

San Francisco Bay Conservation and Development Commission

455 Golden Gate Avenue, Suite 10600, San Francisco, California 94102 tel 415 352 3600 fax 415 352 3606

November 14, 2014

TO: Commissioners and Alternates

FROM: Lawrence J. Goldzband, Executive Director (415/352-3653; larry.goldzband@bcdc.ca.gov)
Jaime Michaels, Coastal Program Analyst (415/352-3613; jaime.michaels@bcdc.ca.gov)

SUBJECT: **Staff Recommendation on BCDC Permit Application No. 2013.001.00;
Office Campus, Shoreline Revetment, and Public Access Improvements
City of Burlingame, San Mateo County**
(For Commission consideration on November 20, 2014)

Recommendation Summary

The staff recommends approval of BCDC Permit No. 2013.001.00, to the City of Burlingame and 350 Beach Road, LLC's for an office complex, which, as conditioned, will result in the following:

1. The construction of a six-building office campus and the realignment of Airport Boulevard—activities occurring largely outside of the Commission's jurisdiction;
2. In the Bay, the removal of concrete and rubble from a 13,822-square-foot area at the site's eastern shoreline and the construction of an engineered revetment (1,481 cubic yards of solid fill) in the approximately equivalent 13,822-square-foot area. Also, within that same footprint, the placement of 17 cubic yards of solid fill to support a public access overlook; and
3. Within the 100-foot shoreline band, the construction of an approximately 27,000-square-foot section of the shoreline revetment system, the south-eastern and north-western ends of realigned Airport Boulevard (areas totaling approximately 6,000 square feet), portions of five stormwater outfalls, and two 100-foot-wide, 815-foot-long dedicated public shoreline areas (totaling approximately 3.7 acres).



Staff Recommendation

The staff recommends that the Commission adopt the following resolution:

I. Authorization

- A. **Authorized Project.** Subject to the conditions stated below, the City of Burlingame and 350 Beach Road, LLC (“permittees”) are hereby granted permission to conduct activities in the Bay and within the 100-foot shoreline band as part of the development of an office campus, a shoreline revetment system, and public access areas, at a 20-acre site located west and south of Airport Boulevard and north of Beach Road, in the City of Burlingame, San Mateo County, specifically:

In the Bay

1. Remove approximately 1,547 cubic yards of concrete and debris from a 13,822-square-foot area along the site’s eastern boundary;
2. Install, use, and maintain in-kind an approximately 13,822-square-foot engineered rock revetment (1,481 cubic yards) at the eastern site boundary; and
3. Place, use, and maintain in-kind approximately 17 cubic yards of solid fill within an approximately 50-square-foot area to support a public access overlook at the eastern site boundary.

Within the 100-foot shoreline band

1. Construct, use, and maintain an approximately 1.85-acre public area at the site’s eastern boundary and an approximately 1.85-acre public area adjacent to Sanchez Channel (a total of 3.70 acres of dedicated public access area) with public-serving amenities, including 12-foot-wide, San Francisco Bay Trail bicycle and pedestrian paths, four Bay overlooks, site furnishings (such as benches, trash receptacles), signage, lighting, and landscaping;
2. Construct, use, and maintain in-kind portions of three outdoor dining patios—two at the western shoreline and one at the eastern shoreline—covering, in total, a 3,650-square-foot area;
3. Remove concrete and debris from the shoreline, and install, use, and maintain in-kind a shoreline revetment covering approximately 27,400 square feet (0.63 acres) along the site’s eastern shoreline;
4. Construct, use, and maintain in-kind portions of the southeastern and northwestern sections of Airport Boulevard covering a total of approximately 6,180 square feet (0.14 acres);
5. Remove four outfalls, and install, use, and maintain in-kind two 30-inch-diameter below-ground outfalls and associated headwall structures at the site’s eastern boundary; and

6. Remove two outfalls, and install, use and maintain in-kind two approximately 24-inch-diameter below-ground outfalls and one 42-inch-diameter below-ground outfall and associated headwall structures at the site's western boundary.
- B. **Application Date.** This authority is generally pursuant to and limited by the permittees' application dated January 3, 2013, including all accompanying and subsequent correspondence and exhibits, but subject to the modifications required by conditions hereto.
- C. **Deadlines for Commencing and Completing Authorized Work.** Construction activities authorized herein must commence prior to December 1, 2017, or this permit will lapse and become null and void. All construction work authorized herein must be diligently pursued to completion and completed within four years of project commencement or by December 1, 2021, whichever is earlier, unless an extension of time is granted by amendment of the permit. All in-kind maintenance authorized herein is allowed as long as activities and uses authorized herein remain in place and as long as relevant title documents, including leases, are valid.
- D. **Summary of Bay Fill and Public Access.** At the eastern site boundary, the project will remove 1,547 cubic yards of solid fill from an approximately 13,822-square-foot area of the Bay and, in its place, place approximately 1,481 cubic yards of rock to create approximately 13,822 square feet of an engineered revetment. Additionally, approximately 17 cubic yards of solid fill will be placed to support one public access overlook. Therefore, the project authorized herein will result in a 49 cubic yard increase of Bay volume. The project will also create two, 815-foot-long shoreline parks totaling 3.70 acres with public access amenities, including pathways, seating, and landscaping.

