690-foot-long, 8-foot-wide concrete public access trail along the western side of the new entry road to connect Tidewater Avenue to the shoreline
(a 180-foot-long, 8-foot-wide portion of this trail is within the Commission's jurisdiction and will relocate an existing section of trail to accommodate the new entry road.
- (2) A 22,735-square-foot landscaped and irrigated turf area between the new parking lot and the shoreline pathway;
- (3) A 420-square-foot restroom building;
- (4) Two picnic areas with one picnic table and one barbeque each; ~~and~~
- (5) A 2,600-square-foot parking lot with 50 spaces, six spaces of which are ADA-accessible;

b. Phase Two (Material Amendment No. One)

- (1) An approximately 460-foot-long, 12- to 25-foot-wide public access path with an average width of 17 feet, connecting to the existing 470-foot-long section of the San Francisco Bay Trail with benches and bike racks;
- (2) An approximately 1,115-square-foot entry plaza;
- (3) Two boat staging areas totaling approximately 6,250 square feet;
- (4) An approximately 2,500-square-foot lawn for boat staging and an approximately 8,900-square-foot landscaped area; and
- (5) Three public access shore signs and one interpretive panel near the boat dock authorized herein to educate the general public about the nearby Bay habitat.

~~D.~~ **3. Maintenance.** The public access improvements authorized herein shall be permanently maintained by and at the expense of the permittee or its assignee. Such maintenance shall include, but is not limited to, repairs to the public access trail and paved, landscaped areas, repairs to the observation platforms, repairs and maintenance of the public restroom, maintenance of the grass pavers and other amenities (e.g., bike rack, benches, etc.), periodic cleanup of litter and other materials deposited within the access areas, and assuring that the public access signs and interpretive panels remain in place and visible, and repairs to any public access

areas or improvements that are damaged by future flooding, including and subject to approval by or on behalf of the Commission, raising land elevations or redesigning public access features to protect and ensure the usability of the public access areas and improvements, flooding where appropriate. Within 30 days after notification by staff, the East Bay Regional Park District shall correct any maintenance deficiency noted in a staff inspection of the site.

4. **Assignment.** The permittee 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 to conditions of this amended permit.
5. **Future Public Access Connections to Neighboring Parcel.** The permittee shall coordinate with possible future applicants and the Commission to enable the construction of future public access connections between its property and the neighboring parcel to the north to facilitate the completion of any future extension of the shoreline path. Within six months of commencement of construction of any shoreline public access area on the neighboring parcel, the permittee shall install improvements, as needed, to create one or more physical connections to the adjacent public access area at the north end of the site. At such time, the permittee shall reasonably coordinate the design, construction and maintenance with the permittee of the adjacent parcel to create a continuous and seamless transition between the public access areas, including landscaping and paving. The exact manner in which the connection is made shall be reviewed, and if adequate, approved by or on behalf of the Commission pursuant to Special Condition II-A.
6. **Reasonable Rules and Restrictions.** The permittee may impose reasonable rules and restrictions for the use of the public access areas and improvements 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 permittee has both identified and substantiated. Rules may include restricting hours of use.

C. Dredging

1. **Water Quality Approval.** At least 45 days prior to the commencement of any dredging episode authorized herein, the permittee shall submit to the Executive Director water quality certification, waste discharge requirements, or any other required approvals from the California Regional Water Quality Control Board, San Francisco Bay Region (Regional Board). Failure to obtain such certification prior to the commencement of any dredging episode shall terminate the Commission's authorization for that episode. The Executive Director may, upon review of the Regional Board approval, either: (1) approve the dredging episode consistent with this authorization; or (2) amend this authorization, as necessary, related to water quality issues. Unless the permittee agrees to amend this authorization in a manner specified by or on behalf of the Commission, this amended permit shall become null and void.
2. **Five-Year Permit for Dredging.** The approximately 3,800 cubic yards from an approximately 16,000-square-foot (0.37 acres) area or less of new dredging authorized shall

be completed within five years of the date of issuance of this amended permit. No further dredging is authorized.

3. **Limits on Dredging.** This amended permit authorizes new dredging only within the area as shown on Exhibit B to an authorized project depth of -3.6 Mean Lower Low Water (MLLW) plus one foot allowable over-dredge depth. No dredging in other areas is authorized.

4. **Dredging and Disposal Activity**

- (1) **Pre- Dredging and Disposal Report and Notice.** At least 45 days before the commencement of any dredging and disposal episode authorized herein, the permittee shall submit to the Commission's Executive Director:

- a. 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 permittee shall notify the Commission staff by telephone or in writing or, if the date of commencement changes, provide an updated schedule.

(2) **Post-Dredging Requirements**

- a. Within (30) days of completion of the dredging authorized by this amended permit, the permittee shall submit to the Commission a bathymetric map showing the actual area 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.
- b. If a dredging episode stops for longer than six consecutive months, the permittee must submit, before the dredging episode has resumed, 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 permittee to complete: (1) new sediment characterization, and (2) a re-survey of the dredge area, and/or (3) a revised alternative disposal option analysis.
- c. If the dredging episode continues longer than one year, whether dredging is continual throughout the year or is fragmented within the episode, the permittee must provide the Commission with the following dredging report: (1) the actual areas and the depth dredged based on MLLW, and any dredging that occurred outside the area dredged; (2) the actual volume of the material dredged; and (3) 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 permittee must submit a dredging report as described in Special Condition II-C-4.

