

# SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

455 Golden Gate Avenue, Suite 10600 • San Francisco, California 94102 (415) 352-3600 • Fax: (415) 352-3606 • www.bcdc.ca.gov

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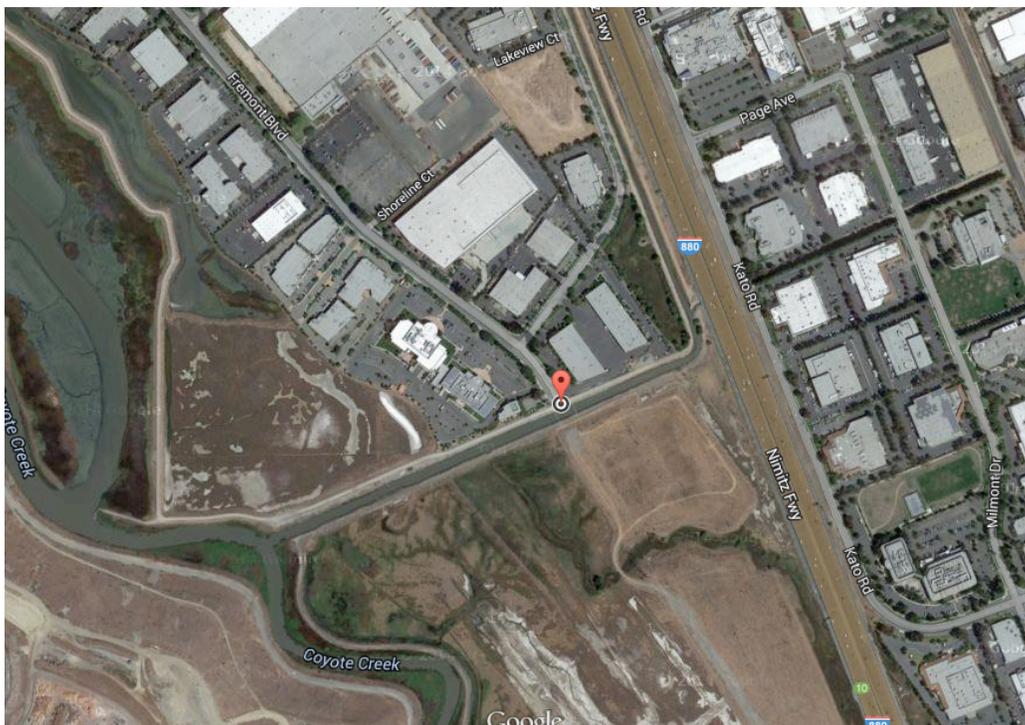
## Application Summary (For Commission consideration on July 17, 2014)

**Number:** BCDC Permit Application No. 2013.008.00  
**Date Filed:** May 7, 2014  
**90th Day:** August 5, 2014  
**Staff Assigned:** Erik Buehmann (415/352-3645 erikb@bcdc.ca.gov)

### Summary

**Applicant:** OMP/I&G Creekside Investors LLC.

**Location:** The proposed project is located at the southern end of Fremont Boulevard, at its current terminus at Alameda County Flood Control District Flood Channel B, in the City of Fremont, Alameda County.



*Making San Francisco Bay Better*

**Project:** The project involves constructing a 4,906-square-foot vehicle and pedestrian bridge in the Commission’s certain waterway jurisdiction to extend Fremont Boulevard across the flood control channel to the undeveloped parcel to the south. The bridge would be cantilevered over Flood Channel B and include two bike lanes and two sidewalks. In the future, Fremont Boulevard is to be extended to the south as part of large retail/commercial development.

**Issues Raised:** The staff believes that the application raises three primary issues: (1) whether the proposed fill for the project is consistent with the McAteer-Petris Act and the Bay Plan policies on fill, including policies on safety of fill, climate change, mitigation, and transportation; (2) whether the proposed public access improvements are consistent with the Bay Plan policies on public access, including policies on sea level rise and appearance, design, and scenic views; and whether the proposed project is consistent with the Bay Plan policies on transportation.