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. Plan Review and Approval

1. **Construction in Accord with Plans.** The project constructed pursuant to this permit shall generally conform with the plans entitled "Burlingame Point: 300-333 Airport Blvd, Burlingame, CA" revised through November 4, 2014 and prepared by DES, and all accompanying and subsequent correspondence and exhibits. Final project plans shall be prepared and submitted for staff review and approval by or on behalf of the Commission, as described below.
2. **Plan Review.** No work authorized herein shall commence until final site plans, including for demolition, grading, staging, construction, engineering, architectural, and landscaping activities authorized herein, have been submitted to, reviewed, and approved in writing by or on behalf of the Commission. Specific drawings and information required in such plans shall be discussed and determined in coordination with Commission staff prior to

submittal. To save time, preliminary drawings should be submitted and reviewed prior to submittal of final drawings. The plans shall be accompanied by a letter requesting plan review and approval and identifying the type of plans. At a minimum, plans shall include: the shoreline (Mean High Water/ MHW), the 100-foot line inland of MHW, property lines, the boundaries of areas to be reserved for public access, and the location, dimensions, and materials of all elements of the project authorized herein. All plan review shall be completed by or on behalf of the Commission within 45 days after receipt of such plans.

- a. **Shoreline Revetment.** The revetment plans shall consist of diagrams and cross-sections that: (1) show and clearly label the MHW referenced to NGVD29, 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) identify who designed the shoreline protection improvements and their background in coastal engineering.

Riprap material shall be either quarry rock or specially cast or carefully selected concrete pieces free of reinforcing steel and other extraneous material and conform 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.

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) unless the revetment is keyed at the toe. 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. The revetment shall be constructed in a manner that approximately matches the grade at the adjacent properties to provide a gradual transition between these shoreline features and, at a later date, facilitate integration of these features.

3. **Plan Approval.** Plan approval or disapproval shall be based upon:
- (a) completeness and accuracy of the plans in showing features authorized herein;
 - (b) consistency of the plans with the terms and conditions of this permit;
 - (c) assurance that any Bay fill does not exceed this authorization and any work within the 100-foot shoreline band conforms with public access improvements authorized or required herein;
 - (d) the appropriateness of the types of fill material and their manner of placement;
 - (e) the preparation of

the plans by professionals and their official stamp of or certification of approval; and (f) assurance that appropriate provisions have been incorporated for safety in case of a seismic or future flooding event.

4. **Conformity with Final Approved Plans.** Prior to commencement of any work authorized herein, the appropriate design professional(s) of record shall certify in writing that, through personal knowledge, the work covered by the authorization will be performed in accordance with the approved design criteria and in substantial conformance with the approved plans. 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.
5. **Discrepancies Between Approved Plans and Special Conditions.** In case of any discrepancy between final approved plans and special conditions of this authorization, the Special Condition shall prevail. The permittees are responsible for assuring that all plans accurately and fully reflect the special conditions of this authorization.
6. **Appeals of Plan Review Decisions.** Any plan approval, conditional plan approval or plan denial may be appealed by the permittees or any other interested party to the Design Review Board or, if necessary, subsequently to the Commission. Such appeals must be submitted to the Executive Director within 30 days of the plan review action and must include the specific reasons for appeal. The Design Review Board shall hold a public hearing and act on the appeal within 60 days of the receipt of the appeal. If subsequently appealed to the Commission, the Commission shall hold a public hearing and act on the appeal within 90 days of the receipt of the subsequent appeal.
7. **Foundation Layout Inspection.** To ensure that no office buildings with the exception of the three associated outdoor dining patios are constructed within the dedicated public access areas required herein, prior to construction of building forms or structures to be located adjacent to required public access, the permittees shall request in writing an inspection by the Commission staff of the foundation layout as it has been surveyed and staked in the field relative to Mean High Water. Within five working days of receipt of the written request for an inspection, the Commission staff will inspect the foundation layout as it has been surveyed and staked in the field for any structure that will be located in or adjacent to BCDC's 100-foot shoreline band or required public access area. The permittees shall not commence construction of the forms or pour the foundation until the Commission staff has confirmed in writing that the foundation layout is consistent with the terms and conditions of the permit by providing the permittees with a Certificate of Foundation Layout Inspection. If the staff is unable to perform this inspection within the five-day period, the permittees may commence the work

authorized herein, but the Commission staff's inability to complete such an inspection does not relieve the permittees of the responsibility to provide public access areas and build any structures (the project) in accord with the approved plans.