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

<u>Species of Concern</u>	<u>Work Window Period</u>	<u>Consulting Agency</u>
<u>Pacific Herring</u>	<u>March 1st through November 30th</u>	<u>CDFG</u>
<u>Chinook Salmon and Steelhead</u>	<u>June 1st through November 30th</u>	<u>NOAA</u>
<u>California Least Tern</u>	<u>August 1st through March 15th</u>	<u>FWS</u>

CDFG-California Department of Fish and Game; NOAA-NOAA Fisheries, FWS—U.S. Fish and Wildlife Service

This work window between August 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 (1) consultation between the US Army Corps of Engineers and the U.S. Fish and Wildlife Service and/or NOAA Fisheries has occurred; and (2) 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: (1) after the East Bay Regional Park District representative requests from the California Department of Fish and Game that they be allowed to dredge outside of the work window, discussions between the East Bay Regional Park District representative and the Department of Fish and Game has occurred and the outcome of those discussions has been provided to the Commission staff; and (2) the Executive Director has determined that dredging outside of the work window will be consistent with the Commission’s laws and policies.

The California Fish and Game Commission has listed longfin smelt and green sturgeon as a threatened species under the California Endangered Species Act (CESA). The California Department of Fish and Game (DFG) has not yet issued regulations requiring measures to avoid, minimize or mitigate the incidental take of longfin smelt and the green sturgeon associated with dredging projects. The DFG may require an incidental take permit for this project. If, at any time during the effective life of this permit, the DFG’s requirements for an incidental take permit, or any other laws, policies or regulations are changed to require measures to protect longfin smelt and the green sturgeon from activities including and related to dredging, dredged material disposal, and beneficial reuse, this amended permit shall become null and void unless the permittee agrees to obtain an amendment to this authorization to comply with the new laws, policies, or regulations in a manner specified by or on behalf of the Commission.

6. **Barge Overflow Sampling and Testing.** Results of any effluent water quality or other testing required by the California Regional Water Quality Control Board, San Fran-

cisco Bay Region shall be submitted in writing to Commission staff at the same time such testing is submitted to the Regional Board.

7. **Monitoring and Enforcement.** The permittee shall allow the Commission staff or representatives of other state or federal agencies to come aboard the dredge or barge associated with any dredging episode 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 amended 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 permittee to submit a revised report that meets the conditions of this amended permit. If the Commission determines that the post-dredging report indicates that work has occurred beyond that authorized by this amended permit such violation may result in the initiation of enforcement action by or on behalf of the Commission.
8. **Long-Term Management Strategy Program.** If, at any time during the effective life of this amended permit, the Commission's laws, Bay Plan policies, or regulations are changed and are in effect regarding dredging, dredged material disposal, and beneficial reuse consistent with the multi-agency Long-Term Management Strategy Program (LTMS), this amended permit shall become null and void unless the permittee agrees to amend this authorization to meet the new laws, policies, or regulations in a manner specified by or on behalf of the Commission.

D. 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.
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 5.9-foot (NGVD) 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 amended 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 permittee, 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 permittee or any successor or assignee shall correct any maintenance deficiency noted by the staff.

E. Construction Best Management Practices

1. **Debris Removal.** All construction debris shall be removed to a 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 permittee, its assigns, or successors in interest, or the owner of the improvements, shall remove such material, at its expense, within ten days after it has been notified by the Executive Director of such placement.
2. **Construction Operations.** All construction operations shall be performed to prevent construction materials from falling into the Bay. In the event that such material escapes or is placed in an area subject to tidal action of the Bay, the permittee shall immediately retrieve and remove such material at its expense.

3. **Water Quality Protection.** During construction activities authorized herein, the permittee shall employ best management practices to prevent the erosion of construction material and release of non-point source pollution into the Bay and associated water quality impacts.
 4. **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.
 5. **Herring Restrictions.** If work occurs in the water during the herring spawning or hatching season (December through February), a professional biologist or other individual competent to identify herring spawning activity, shall inspect the project site three times a week during the construction operations occurring between December 1 and March 1 of any year. If herring spawning is detected by the on-site biologist or qualified individual, Department of Fish and Game personnel, or the Commission staff, all construction in the water shall cease for a minimum of 14 days and shall continue suspended until it can be determined by the on-site biologist or qualified individual, Department of Fish and Game personnel, or the Commission staff that the herring hatch has been completed and larval herring concentrations have left the site. To facilitate rapid and efficient communication under these circumstances, the permittee shall provide the Commission staff and Department of Fish and Game personnel with all necessary telephone, FAX, and pager numbers. Construction in the water may be resumed thereafter at the sole discretion of the permittee and the Commission staff, but shall be terminated if further spawning takes place at the site.
- I. **F. In-Kind Repairs and Maintenance.** Any in-kind repairs and maintenance of the work authorized herein shall not result in any enlarged footprint of those features, and is authorized as long as the authorized improvements remain in place. 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.
- G. Stormwater Runoff Management.** Stormwater runoff generated from the site will be treated with a Deep Steel Catch Basin Stormfilter, which will serve as a below-grade filtration unit and a bioswale between the entry plaza and the Bay.
- H. Hold Harmless and Indemnify.** The permittee shall hold harmless and indemnify the Commission, all Commission members, Commission employees, and agents of the Commission from any and all claims, demands, losses, lawsuits, and judgments accruing or resulting to any person, firm, corporation, governmental entity, or other entity who alleges injuries or damages caused by work performed in accordance with the terms and conditions of this amended permit. This condition shall also apply to any damage caused by flooding of or damage to property that is alleged to be caused as a result of some action or lack of action by the Commission growing out of the processing of and issuance of this amended permit.
- Ⓔ. **I. Notice to Contractor.** The permittee shall provide a copy of this amended permit to any contractor or person working in concert with the permittee to carry out the activities authorized herein and shall point out the special conditions contained herein.