### Background

The proposed bridge would consist of an approximately 89-foot-wide and 79.5-foot-long span, totaling approximately 4,906 square feet, cantilevered over Flood Channel B, a branch of Coyote Creek, a “certain waterway” designated in the McAteer-Petris Act (Section 66610(e)(2) of the McAteer-Petris Act). The Commission has no shoreline band jurisdiction adjacent to certain waterways. The bridge would allow Fremont Boulevard, which currently terminates at Flood Channel B, to continue south and link with Dixon Landing Road. The bridge would provide a connection to a proposed approximately 487,000-square-foot shopping center development outside of the Commission’s jurisdiction, located south of Flood Channel B, north of Dixon Landing Road, and adjacent to I-880. Mitigation for the project has already been completed through an 84-acre wetland restoration project outside of the Commission’s jurisdiction to the southwest of the proposed bridge. Once the applicant has completed construction of the bridge, the City of Fremont would accept assignment of the permit and the continued obligation to maintain the bridge and public access.

### Project Description

**Project Details:** The applicant, OMP/I&G Creekside Investors LLC, describes the project as follows:

**In a Certain Waterway.** Construct, use, and maintain an approximately 4,906-square-foot cantilevered vehicle and pedestrian bridge over Flood Channel B, including two approximately five-foot wide bicycle lanes, and two sidewalks, 5.5 feet wide and 9.5 feet wide respectively.

**Fill:** The proposed project would result in 4,906-square-feet of new cantilevered fill over a certain waterway. The abutments for the bridge would be constructed upland of the inland edge of marsh vegetation as it once existed in the channel, outside the Commission's jurisdiction. Therefore, no pile-driving or in-water work would be required to construct the bridge.

Fremont Boulevard Bridge Fill Totals	
Type of Fill	Total Fill
Cantilevered (sf)	4,906
Solid (sf)	0

**Public Access:**

Currently, a public access trail, required pursuant to BCDC Permit No. 1981.007.03 issued to King & Lyons, runs along the northern bank to the west. A public access parking lot and trailhead lies immediately to the west of the existing Fremont Boulevard terminus. The bridge would include two approximately five-foot-wide Class II bicycle lanes (immediately adjacent to the vehicle travel lanes), one approximately nine-and-a-half-foot-wide sidewalk on the west side of the bridge, one approximately five-and-a-half-foot-wide sidewalk on the east side, and an approximately 43-inch-high railing. In addition to the public access associated with the bridge, the applicant proposes to amend BCDC Permit No. 1981.007.03 to provide new signage and landscaping at two existing public access areas north of the proposed bridge. Furthermore, the applicant would amend BCDC Permit No. 1981.007.03 and construct an approximately 1.7-mile Class II trail along Fremont Boulevard north of Flood Channel B, connecting to the public access on the bridge.

Type of Public Access	Square Feet	Length (feet)	Width (feet)
Bike and Pedestrian on Bridge	1,987	79.5	25

**Schedule and Cost:**

The project would begin construction in Fall 2014 and would be completed by Fall 2015. The total project cost is \$1,630,000.

**Staff Analysis**

- A. **Issues Raised.** The staff believes that the application raises three primary issues: (1) whether the proposed fill for the project is consistent with the McAteer-Petris Act and the Bay Plan policies on fill, including policies on safety of fills and sea level rise; (2) whether the proposed public access improvements are consistent with the Bay Plan policies on public access, including policies on sea level rise and appearance, design, and scenic views; and (3) whether the proposed project is consistent with the Bay Plan policies on transportation.