B. **Public Access.** A 3.70-acre (161,172 square feet) total area at the site's eastern and western shoreline 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. The area and improvements shall comply with the accessibility requirements of the California Building Code. If the permittees wish to use the public access area for other than public access purposes, they must obtain prior written approval by or on behalf of the Commission.

1. **Permanent Guarantee.** Prior to the commencement of any activity authorized herein, the permittees shall, by instrument or instruments acceptable to counsel for the Commission, dedicate to a public agency or otherwise permanently guarantee such rights for the public to the two approximately 80,586-square-foot public access areas. The instrument shall create rights in favor of the public, which shall commence no later than after completion of construction of any public access improvements required by this authorization and prior to the use of any structures authorized herein. Such instrument shall be in a form that meets recordation requirements of San Mateo County and shall include a legal description of the property being restricted and a map that clearly shows the shoreline (Mean High Water Line), the property being restricted for public access, the legal description of the property and of the area being restricted for public access, and other appropriate landmarks and topographic features of the site, such as the location and elevation of the top of bank of any levees, any significant elevation changes, and the location of the nearest public street and adjacent public access areas.

Approval or disapproval of the instrument shall occur within 30 days after submittal for approval and shall be based on the following: (a) sufficiency of the instrument to create legally enforceable rights and duties to provide the public access area required by this authorization; (b) inclusion of an exhibit to the instrument that clearly shows the area to be reserved with a legally sufficient description of the boundaries of such area; (c) sufficiency of the instrument to create legal rights in favor of the public for public access that will run with the land and be binding on any subsequent purchasers, licensees, and users; and (d) establishment of a single entity responsible for maintaining all public access areas and associated improvements, which is able and willing to meet the responsibilities for maintaining such areas and improvements required herein.

Within 30 days after approval of the instrument, the permittees shall record the instrument on all parcels affected by this instrument and shall provide evidence of recording to the Commission. No changes shall be made to the instrument after approval without the express written consent by or on behalf of the Commission.

2. **Improvements.** The public access improvements generally depicted on Exhibit A shall be implemented by the permittees in the following sequence:
 - (a) within six months of the occupancy of the first office building located east of the realigned Airport Boulevard, the 1.87-acre dedicated public access area at the eastern shoreline shall be completed; and
 - (b) within six months of the occupancy of the first office building located west of the realigned Airport Boulevard, the 1.87-acre dedicated public access area at the western shoreline shall be completed. Public access improvements shall be consistent with the plans approved pursuant to Special Condition II.A of this authorization and substantially conform to the plans entitled "Burlingame Point: 300-333 Airport Blvd, Burlingame, CA" revised through November 4, 2014 and prepared by DES. These improvements include the following:
 - (a) Two 1.87-acre public access areas, each along approximately 815-foot-long shorelines with 12-foot-wide lighted bicycle and pedestrian paths;
 - (b) A minimum of four Bay overlooks;
 - (c) Irrigated landscaped areas with lighting;
 - (d) A minimum of 20 benches, ten trash receptacles, and six drinking fountains roughly equally divided between the two required public access areas:
 - (e) A minimum of eight public access signs for the dedicated public areas, four way-finding signs, and four interpretive signs providing information about, for example, site and natural history, other nearby public shoreline areas or parks, etc.; and
 - (e) A minimum of 30 public bicycle parking spaces and 20 dedicated public vehicle parking spaces.
3. **Outdoor Dining Areas.** The three outdoor dining areas authorized herein shall be designed, constructed, and contain signage to clearly indicate that such areas are for entry, exit, and use by the general public. If constructed with wind-protective screens, such screens shall be constructed of transparent materials and be located away from the entrance and exit points to these areas so as to not obstruct ingress or egress to/from these areas by the general public.

4. **Maintenance.** The areas and improvements within the total 161,172-square-foot area shall be permanently maintained by and at the expense of the permittees or their assignees. Such maintenance shall include, but is not limited to, repairs to all path surfaces; replacement of any landscaped materials that die or become unkempt; repairs or replacement as needed of any public access amenities such as signs, benches, drinking fountains, trash receptacles, lights, telescopes, patios, overlooks, art, parking spaces; periodic cleanup of litter and other materials deposited within the access areas; removal of any encroachments into the access areas; and assuring that the public access signs remain in place and visible. Within 30 days after notification by staff, the permittees shall correct any maintenance deficiency noted in a staff inspection of the site.
5. **Assignment of Maintenance Responsibility.** Prior to assigning any portion of this permit, the permittees shall transfer maintenance responsibility of dedicated public access area authorized and required herein to a public agency or other party acceptable to the Commission but only provided that the transferee agrees in writing, acceptable to counsel for the Commission, to be bound by all terms and conditions of this permit. If the permittees propose to establish an entity that has a membership, such as a homeowners' association, the instrument shall also: (a) establish the authority of the entity to impose charges on its members to assure that the entity has sufficient financial resources to maintain all of the public access improvements and landscaping; (b) provide that the entity has the legal authority to take any and all actions necessary to maintain all of the public access improvements and landscaping; (c) provide that each and every member is jointly and severally responsible with each and every other member to maintain all of the public access improvements and landscaping pursuant to this permit; (d) provide that the Commission may serve all notices, including notices on any members, on the entity only; and (e) provide that the entity has the authority to accept a partial assignment of the amended permit for the purposes described above.
6. **Reasonable Rules and Restrictions.** The permittees may impose reasonable rules and restrictions for the use of the public access areas to correct particular problems that may arise. Such limitations, rules, and restrictions shall have first been approved by or on behalf of the Commission upon a finding that the proposed rules would not significantly affect the public nature of the area, would not unduly interfere with reasonable public use of the public access areas, and would tend to correct a specific problem that the permittees have identified and substantiated. Rules may include restricting hours of use and delineating appropriate behavior.
7. **Connections to Neighboring Parcels.** The permittees shall design and construct the public areas authorized and required herein in a manner that integrates with adjoining public access areas and allows for a continuous,