- H. **J. 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 amended permit and the final BCDC-approved plans, particularly as they pertain to any public access or open space required herein, or environmentally sensitive areas.
- J. **K. Site Access.** The permittee grants 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 [amended] project is being/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.
- K. **L. Recording.** The permittee shall record this amended permit or a notice specifically referring to this amended permit on all parcels affected by this permit with Alameda County within 30 days after execution of the amended permit issued pursuant to this authorization and shall, within 30 days after recordation, provide evidence of recordation to the Commission.

III. Findings and Declarations

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

- A. **Original Authorization.** Phase One of the project, an addition to Martin Luther King Regional Shoreline Park, involved the construction of a 22,735-square-foot landscape area, picnic facilities, a restroom, parking lot, roads and a shoreline path. These improvements were authorized administratively in BCDC Permit No. M06-8.

~~The original project qualified as an administrative project because it involved authorized by this permit involves the installation of public access improvements to the existing shoreline facilities at the Martin Luther King Jr. Regional Shoreline, including the installation of new public access pathways, picnic areas, a public access parking lot, landscaping, and a public restroom. Therefore, the work authorized herein constitutes~~ the placement of small amounts of inert inorganic materials within the 100-foot shoreline band that ~~will~~ would not have a significant adverse effect on present or possible future maximum feasible public access to the Bay, as defined in Regulation Section 10601(b)(1), and thus ~~is~~ was a "minor repair or improvement" for which the Executive Director may issue a permit, pursuant to Government Code Section 66632(f) and Regulation Section 10622(a).

- B. That The original authorization was found to be project authorized by this permit is consistent with the McAteer-Petris Act and with the San Francisco Bay Plan in that it would not adversely affect the Bay nor public access to and enjoyment of the Bay. Prior to the installation of improvements authorized in M06-8, Presently, there is was a paved trail and benches located along the shoreline of the project site. The site is was currently open to the public; however, use of the site is was minimal due to the lack of amenities. The work authorized herein will in the original authorization improved public access to and along the shoreline at the project site by improving the existing Bay Trail that

connects Tidewater Avenue to the shoreline and providing additional shoreline amenities. The Bay Trail from Tidewater Avenue ~~will~~ led to a new 50-space public access parking lot. From the new parking lot, the public ~~now will be able to~~ uses a new, 10-foot-wide, public access trail to access an existing trail that is located along the shoreline of the Oakland Estuary. Picnic areas surrounded by landscaping and turf will provide opportunities for sitting, barbecuing, picnicking, and enjoying views of the Bay and the installation of a public restroom will make the park facilities more usable and comfortable.

Special conditions ~~were have been~~ included in the original authorization to ensure that the project ~~will~~ would not have adverse impacts on water quality and included preventing construction materials from falling, washing or blowing into the Bay and removing all construction debris from the project site. Additionally, special conditions ~~were have been~~ included to require that the improvements authorized herein are maintained and remain open and available to the public.

~~On March 17, 2006, the East Bay Regional Park District submitted an application to develop a larger project at the site called the Tidewater Aquatic Center. The Tidewater Aquatic Center was to be developed through a partnership between the East Bay Regional Park District and the Oakland Strokes and included a multi-use aquatic facility, a boat dock, trails, picnic and turf areas, a public restroom and parking. The full project was brought before the Design Review Board on April 10, 2006. Since the Design Review Board meeting, the applicant has been working on issues related to the installation of the boat dock, including the need for dredging of the Oakland Estuary. On May 1, 2007, BCDC received a request from East Bay Regional Park District to install the park improvement portion of the project while the details regarding the construction of the aquatic center and boat dock are being resolved. The work authorized herein is Phase 2A of the larger project to create the Tidewater Aquatic Center. Phase I has been completed for some time and consists of the trail and benches that currently exist at the site. Phase 2B and 2C of the project involve the installation of the boat dock and the Tidewater Aquatic Center facility, respectively. Requests for the authorization of Phases 2B and 2C phases will be submitted some time in the future and may be authorized through an amendment to this original permit.~~