1. **Bay Fill.** The Commission may allow fill only when it meets the requirements identified in Section 66605 of the McAteer-Petris Act, which states, in part, that: (a) fill “should be limited to water-oriented uses (such as water-oriented recreation or public assembly) or “minor fill for improving shoreline appearance and public access”; (b) fill in the Bay should be approved only when “no alternative upland location” is available; (c) fill should be “the minimum amount necessary to achieve the purpose of the fill”; (d) “the nature, location, and extent of any fill should be such that it will minimize harmful effects to the Bay area, such as, the reduction or impairment of the volume, surface area or circulation of water, water quality, fertility of marshes or fish or wildlife resources, or other conditions impacting the environment...”; and (e) “fill should be authorized when the applicant has such valid title to the properties in question that he or she may fill them in the manner and for the uses to be approved.”
  - a. **Water-Oriented Use.** The proposed project would involve the construction of a vehicle and pedestrian bridge. Bridges are explicitly defined as a water-oriented use within Section 66605(a) of the McAteer-Petris Act.
  - b. **Alternative Upland Location.** The applicant states there is no reasonable upland alternative to directly connecting the current existing terminus of Fremont Boulevard to the parcels planned for the development to the south without constructing a bridge across Flood Channel B.
  - c. **Minimum Amount Necessary.** The proposed project would result in a total of 4,906-square-feet of new cantilevered fill. No solid or floating fill is proposed. The applicant states this is the minimum amount of fill necessary to provide a safe and useable bridge for both vehicles and pedestrians.
  - d. **Effects on Bay Resources.** The applicant states that the bridge would not significantly affect environmental and Bay resources. The proposed bridge would involve approximately 0.16 acres of fill. Because the bridge would be cantilevered over the channel, it would not effect water surface elevations, sediment transport or tidal hydrodynamics in the channel. On August 19, 2013, the California Department of Fish & Game informed the applicant that no streambed alteration agreement was necessary for the proposed bridge. On August 28, 1999, the U.S. Army Corps of Engineers issued a permit for the development, including the bridge, which expires in 2019. The Regional Water Quality Control Board issued a waiver of water quality discharge requirements.
  - e. **Valid Title.** The bridge would be built over property owned by the Alameda County Public Works Department Flood Control District (District). The District has approved an easement to the applicant for construction and maintenance of the bridge. After the bridge has been constructed, the bridge would be deeded to the City of Fremont. When the City of Fremont takes ownership of the bridge, the applicant and the District will assign the easement to the City.
  - f. **Safety of Fills.** The McAteer-Petris act requires “[t]hat public safety, and welfare require that fill be constructed in accordance with sound safety standards.” In addition, Bay Plan Safety of Fills Policy 3 states: “[t]o provide vitally needed information on all kinds of soils, installation of strong-motion seismographs should be required on all future major land fills.” The bridge would be constructed to meet current seismic safety standards on soil with little risk of liquefaction. The applicant has collaborated with the California Geological Survey to prepare a seismic instrumentation plan to install strong-motion seismographic instruments on the substructure of the bridge and has agreed to participate in the California Strong Motion Instrumentation Program.

- g. **Sea Level Rise.** The Bay Plan policies on Safety of Fill state, in part, that “[a]dequate measures should be provided to prevent damage from sea level rise and storm activity that may occur on fill or near the shoreline over the expected life of a project.... New projects on fill or near the shoreline should...be built so the bottom floor level of structures will be above a 100-year flood elevation that takes future sea level rise into account for the expected life of the project.” Bay Plan Climate Change Policy 7 identifies specific types of projects that are deemed to have regional benefits, advance regional goals, and that should be encouraged, if their regional benefits and their advancement of regional goals outweigh the risk from flooding. Policy 7 identifies one of those projects as a “transportation facility or other critical infrastructure that is necessary...to serve planned development.” Bay Plan Climate Change Policy 6 identifies several regional goals including, “[a]dvanc[ing] regional public safety and economic prosperity by protecting...infrastructure that is crucial to public health or the region’s economy....”

The applicant has provided sea level rise projections to the end-of-century relative to the bridge and its associated public access features (Exhibit E). Using a projection of slightly over one-foot of sea level rise by mid-century and over five feet of sea-level rise at the end-of-century (within the sea level rise projections currently recommended by the National Research Council), the applicant projects that the soffit of the bridge would remain above the projected water levels for mean high water and mean higher high water levels. However, in the event of the storm surge and 100-year flood event at the end of the century, floodwaters could rise above the soffit of the bridge and wash the solid sidewall of the bridge railing. The proposed bridge constitutes a transportation facility that is also critical infrastructure necessary to connect the terminus of Fremont Boulevard to the planned multi-use development to the south of Flood Channel B. In addition, the bridge provides the regional benefit of a public access connection over Flood Channel B. The as-yet unbuilt shopping center on the parcel south of Channel B is required to provide public access along the Fremont Boulevard extension pursuant to BCDC Permit No. M2000.034.00 for the construction of concrete culverts and tidal gates associated with the mitigation for the proposed development. The applicant also proposes to extend the bike lane along existing Fremont Boulevard north of Channel B. Therefore, the regional goals and benefits would outweigh the risk from flooding in a 100-year flood event at the end-of-century.