seamless connection to adjacent publicly-accessible areas at the following locations: at the southeastern corner of Airport Boulevard and along Airport Boulevard through the office campus; at the northwest corner of the site at the connection with the Sanchez Channel bridge; and at the northeastern corner to the Fisherman's Park and parking area.

Within one year of commencement of construction of any publicly accessible areas at the neighboring properties, the permittees shall assure that the public access areas and improvements required herein either provide or will be modified to facilitate a continuous and seamless connection between the public access areas required herein and adjacent public areas. At such time, the permittees shall take reasonable actions to coordinate the design, construction, and maintenance with the permittees of the adjacent parcels and the Commission staff. The exact manner in which the connection is designed and constructed shall be reviewed and approved by or on behalf of the Commission pursuant to Special Condition II.A.

8. **Required Public Access and Site Flooding.** The permittees shall implement strategies to ensure that the public access areas required herein are either protected against or resilient to future flooding and/or sea level rise in a manner consistent with Special Condition II.G. In the event that adaptation strategies to assure resilience and/or protection from tidal flooding would result in a significant visual or physical impact at the dedicated public access areas so as to result in a decrease in area or impact the public's ability to use such areas and view the Bay, the permittees shall coordinate with the Commission staff to prepare an alternative public access plan and obtain the necessary authorization by or on behalf of the Commission to ensure the creation and dedication of equivalent public access associated with the project authorized herein.
- C. **Restrictions on In-Bay Construction.** All construction activities in the Bay authorized herein shall comply with the following restrictions to minimize disturbance to special-status species pursuant to the National Oceanic and Atmospheric Administration Fisheries (NOAA Fisheries) Endangered Species Act (ESA) Section 7(a)(2) Concurrence Letter and Magnuson-Stevens Fishery Conservation Management Act Essential Fish Habitat Response for the project dated February 28, 2014, 2014: (i) the restriction of activities below Mean High Water (MHW) to the period of June 15 to November 30; (ii) the restriction of work below MHW to low-tide events; (iii) the use of an environmental bucket or silt curtain for work occurring below MHW; (iv) the use of a vibratory hammer during sheet-pile installation; (v) the prohibition of project barges from resting on the Bay bottom; and (vi) the use of land-based equipment for shoreline excavation and fill work.

- D. **Water Quality Certification.** All construction activities in the Bay authorized herein shall comply with the requirements of the water quality certification dated July 28, 2014, issued by the California Regional Water Quality Control Board, San Francisco Bay Region, including the preparation of a Storm Water Pollution Prevention Plan (SWPPP), and the restriction of in-water work to low tide events.
- E. **Valid Title/Lease.** Prior to project commencement, the permittees shall obtain and provide an executed valid lease for the project site's eastern shoreline area—with, among other things, the signatures of the California State Lands Commission and 350 Beach Road, LLC—to the Commission staff. Further, prior to the expiration date of the lease on September 19, 2062, the permittees shall: (1) make good faith efforts to enter into a new or extended lease for the underlying property, namely the eastern shoreline area and provide evidence of the new or extended lease to the Commission staff; or (2) in the event that a new or extended lease is not obtained by the permittees and/or is not provided to the Commission staff prior to September 19, 2062, the permittees shall be responsible for and obtain any necessary Commission authorization for the removal or modification of facilities and uses authorized herein located at property for which valid title no longer exists.
- F. **Maintenance and Repair.**
1. **General Maintenance.** All maintenance of facilities authorized herein shall constitute in-kind work only and shall not result in an expansion of the Bay volume or footprint of the project or fill authorized herein.
 2. **Shoreline Revetment Maintenance.** The shoreline revetment authorized herein shall be regularly maintained by, and at the expense of the permittees, any assignee, lessee, sublessee, or other successor in interest to the project. Maintenance shall include, but not be limited to, collecting any riprap materials that become dislodged and repositioning them in appropriate locations within the riprap covered areas, replacing in-kind riprap material that is lost, repairing the required filter fabric as needed, and removing debris that collects on top of the riprap. Within 30 days after notification by the staff of the Commission, the permittees or any successor or assignee shall correct any maintenance deficiency noted by the staff.
- G. **Sea Level Rise Resilience and Adaptation Measures**
1. **Adaptation to Future Flooding.** The permittees shall construct the eastern shoreline revetment and overlooks to a finished elevation of 12.9' NGVD29 and the adjacent eastern shoreline public access area to a finished elevation of 13.4' NGVD29. In the event that future sea level rise and flooding regularly overtops the revetment crest and/or the public access area becomes unavailable for use due to regular flooding, within six months of notice by the Commission's Executive Director, the permittees shall prepare a proposal with adaptation strategies to prevent flooding or enhance resilience of the revetment and the dedicated public access areas. The