- B. Use (Both Phase One and Phase Two).** The projects are located in an area designated as Waterfront Park, Beach on Bay Plan Map No. Five, which includes a policy stating that San Leandro Bay, which is south of the proposed project site, possesses, "valuable wild-life habitat; great recreation potential," and another policy stating that "boating facilities and parks [should be developed], but preserve wildlife habitat. Provide continuous shoreline public access and public and commercial recreation uses." Since the project involves developing the area for an aquatic recreation facility and a waterfront park, the Commission finds that the project is consistent with the Bay Plan Map No. Five.
- C. Amendment No. One.** The project, which is the subject of Amendment No. One involves constructing Phase Two of the planned expansion of Martin Luther King Regional Shoreline Park. The amount of fill proposed for the boat dock, the relative narrowness of the proposed public access improvements, and the conversion of intertidal mudflats to shallow subtidal flats, were all activities slightly beyond the scope of those the Executive Director typically administratively approves. The Commission's approval of Phase Two (Material Amendment No. One) is based on the following findings:

1. **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; (b) fill in the Bay should be limited to water-oriented uses, such as water-oriented recreation and public assembly, or minor fill for improving shoreline appearance or public access to the Bay; (c) no alternative upland location exists for the fill; (d) the fill should be the minimum amount necessary to achieve the project purpose; (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; and (f) that the public, health, safety, and welfare require that fill be constructed in accordance with sound safety standards.

The permittee will place approximately 6,395 square feet of floating and cantilevered fill to provide an ADA-accessible floating dock and two gangways, one of which will be ADA-accessible. Approximately 17,157 square feet (0.39 acres) of solid fill for shoreline protection will be placed in the Bay, of which 8,000 square feet will be authorized after-the-fact.

- a. **Public Benefits v. Public Detriment.** Currently, the site is vacant. Approximately one quarter of the fill (6,395 square feet or 0.15 acres) is necessary to construct an ADA-accessible boat dock with two gangways for launching kayaks, canoes, and other non-motorized boats. The remaining fill (approximately 17,157 square feet or 0.15 acres) is to create a permanent shoreline to support water-oriented recreation and public assembly activities at the site.

As the proposed fill for the boat dock will greatly increase recreational boating opportunities in the Oakland Estuary, and because the fill for riprap will stabilize the shoreline to accommodate this increase in use, the Commission finds that the public benefits of the fill exceed the associated public detriments.

- b. **Water-Oriented Use.** The purpose of the fill is to create water-oriented recreation and public assembly facilities and to stabilize the shoreline, which will support public access amenities. In 2003, the permittee discovered contaminated riprap and immediately removed and replaced the contaminated materials with clean, one-quarter ton rock riprap. According to the permittee, the riprap that has already been replaced at the site (i.e., after-the-fact) and the new riprap will stabilize the shoreline and facilitate continuous public access along the length of the project site. The riprap will also protect the aquatic recreation facilities located on the shoreline. Special Condition II-D requires the permittee to provide the Commission staff with riprap plans which will be reviewed and approved prior to the placement of the new shoreline protection, and to maintain the authorized shoreline protection.

The Commission finds that the fill is for a water-oriented use.

- c. **Alternative Upland Location.** There is no alternative upland location for the dock or gangways as the structures must be on the water to provide access for launching and tying up boats. The fill for riprap is intended to stabilize the Bay shoreline, and, by necessity, involves the placement of some fill in the Bay.

The Commission finds that there is no alternative upland location for the fill.

- d. **Minimum Amount Necessary.** Due to the shallowness of the site and the prevailing winds, rowing shells will dock only along the western side of the launching float. The length of the floating dock was determined by the number of rowing shells that will be docked for the Oakland Strokes program and other EBRPD programs that will likely be using the dock at the same time. Two gangways will be constructed, one of which will be ADA-accessible, while the other one will be wide enough to transport the small non-motorized boats to the floating dock.

Special Condition II-A-1, which requires the permittee to submit plans to Commission staff and obtain approval prior to construction, will ensure that the minimum fill necessary is placed in the Bay to stabilize the shoreline.

The Commission finds that the fill is the minimum amount necessary to complete the project

- e. **Minimizing Impacts.** The Bay Plan policies on water surface area and volume state that, “[w]ater circulation in the Bay should be maintained, and improved as much as possible. Any proposed fills, dikes or piers should be thoroughly evaluated to determine their effects on water circulation and then modified as necessary to improve circulation or at least to minimize any harmful effects.” The placement of riprap along the shoreline and the boat launching facilities will not result in any changes to the water circulation or quality of the Bay. Special Condition II-E requires that the permittee employ BMPs during construction to prevent sediment and non-point source pollution (NPS) related to construction from entering the Bay. Further, this special condition prohibits the permittee from using creosote treated pilings or wood as a part of the project. As discussed in detail later, the RWQCB issued a water certification on March 13, 2009, for the dredging authorized herein.

The Commission finds that the fill authorized will minimize the impacts to water surface area and volume.

2. **Public Access and Recreation.** Section 66602 of the McAteer-Petris Act states that “...existing public access to the shoreline and waters of the...[Bay] is inadequate and that maximum feasible public access, consistent with a proposed project, should be provided.” 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.” 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 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 Public Access Policy 11 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.”