- h. **Mitigation.** The Bay Plan Mitigation Policy 1 states, in part: “[p]rojects should be designed to avoid adverse environmental impacts to Bay natural resources such as to water surface area, volume, or circulation and to plants, fish, other aquatic organisms and wildlife habitat, subtidal areas, or tidal marshes or tidal flats. Whenever adverse impacts cannot be avoided, they should be minimized to the greatest extent practicable. Finally, measures to compensate for unavoidable adverse impacts to the natural resources of the Bay should be required.” Mitigation has already been completed as part of phase one of the project and was approved by BCDC Permit No. M2000.034.00. Applicants restored approximately 84-acres of wetland to the southwest of the project site. Seven acres of the wetland is a tidal marsh pond, connected to Channel B through a tide gate. This portion of the mitigation area was intended as mitigation for the fill associated with the bridge. The remainder of the wetland constitutes a managed wetland site featuring gated culverts to control tidal flows. The tidal marsh area was restored in 2002. It was designed to meet specified performance standards by 2006. The site is now well

vegetated with pickleweed and hydrophytes and provides valuable habitat for several animal species, including the salt marsh harvest mouse. The City of Fremont required a 50-year management plan for the wetland as part of its project approval. In the event the applicant transfers ownership of the wetland mitigation site, the City would either enter an agreement with the new owner or establish its own long-term management plan for the area. At this time, the United States Fish and Wildlife Service has expressed interest in obtaining the wetland mitigation site.

The Commission should determine whether the proposed project is consistent with the McAteer-Petris sections and relevant San Francisco Bay Plan policies regarding fill in the Bay.

## 2. Public Access

- a. **Maximum Feasible Public Access.** Section 66602 of the McAteer-Petris Act states, in part, 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." In addition, the Bay Plan policies on public access state, in part, that "a proposed fill project should increase public access to the Bay to the maximum extent feasible..." and that "access to and along the waterfront should be provided by walkways, trails, or other appropriate means and connect to the nearest public thoroughfare where convenient parking or public transportation may be available."

Currently, there is no public access to connect Fremont Boulevard to Dixon Landing Road across Flood Channel B. The proposed project would create a nine-and-a-half-foot wide pedestrian sidewalk spanning the west side of the bridge for the full 79.5-foot length of the bridge. On the east side of the bridge, a five-and-a-half-foot wide pedestrian sidewalk would be constructed. In addition, two five-foot-wide Class II bicycle lanes would be constructed on either side of the vehicular travel lanes. The sidewalks and bicycle lanes would comply with the Americans with Disabilities Act (ADA). The wider western sidewalk would provide views to the Bay and serve as a segment of the San Francisco Bay Trail (Exhibit B). The sidewalks and bicycle lanes would connect with the sidewalks and a proposed bicycle lane on Fremont Boulevard to the north and the future development sidewalks and bicycle lanes to the south connecting the Bay Trail to Dixon Landing Road as required by M2000.034.00.

The proposed bridge would provide an important connection for users coming from the south on Dixon Landing Road to access the public access amenities located to the north of Flood Channel B. BCDC Permit No. 1981.007.03 authorized development and associated public access in the 591-acre area north of Flood Channel B. Permit No. 1981.007.03 requires an approximately 2-mile path along Flood Control Channel B, Coyote Creek, and Mud Slough and two staging areas adjacent to Fremont Boulevard to provide access to these required trails. These staging areas were required to be at least 10,000-square-feet in area and to serve as trailheads, rest areas, and vista points. Pursuant to the requirements of its permit, the permittee for BCDC Permit No. 1981.007.03, King & Lyons, constructed a 13,000-square-foot park at the north end of the site near the intersection of Fremont Boulevard and Warren Avenue ("North Park") and a 15,800-square-foot park at the south end of the property near the proposed location of the bridge ("South Park"). OMP/I&G Creekside Investors LLC (the applicants for the bridge) have stated their intention to work with King &

Lyons (the developer of the area north of Channel B) to provide enhanced signage to the parks (including new public access signs), provide new landscaping at the two parks, and to construct two bicycle lanes along the existing 1.7-mile stretch of Fremont Boulevard north of Channel B. The public access signs would include Bay Trail signs identifying the proposed bridge bicycle and pedestrian pathways as part of the Bay Trail.