permittees shall, pursuant to Special Condition II-A (Plan Review), provide the adaptation strategy to the Commission staff for its review and approval by or on behalf of the Commission.

2. **Monitoring Program.** Following construction of the project authorized herein, the permittees shall develop and implement a program for monitoring future sea level rise at the project site to understand its effect on the structures authorized herein. As a part of the program, the permittees shall, at a minimum, evaluate tidal data for the site, perform topographic surveys of site features, and report on the frequency and duration of tide waters exceeding the revetment crest elevation to determine whether and when adaptation strategies should be implemented over time. The permittees will incorporate the monitoring program into the *Site Operation and Maintenance* manual, and provide the Commission staff with monitoring program data on a periodic basis, likely every five years following completion of project construction.

III. Findings and Declarations

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

- A. **Use.** The project is not located at a site with a Bay Plan priority use designation.
- B. **Bay Fill.** The Commission may authorize fill when the fill proposal complies with the requirements identified in Section 66605 of the McAteer-Petris Act, including: (a) the public benefits of fill exceed the public detriment from the loss of water area, and the fill is limited to water-oriented uses or is "minor" to improve shoreline appearance or public access; (b) no alternative upland location exists for the fill, and the fill is the minimum amount necessary; (c) the fill should minimize harmful effects to the bay area, including water quality and fertility of fish and wildlife resources; (d) the permittees have valid title to the property to be filled; and (e) the fill should be constructed in accordance with sound safety standards and to afford reasonable protection against the hazards of unstable geologic conditions or flooding.
 1. **Public Benefit, Water-Oriented Use, Shoreline Appearance, and Public Access.** The project involves the removal of 1,547 cubic yards of concrete and rubble from a 13,822-square-foot section of the site's eastern shoreline and, within an approximately equivalent footprint, the placement of approximately 1,481 cubic yards of engineered riprap. In addition, the project involves placing 17 cubic yards of fill to support a public access overlook.

The site was formerly open Bay but was filled in the early 1960s by constructing a perimeter barrier of unengineered concrete and debris and, subsequently, disposing fill within the built perimeter. Sanchez Channel is a remnant of the open Bay at the site. The existing top of bank elevations along the 815-foot-long shorelines are: at the western shoreline, +7.0 to 9.5 feet National Geodetic Vertical Datum 1929 (NGVD29) and, at the eastern shoreline, +8.5 to 10.0 feet NGVD29.

The current 100-year extreme water elevation (the Federal Emergency Management Agency's (FEMA) Base Flood Elevation) at the site is +7.2 feet NGVD29. Thus, with current sea levels, there is a 1% chance every year that extreme water levels will exceed the elevation of the bank in some areas for a period of several minutes to hours at a time. For this reason, the permittees stated that existing shoreline embankments are not high enough to protect shoreline areas from projected flooding. Further, the existing unengineered material at the eastern shoreline is "dilapidated... [and] will erode and eventually fail," and will not protect the project from wave action and erosion if left in place. In contrast, the perimeter of Sanchez Channel will protect the site in the immediate future because the channel is relatively isolated and protected from wind generated waves associated with the open Bay.

At the eastern shoreline, the existing debris will be removed and, within an almost identical footprint, an engineered revetment constructed with less material than currently exists. The revetment will be constructed using appropriately-sized rock overlying geotextile fabric. According to the permittees, over time, sediment will wash in and settle within the system creating a continuous and natural grade. In addition, within an approximately 50-square-foot area where concrete and rubble will be removed, 17 cubic yards of fill will be placed to support a public overlook.