The Bay Plan Recreation Policy 1 states, “[D]iverse and accessible water-oriented recreation facilities such as marinas, launch ramps, beaches, and fishing piers should be provided to meet the needs of a growing and diversifying population....”

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 public project, such as the EBRPD’s Tidewater Aquatic Center, will provide the maximum feasible public access consistent with the project, the Commission should evaluate whether the public access is *reasonable* given the scope of the project.

The original permit, issued on July 6, 2007, authorized Phase One of the expansion of Martin Luther King Regional Shoreline Park, improving park facilities on a 36,000-square-foot area (0.83 acres) at the adjoining site. The facilities included vehicular access to the shoreline, a 50-car parking lot, a 400-foot-long shoreline public access trail, a landscaped area with picnic tables and BBQs, and a public restroom.

The project that is the subject of Amendment No. One (Phase Two) will extend the shoreline access trail and develop recreational boating facilities at the site located immediately north of the improvements authorized in the original permit. These new improvements include: (1) an approximately 460-foot-long, San Francisco Bay Trail shoreline pathway ranging from 12 to 25 feet wide, with an average width of 17 feet; (2) a 1,115-square-foot entry plaza; (3) two asphalt-paved boat staging areas totaling approximately 6,250 square feet; (4) one 2,500-square-foot lawn area for boat staging; (5) landscaping associated with the three buildings and adjacent to the entry plaza; (6) two buildings and a paved outdoor area for boat storage, (7) one building to house offices, training facilities, and a caretaker’s residence and two adjacent parking spaces; (8) an ADA-accessible dock for launching non-motorized watercraft; and (9) other public access amenities, such as benches, signs and trash containers. The floating dock will be accessible to the public during daylight hours, such as 6 a.m. to dusk, and all public access improvements will be ADA-accessible. The site is also designated as a launch site for the Water Trail in BCDC’s Draft San Francisco Bay Area Water Trail Plan and will be maintained by EBRPD.

On April 10, 2006, the Commission’s Design Review Board (DRB) reviewed the Tidewater Aquatic Center in its entirety, including the project authorized in the original permit (Phase One improvements) and the one that is the subject of Material Amendment No. One (Phase Two improvements). The DRB evaluated whether the mezzanines in the middle of the three buildings would adversely impact public

access, and whether the location and size of the secure boat storage area would impact a possible future public access connection to areas north of the project site, a sediment/gravel facility. The DRB determined that the mezzanines would not adversely impact public access. Also, the location of the secure boat storage area was changed so as not to obstruct the possibility of extending public access across the neighboring site to the north if the area became available for access. The DRB also suggested using soft paving in lieu of grass pavers, however, the permittee believed that grass pavers were a better choice for the expected use for boat staging. The permittee also stated that this area would be used to help train beginner boat users, and would provide the extra width required for fire department access. Ultimately, the DRB agreed with the use of grass pavers at the site.

Special Condition II-B requires that the access improvements be made available exclusively for public use for as long as the improvements exist. Further, this special condition requires that the improved public access be maintained, and that the future public access connection to the north of the project site be facilitated by the permittee when and if the adjacent parcel becomes available for public access.

The Commission finds that, as conditioned, the project provides the maximum feasible public access consistent with the project.

3. **Natural Resource Policies.** The Bay Plan policies on fish, other aquatic organisms and wildlife state, “[T]o assure the benefits of fish, other aquatic organisms and wildlife for future generations, to the greatest extent feasible, the Bay’s tidal marshes, tidal flats, and subtidal areas should be conserved, restored and increased.” Further, the Bay Plan Subtidal Area policies state, “[a]ny 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.”

Because only a few scattered marsh plants occur along the project site, the project will not significantly impact the Bay’s tidal marshes. However the dredging associated with the project will convert 16,020 square feet (0.37 acres) of intertidal mudflats to shallow subtidal habitat. While benthic organisms will likely quickly colonize the newly deepened areas, the shallow subtidal flats will be too deep for most shorebirds who currently forage at the site, and human activities can be expected to discourage bird use. However, the extent of such impacts was not analyzed in an environmental document (the project was determined to be categorically exempt from the need to prepare an environmental document).

The project is near East Creek Slough, Damon Slough, and Arrowhead Marsh, all sensitive wetland habitats. Members and participants in the programs at Tidewater Aquatic Center, such as Save the Bay’s “Canoes in Slough” program, will be led by naturalists that will educate kayak and canoe groups about the fragile environment and instruct boaters to avoid the slough altogether. The permittee will place signs on or near the dock to educate the general public about the sensitive Bay habitat nearby.

The authorization of Material Amendment No. One contains a number of Special Conditions intended to address the project’s potential impacts on the Bay’s natural

resources. There are requirements for best management practices to minimize construction impacts through such measures as allowing construction to occur only during those months where special status species are not present, prohibiting the use of creosote-treated materials, and assuring that debris generated during construction does not enter the Bay. The authorization also requires the permittee to provide educational information to users of the facility about the sensitivity of nearby wildlife to human disturbance in an effort to minimize the effect of increased human activity in an area surrounded by marsh, overwintering waterfowl, and endangered species (the California clapper rail).