The public access area and character proposed for this project is similar with access provided with similar projects. A pending application to replace Bon Air Bridge over Corte Madera Creek, a certain waterway, (a material amendment to BCDC Permit Application No. M1994.015.02), proposes two seven-foot-wide Class II bicycle lanes and two ten-foot-wide sidewalks. In addition, BCDC Permit No. 2007.002.03 to the City of Oakland authorized the construction of a 27,588-square-foot bridge over Lake Merritt Channel along the Embarcadero. Public access required for this project included two six-foot-wide bicycle lanes, a five-foot bicycle lane on the north side of the bridge, and a twelve-foot-wide Bay Trail segment along the south side of the bridge including two belvederes to serve as vista points. By comparison, the bridge proposed for this project is smaller both in area and in scale to these two larger bridges, with less fill and fewer associated impacts to the Bay.

- b. **Sea Level Rise.** The Bay Plan policies on Public Access include policies related to sea level rise. Public Access Policy 7 states, in part: “[a]ny public access provided as a condition of development should either be required to remain viable in the event of future sea level rise or flooding, or equivalent access consistent with the project should be provided nearby.” The project applicant has provided sea level rise projections that show the impact over time to the public access features of the bridge (Exhibit E). The bridge’s elevation would assure that it would remain above projected rising sea levels at mid-century and end-of-century. The solid sidewall of the bridge railing may be threatened by storm surge and a 100-year flood event at the end-of-century. The applicant states that although flooding may occur in a 100-year flood event at the end of the century, it is likely the public sidewalk and bike lane would remain viable because wave forces on the bridge would be relatively weak and the bridge is designed for deck drainage.
- c. **Appearance, Design, and Scenic Views.** The Bay Plan policies on Appearance, Design, and Scenic Views (Policy 2) state, in part: “[a]ll Bayfront development should be designed to enhance the pleasure of the user or viewer of the Bay. Maximum efforts should be made to provide, enhance, or preserve views of the Bay and shoreline, especially from public areas, from the Bay itself, and from the opposite shore.” The pedestrian and cycling pathways on the bridge would provide an elevated platform for viewing the Coyote Creek and the adjacent restored wetland mitigation site.

The Commission must determine whether the proposed project is consistent with the Bay Plan policies regarding public access and appearance, design and scenic views.

3. **Transportation.** The Bay Plan policies on Transportation (Policy 3) state, in part: “[i]f a route must be located across a waterway, the following provisions should apply: (a) [t]he crossing should be placed on a bridge or in a tunnel, not on solid fill...” The Bay Plan Transportation Policy No. 4 states, “bridges over the Bay or certain waterways should include pedestrian and bicycle paths that will either be a part of the Bay Trail or connect the Bay Trail with other regional and community trails.” The proposed project is a cantilevered bridge designed to provide new access across Flood Channel B, including two pedestrian sidewalks and two bicycle lanes. Both the sidewalk and bike lanes will be part of the San Francisco Bay Trail. The Commission should consider whether the proposed project would be consistent with its Bay Plan policies regarding transportation.

**B. Review Boards**

1. **Engineering Criteria Review Board.** The Commission's Engineering Criteria Review Board (ECRB) did not review the proposed project.
2. **Design Review Board.** As a result of the straightforward scope of the proposed public access that is associated with the project (bike lanes, sidewalks, and a new segment of Bay Trail) and the Commission's limited jurisdiction, the Design Review Board did not review the proposed project.

**C. Environmental Review.** On December 10, 2009, the City of Fremont Planning Commission certified the Environmental Impact Report in accordance with the California Environmental Quality Act (CEQA).

**D. Relevant Portions of the McAteer-Petris Act**

1. Section 66602
2. Section 66605
3. Section 66632

**E. Relevant Portions of the San Francisco Bay Plan**

1. *San Francisco Bay Plan* Policies on Safety of Fills
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* Policies on Transportation

**Exhibits**

**A. Vicinity Map**

**B. Section View of Bridge**

**C. Overhead View of Bridge**

**D. Additional Public Access Improvements**

**E. Sea Level Rise Analysis**