Although Section 66605(a) of the McAteer-Petris Act does not explicitly name shoreline revetment as a water-oriented use, the Bay Plan contains an entire set of policies on the activity recognizing it as a type of use common in San Francisco Bay. The permittees state that through the removal of dilapidated concrete and rubble and the construction of an engineered system the shoreline will be "aesthetically improve[d]." In addition, to providing a "long-term, engineered solution" for the shoreline at the site, the permittees state that the fill will, in part, "provide sound structural support to the [proposed] public shoreline access." It should be noted that the Bay Plan Public Access Policy 8 states, in part: "...a small amount of fill may be allowed if the fill is necessary and is the minimum absolutely required to develop the project in accordance with the Commission's public access requirements." As stated previously, the project fill will protect the shoreline from erosion and support a public overlook, overall, will result in a net reduction of solid fill in the Bay.

The Commission finds that the project's public benefits outweigh its detriments and, further, that the project serves a water-oriented use, improves shoreline appearance, and will result in a minor amount of fill to support a public access amenity, and therefore, the activity is consistent with Section 66605 of the McAteer-Petris Act.

2. **Upland Alternative and Minimum Fill Necessary.** The revetment is designed to provide shoreline protection from wave action and erosion and, thus, by its very nature, cannot be built upland. According to the permittees, a "[r]eduction in fill associated with the shoreline protection replacement work would require placement of the shoreline protection landward of the existing location...[which] would [among other things] entail additional grading and removal of the existing shoreline thereby reducing the landward area available for public access." The fill to support the overlook is designed to provide the public with an opportunity to experience the open water in a manner that an upland overlook would not achieve.

The Bay Plan findings supporting the shoreline protection policies state, in part, "[b]ecause vast shoreline areas are vulnerable to flooding and because much of the shoreline consists of soft, easily eroded soils, shoreline protection projects are often needed to reduce damage to shoreline property and improvements," and, further, recognize that "[m]ost structural shoreline protection projects involve some fill." The fill for the revetment and the public overlook will result in 49 cubic yards less fill than currently exists in the Bay.

The Commission finds that no upland alternative exists for the project and that it involves the minimum amount necessary, and, therefore, the activity is consistent with Section 66605 of the McAteer-Petris Act.

3. **Minimizing Harmful Effects.** In addition to relevant provisions in the McAteer-Petris Act (Section 66605), the Bay Plan addresses minimizing effects of fill projects on Bay resources, as demonstrated in the following policies. The Bay Plan **Fish, Other Aquatic Organisms, and Wildlife** Policy 4 states, in part, "[t]he Commission should: (a) consult with...the National Marine Fisheries Service whenever a proposed project may adversely affect an endangered or threatened plant, fish, other aquatic organism or wildlife species;...and (c) give appropriate consideration to the recommendations of...the National Marine Fisheries Service...to avoid possible adverse effects of a proposed project on fish, other aquatic organisms and wildlife habitat." The Bay Plan **Subtidal Areas** Policy 1 states, in part: "Projects in subtidal areas should be designed to minimize and, if feasible, avoid any harmful effects."

In addition, the Bay Plan **Water Quality** Policy 2 states, in part: "[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 Regional

Water Quality Control Board's [RWQCB] Basin Plan. The policies, recommendations, decisions, advice and authority of the State Water Resources Control Board and the Regional Water Quality Control Board, should be the basis for carrying out the Commission's water quality responsibilities."

On February 28, 2014, the National Oceanic and Atmospheric Administration Fisheries (NMFS) issued an Endangered Species Act (ESA) Section 7(a)(2) Concurrence Letter and Magnuson-Stevens Fishery Conservation Management Act Essential Fish Habitat Response for the project, which includes a revetment and the installation of fill to support a public overlook—an activity likely to involve pile-driving. NMFS' letter identifies the federally-threatened Central California Coast steelhead (*Oncorhynchus mykiss*) and the North American green sturgeon (*Acipenser medirostris*) as species potentially affected by the project.

NMFS' letter states that the Bay "adjacent to the project site supports a diverse invertebrate community that can provide prey resources for listed fish species" and, further, "the effects of the proposed action are reasonably likely to include degradation of water quality, elevated sound levels during pile driving, and disturbance of benthic organisms along the shoreline during construction." However, NMFS states that the permittees' use of certain measures will minimize or avoid such impacts, specifically: the restriction of activities below Mean High Water (MHW) during the period of June 15 to November 30; the restriction of work below MHW to low-tide events; the use of an environmental bucket or silt curtain for work occurring below MHW; the use of a vibratory hammer during sheet-pile installation; the prohibition of project barges from resting on the Bay bottom; and the use of land-based equipment for excavation and fill work. Special Condition II.C requires that the permittees incorporate these measures when undertaking project activities occurring in the Commission's jurisdiction.

The NMFS's letter recognizes that restricting in-water work from June 15 to November 30 will avoid migration season of adult and juvenile CCC steelhead and, thus, "no CCC steelhead [are anticipated to] be present in the action area during construction." NMFS also states that the restricted in-water work, including limiting work to low-tide events and use of an environmental bucket or silt curtain for work below MHW, will "limit" turbidity effects on the green sturgeon whose feeding behavior and growth cycle could otherwise be affected. Moreover, the letter states that the sturgeon is "tolerant of levels of turbidity that exceed levels expected to result from this project" and is "highly mobile" and expected to disperse during construction. Further, the use of a vibratory hammer for sheet-pile installation "is expected to avoid generation of underwater sound levels that are harmful to fish....[and] sound pressure levels generated by this project's construction activities should not present a risk of physical injury or mortality to threatened green sturgeon."