The Commission finds that, as conditioned, the project will not adversely affect fish, other aquatic organisms and wildlife of the Bay, tidal marshes and tidal flats and subtidal areas.

4. **Dredging and Water Quality Policies.** The Bay Plan policies on dredging state that “[d]redging and dredged material disposal should be conducted in an environmentally and economically sound manner. Dredgers should reduce disposal in Bay and certain waterways over time to achieve the LTMS goal of limiting in-Bay disposal.” The Bay Plan Dredging Policy 2 states, in part, that, “[d]redging 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, such as navigational safety; (b) the materials to be dredged meet the water quality requirements of the San Francisco Bay Regional Water Quality Control Board;” ... “ (d) the siting and design of the project will result in the minimum dredging volume necessary for the project; and (e) the materials will be disposed of in accordance with Policy 3.” Policy 3 states, in part, that “[D]redged materials should, if feasible, be reused or disposed outside of the Bay and certain waterways.

The Bay Plan Water Quality Policy 2 states that “[W]ater quality in all parts of the Bay should be maintained at a level that will support and promote the beneficial uses of the Bay as identified in the San Francisco Bay Regional Water Quality Control Board’s Basin Plan and should be protected from all harmful or potentially harmful pollutants. 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.”

The project involves removing approximately 920 cubic yards of riprap covering approximately 9,160 square feet to allow dredging of approximately 3,835 cubic yards of sediment from an approximately 16,020-square-foot area in the Bay. Following dredging, new riprap material will be placed on the reconfigured shoreline and a floating dock and gangway installed. Dredging to a depth of -3.6 feet Mean Lower Low Water, plus one foot of overdredge allowance is needed to

increase the water depth to allow small boat access. The dredged material will be disposed at Winter Island, a managed wetland near the City of Pittsburg, in the west Sacramento-San Joaquin Delta, outside of the Commission's jurisdiction.

The California Regional Water Quality Control Board issued a water quality certification for the project on March 13, 2009, and stated that, "the project will impact 0.37 acres of rock riprap-armored shoreline through the dredging/excavation of about 3,835 cubic yards of sediment and soil... However, these activities are not anticipated to have significant impacts on shoreline habitat, since their major impact will be to move rock-lined shoreline habitat slightly landward, while slightly increasing the amount of open water at the Project site. The new floating docks and gangplanks are not anticipated to have significant impacts on beneficial uses of waters of the State, since they will not place significant amounts of fill into waters of the State."

Special Condition II-C ensures that the project minimizes potential adverse impact to Bay water quality. Specifically, Special Condition II-C-5 limits dredging from August 1st to November 30th to avoid any impacts on Pacific Herring, Chinook Salmon and Steelhead, and the California Least Tern. Special Condition II-C also requires the permittee to provide the Commission staff with pre- and post-dredge surveys to ensure that the dredging activities remain consistent with those authorized herein. Special Conditions have been included to ensure an effective stormwater management program and the implementation of construction best management practices. Both conditions will minimize water quality impacts.

The Commission finds the project, as conditioned, is consistent with the Commission's laws and Bay Plan policies regarding dredging and water quality since: (1) the dredging activities will serve a water-oriented use; (2) the activities will meet the Regional Board requirements and promote the beneficial uses of the Bay; and (3) the total volume of dredged material will be disposed outside of the Bay.

5. **Safety of Fill and Shoreline Protection.** The Bay Plan Safety of Fill Policy No. 4 states that, "[t]o prevent damage from flooding, structures on fill or near the shoreline should have adequate flood protection including consideration of future relative sea level rise as determined by competent engineers." The Bay Plan policy on Protection of the Shoreline No. 1 states that, "[n]ew shoreline erosion control projects and maintenance or reconstruction of existing erosion control facilities should be authorized if: (a) the project is necessary to protect the shoreline from erosion; (b) the type of protective structure is appropriate for the project site and the erosion conditions at the site." Further, Bay Plan policy on Protection of the Shoreline No. 2 states, in part, that, "[r]iprap revetments, the most common shoreline protective structure, should be constructed of properly sized and placed material that meet should engineering criteria for durability, density and porosity," and Policy No. 3 states, in part, that, "[a]uthorized protective projects should be regularly maintained according to a long-term maintenance program to assure that the shoreline will be protected from tidal erosion...."

This project was submitted to the Commission staff in 2005 at a time when sea level rise did not receive detailed analysis. Hence, the potential impacts of sea level rise on the project and its associated public access was not discussed with the applicant until recently. The project plans illustrate that the public access pathway will be

located approximately 61.2-inches above Mean High Water or approximately 18-inches above the estimated 100-year highest tide. The public access pathway will, thus, be two inches above the 100 year highest tide expected with a 16-inch sea level rise over the next 50 years, the conservative estimate of the California Climate Action Team Reports on Climate Change. As for the fill in the Bay, the majority of it will be floating, which will move with the tide.