In terms of designated critical habitat for both species of concern, NMFS states that potential effects from turbidity are expected to be “temporary and minor given the small area impacted and work restrictions,” including use of an environmental bucket or silt curtain. NMFS states that benthic invertebrates “may be temporarily disturbed by construction” but, following construction, these communities are expected to recolonize the area. In conclusion, NMFS found that the project “is not likely to adversely affect the subject listed species and designated critical habitats.”

NMFS’ letter identifies the project area as Essential Fish Habitat (EFH) for species managed with the Pacific Coast Salmon Fishery Management Plans (FMP), the Pacific Groundfish FMP, and the Coastal Pelagic FMP, and asserts that the project “would adversely affect EFH” through increased turbidity, degradation to water quality, and direct disturbance of aquatic organisms. Further, the project will temporarily degrade EFH through “removal and disturbance of benthic prey organisms” during revetment construction, but such effects are expected to be temporary and the benthic community recovered within “several months to a few years.” The letter, however, declares that “the project contains adequate avoidance and minimization measures so that these adverse effects to EFH are expected to be insignificant.” Further, after construction, “benefits to EFH will be gained through the removal of debris along the shoreline and the net reduction of bay fill...” In conclusion, NMFS states that the project’s avoidance and minimization measures “offset the adverse effects to EFH...and [it] has no practical EFH conservation recommendations to provide to avoid or reduce the magnitude of these effects.”

On July 28, 2014, the RWQCB issued a water quality certification for the project, which identifies turbidity as a temporary impact on beneficial uses of the Bay, including recreation, wildlife, and commercial uses. To mitigate this impact, the RWQCB’s certification requires, among other things, that the excavation of concrete and rubble from the shoreline and the construction of a shoreline revetment be sequenced to “avoid leaving unprotected segments of shoreline, not undergoing construction, exposed for longer than two weeks.” Other requirements of the certification include the preparation of a Storm Water Pollution Prevention Plan (SWPPP) and, as previously discussed, limiting in-water work to low tide events. As conditioned, the certification states that the project will minimize or avoid potential water quality impacts. Special Condition II.D requires that the permittees adhere to the provisions of the water quality certification for activities occurring within the Commission’s jurisdiction.

The Commission finds that, as conditioned herein, the fill associated with the project will minimize effects on Bay resources and, therefore, is consistent with Section 66605 of the McAtteer-Petris Act.

4. **Valid Title.** The permittees provided a grant deed covering the majority of the upland area at the project site, including the western shoreline. However, the lease between one of the permittees, 350 Beach Road, LLC, and the State Lands Commission for the eastern shoreline, including the water area where the revetment and a portion of one public overlook will be constructed, has not been finalized or provided. The State Lands Commission approved the lease in 2013, but it cannot execute the document until two lease conditions have been met. These conditions require that 350 Beach Road, LLC: (a) obtain the consent of an adjacent land owner to the proposed lease; and (b) initiate a coordination process with stakeholders demonstrating good faith efforts to facilitate future improvements at Fisherman’s Park and the Bay Trail. According to the State Lands Commission staff, it fully expects this issue to be resolved and the subject lease to be signed and executed at which time this remaining title issue will be fully resolved. Special Condition II.E requires the permittees to obtain an executed lease and provide evidence of the lease to the Commission staff prior to commencement of construction of this portion of the project authorized herein.

The subject lease, among other things, requires the leaseholder to maintain and repair all improvements located within the leasehold area, including the shoreline revetment and public access areas. The lease expires on September 19, 2062. Since the project is designed to remain in place beyond that date, the permittees intend to enter into a new or extended lease prior to the end of the initial 49-year-term lease to ensure that valid title remains in place and the authorized improvements are maintained for the life of the project. Special Condition II.E also requires that prior to September 19, 2062, the permittees: enter into a new or extended lease to ensure valid title remains in place for the underlying project property and that the authorized improvements can be maintained for the life of the project, and provide evidence of such a lease to Commission staff. If a new or extended lease is not obtained or provided to the staff by that time, Special Condition II.E requires the permittees to remove or modify facilities and uses located at property to which valid title is no longer held.

The Commission finds that, as conditioned herein, the permittees possess valid title to the underlying property on which the fill associated with the project will be placed and, therefore, is consistent with Section 66605 of the McAteer-Petris Act.