Special Condition II-B ensures that the public access will be maintained for the life of the project including under circumstances where the required access is impacted by flooding. Special Condition II-A requires engineering plan review and approval by Commission staff on behalf of the Commission to ensure the public access is designed at an appropriate elevation to prevent overtopping and is engineered to withstand a 100-year flood event. Special Condition II-H is included to ensure that the Commission is not responsible for property damage related to future flooding. Special Condition II-D requires riprap authorized herein be built to meet specific engineering standards and, further, that it be maintained by the permittee.

The Commission finds that with the project, as conditioned, which requires maintenance of public access on the site and plan review by an engineer, is consistent with its Bay Plan policies regarding safety of fills and shoreline protection, and provides maximum feasible public access consistent with the project.

D. Review Boards

1. **Engineering Criteria Review Board.** The Commission's Engineering Criteria Review Board did not evaluate the project because no structures that could directly lead to loss of human life are located on Bay fill.
2. **Design Review Board.** On April 10, 2006, the Design Review Board (DRB) reviewed both projects authorized herein (Phase One and Phase Two). As discussed previously, in response to the DRB's concerns that the secure boat storage areas as originally sited impacted a possible future public access connection to the north, the permittee changed the design of the storage area so it would not block the possibility of connecting to future public access to the northern neighboring site. The DRB determined that the proposed project would not alter or block views to or from the Bay.

The DRB also questioned whether the slope of the ADA-accessible gangway would be appropriate for access, and the applicant assured the DRB that the gangway would have a slope less than five percent. The DRB recommended that the amount of surface runoff be reduced, and the permittee worked with the City of Oakland to develop and implement best management practices to reduce storm water runoff and improve storm quality at the project site, including minimizing the use of solid pavers by using grass cells and installing a landscaped bioswale area.

- € **E. Coastal Zone Management Act.** The Commission further finds, declares, and certifies that the activity or activities authorized herein are consistent with the Commission's Amended Management Program for San Francisco Bay, as approved by the Department of Commerce under the Federal Coastal Zone Management Act of 1972, as amended.
- Ð **F. Environmental Review.** Pursuant to the California Environmental Quality Act (CEQA), the City of Oakland, the lead agency for the project, certified a Final Environmental Impact Report on June 8, 1999 authorized herein . ~~This certification was~~ for the entire

Oakland Estuary Policy Plan, of which ~~includes~~ includes the improvements to Martin Luther King Jr. Regional Shoreline ~~are a portion~~. In April 2003, East Bay Regional Park District issued a Notice of Determination that the project authorized herein was Categorically Exempt under Section 15183, which was certified by the City of Oakland on May 18, 2006.

- E. G. Listing. Pursuant to Regulation Section 10620, ~~this~~ the original project was listed with the Commission on July 5, 2007.
- F. H. Enforcement Program and Civil Penalties. The Commission has an enforcement program that reviews its permits for compliance. The Commission may issue cease and desist and civil penalty orders if violations are discovered. The McAteer-Petris Act provides for the imposition of administrative civil penalties ranging from \$10 to \$2,000 per day up to a maximum of \$30,000 per violation. The Act also provides for the imposition of court-imposed civil penalties of up to \$30,000 in addition to any other penalties, penalties for negligent violations of between \$50 and \$5,000 per day, knowing and intentional penalties of between \$100 and \$10,000 per day, and exemplary penalties, which are supplemental penalties, in an amount necessary to deter future violations. In addition, anyone who places fill, extracts materials, or makes any substantial change in use of any water, land or structure within the area of the Commission's jurisdiction without securing a permit from the Commission is guilty of a misdemeanor.
- I. Conclusion. For all the above reasons, the Commission finds, declares, and certifies that, subject to the Special Conditions stated herein, the project authorized herein is consistent with the San Francisco Bay Plan, the McAteer-Petris Act, the Commission's Regulations, the California Environmental Quality Act, and the Commission's Amended Management Program for the San Francisco Bay segment of the California coastal zone.

IV. Standard Conditions

- A. ~~This permit shall not take effect unless the permittee executes the original of this permit and returns it to the Commission within ten days after the date of the issuance of the permit.~~
~~No work shall be done until the acknowledgment is duly executed and returned to the Commission.~~
- B. ~~The attached Notice of Completion and Declaration of Compliance form shall be returned to the Commission within 30 days following completion of the work.~~
- C. ~~The rights, duties, and obligations contained in this permit are assignable. When the permittee transfers any interest in any property either on which the authorized activity will occur or which is necessary to the full compliance of one or more conditions to this permit, the permittee/transferor and the transferee shall execute and submit to the Commission a permit assignment form acceptable to the Executive Director (call for a copy of the form or download it from our website). An assignment shall not be effective until the assignee executes and the Executive Director receives an acknowledgment that the assignee has read and understands the permit and agrees to be bound by the terms and conditions of the permit, and the assignee is accepted by the Executive Director as being reasonably capable of complying with the terms and conditions of the permit.~~
- D. ~~Unless otherwise provided in this permit, the terms and conditions of this permit shall bind all future owners and future possessors of any legal interest in the land and shall run with the land.~~

- ~~E. Unless otherwise provided in this permit, any work authorized herein shall be completed within the time limits specified in this permit, or, if no time limits are specified in the permit, within three years. If the work is not completed by the date specified in the permit, or, if no date is specified, within three years from the date of the permit, the permit shall become null and void. If a permit becomes null and void for a failure to comply with these time limitations, any fill placed in reliance on this permit shall be removed by the permittee or its assignee upon receiving written notification by or on behalf of the Commission to remove the fill.~~
- ~~F. All required permissions from governmental bodies must be obtained before the commencement of work; these bodies include, but are not limited to, the U. S. Army Corps of Engineers, the State Lands Commission, the Regional Water Quality Control Board, and the city and/or county in which the work is to be performed, whenever any of these may be required. This permit does not relieve the permittee of any obligations imposed by State or Federal law, either statutory or otherwise.~~
- ~~G. Work must be performed in the precise manner and at the precise locations indicated in your application, as such may have been modified by the terms of the permit and any plans approved in writing by or on behalf of the Commission.~~
- ~~H. Work must be performed in a manner so as to minimize muddying of waters, and if diking is involved, dikes shall be waterproof. If any seepage returns to the Bay, the permittee will be subject to the regulations of the Regional Water Quality Control Board in that region.~~
- ~~I. Unless otherwise provided in this permit, all the terms and conditions of this permit shall remain effective for so long as the permit remains in effect or for so long as any use or construction authorized by this permit exists, whichever is longer.~~
- ~~J. Any area subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission under either the McAteer Petris Act or the Suisun Marsh Preservation Act at the time the permit is granted or thereafter shall remain subject to that jurisdiction notwithstanding the placement of any fill or the implementation of any substantial change in use authorized by this permit.~~
- ~~K. Any area not subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission that becomes, as a result of any work or project authorized in this permit, subject to tidal action shall become subject to the Commission's "bay" jurisdiction.~~
- ~~L. This permit reflects the location of the shoreline of San Francisco Bay when the permit was issued. Over time, erosion, avulsion, accretion, subsidence, relative sea level change, and other factors may change the location of the shoreline, which may, in turn, change the extent of the Commission's regulatory jurisdiction. Therefore, the issuance of this permit does not guarantee that the Commission's jurisdiction will not change in the future.~~
- ~~M. Except as otherwise noted, violation of any of the terms of this permit shall be grounds for revocation. The Commission may revoke any permit for such violation after a public hearing held on reasonable notice to the permittee or its assignee if the permit has been effectively assigned. If the permit is revoked, the Commission may determine, if it deems appropriate, that all or part of any fill or structure placed pursuant to this permit shall be removed by the permittee or its assignee if the permit has been assigned.~~

- ~~N. Unless the Commission directs otherwise, this permit shall become null and void if any term, standard condition, or special condition of this permit shall be found illegal or unenforceable through the application of statute, administrative ruling, or court determination. If this permit becomes null and void, any fill or structures placed in reliance on this permit shall be subject to removal by the permittee or its assignee if the permit has been assigned to the extent that the Commission determines that such removal is appropriate. Any uses authorized shall be terminated to the extent that the Commission determines that such uses should be terminated.~~
- A. **Permit Execution.** This amended permit shall not take effect unless the permittee executes the original of this amended permit and returns it to the Commission within ten days after the date of the issuance of the amended 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 amended permit are assignable. When the permittee transfers 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 amended permit, the permittee/transferor and the transferee 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 amended permit and agrees to be bound by the terms and conditions of the amended permit, and the assignee is accepted by the Executive Director as being reasonably capable of complying with the terms and conditions of the amended permit.
- D. **Permit Runs With the Land.** Unless otherwise provided in this amended permit, the terms and conditions of this amended 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 amended permit does not relieve the permittee 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 amended permit and any plans approved in writing by or on behalf of the Commission.
- G. **Life of Authorization.** Unless otherwise provided in this amended permit, all the terms and conditions of this amended permit shall remain effective for so long as the amended permit remains in effect or for so long as any use or construction authorized by this amended 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 amended 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 amended 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 amended 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 amended 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 amended 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 amended permit shall be grounds for revocation. The Commission may revoke any amended permit for such violation after a public hearing held on reasonable notice to the permittee or its assignee if the amended permit has been effectively assigned. If the amended permit is revoked, the Commission may determine, if it deems appropriate, that all or part of any fill or structure placed pursuant to this amended permit shall be removed by the permittee or its assignee if the amended permit has been assigned.
- K. **Should Permit Conditions Be Found to be Illegal or Unenforceable.** Unless the Commission directs otherwise, this amended permit shall become null and void if any term, standard condition, or special condition of this amended permit shall be found illegal or unenforceable through the application of statute, administrative ruling, or court determination. If this amended permit becomes null and void, any fill or structures placed in reliance on this amended permit shall be subject to removal by the permittee or its assignee if the amended 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 permittee shall grant permission to any member of the Commission's staff to conduct a site visit at the subject property during and after construction to verify that the project is being and has been constructed in compliance with the authorization and conditions contained herein. Site visits may occur during business hours without prior notice and after business hours with 24-hour notice.