5. **Sound Safety Standards.** According to the permittees, “[t]he project provides shoreline protection and grading which takes into account the potential for flooding resulting from the combined effect of wave and water surface elevations, based on FEMA guidance for flood protection along the west coast of the United States. Flood protection has been designed to address present day 100-year flood elevations and increases in sea level rise beyond 2050, with an adaptive (*sic*) to address high levels in the future.” The shoreline protection system was designed under the guidance of licensed engineers.

Based on the geotechnical and seismic information regarding the project provided as part of the permit application and, pursuant to Special Condition II.A which requires the permittees to submit final engineering plans for Commission staff review and approval on behalf of the Commission, the Commission finds that the project, as conditioned, will be constructed in accord with sound safety standards and is consistent with Section 66605 of the McAteer-Petris Act.

For these reasons, the Commission finds that the project, as conditioned, is consistent with the McAteer-Petris Act and relevant Bay Plan policies on fill.

- C. **Climate Change and Shoreline Protection.** The Bay Plan Climate Change Policy 2 states: “When planning shoreline areas or designing larger shoreline projects, a risk assessment should be prepared by a qualified engineer and should be based on the estimated 100-year flood elevation that takes into account the best estimates of future sea level rise and current flood protection and planned flood protection that will be funded and constructed when needed to provide protection for the proposed project or shoreline area. A range of sea level rise projections for mid-century and end of century based on the best scientific data available should be used in the risk assessment. Inundation maps used for the risk assessment should be prepared under the direction of a qualified engineer. The risk assessment should identify all types of potential flooding, degrees of uncertainty, consequences of defense failure, and risks to existing habitat from proposed flood protection devices.” Policy 3 states: “To protect public safety and ecosystem services, within areas that a risk assessment determines are vulnerable to future shoreline flooding that threatens public safety, all projects—other than repairs of existing facilities, small projects that do not increase risks to public safety, interim projects and infill projects within existing urbanized areas—should be designed to be resilient to a mid-century sea level rise projection. If it is likely the project will remain in place longer than mid-century, an adaptive management plan should be developed to address the long-term impacts that will arise based on a risk assessment using the best available science-based projection for sea level rise at the end of the century.”

The Bay Plan Shoreline Protection Policy 1 states, in part, “[n]ew shoreline protection projects and the maintenance or reconstruction of existing projects and uses should be authorized if: (a) the project is necessary to provide flood or erosion protection for (i) existing development, use or infrastructure, or (ii) proposed development, use or infrastructure that is consistent with other Bay Plan policies; (b) the type of the protective structure is appropriate for the project site, the uses to be protected, and the erosion and flooding conditions at the site; (c) the project is properly engineered to provide erosion control and flood protection for the expected life of the project based on a 100-year flood event that takes future sea level rise into account; (d) the project is properly designed and constructed to prevent significant impediments to physical and visual public access; and (e) the protection is integrated with current or planned adjacent shoreline protection measures.” Additionally, Shoreline Protection Policy 2 states,

in part: “Riprap revetments, the most common shoreline protective structure, should be constructed of properly sized and placed material that meet sound engineering criteria...” and Policy 3 states that shoreline protection projects should be maintained.

The project involves the placement of 1,481 cubic yards of engineered rock to construct a shoreline revetment at an approximately 13,822-square-foot section of the eastern shoreline. According to the project engineer, the 100-year base flood elevation at the project site is +7.2 feet NGVD29. At the western site boundary, additional flooding associated with wind-driven waves is not expected due to the isolated and protected nature of Sanchez Channel. At the eastern shoreline, however, flood conditions associated with an open water area are expected, e.g., wind-driven waves, and a total water level of 11.6 feet NGVD29 is projected at current sea levels. Future sea level projections at the site are shown below:

Year	Future Sea Level Rise	Maximum Projected Total Water Level Eastern Shoreline	Maximum Projected Total Water Level Western Shoreline
2050	12" (1 foot) NGVD29	12.6' NGVD29;	8.2' NGVD29;
2070	19" (1.6 feet) NGVD29	13.2' NGVD29;	9.8' NGVD29;
2100	36" (3 feet) NGVD29	14.6' NGVD29	10.2' NGVD29

The project is designed to remain in place through the end of the century. The site’s existing elevations will be raised with imported material prior to constructing the facilities authorized herein. At the western shoreline, the finished project elevations will be between 10.6’ and 11.8’ NGVD29, elevations above the projected 10.2’ NGVD29 Base Flood Elevation projected for flooding and sea level rise at 2100.

At the eastern shoreline, finished site elevations will range between 12.9’ NGVD29 at the public overlooks and the revetment crest, and, generally, 13.4’ NGVD29 at the adjacent public access area. Consequently, the public overlooks and the revetment crest will be above projected flooding until about 2065 while the public access areas located upland will be above projected flooding through about 2070. To adapt these areas to flooding projected beyond 2065, the permittees intend to raise the revetment and dedicated public access overlooks and the adjacent dedicated public area above the initial design elevation by a minimum of 11 inches. As a result, the revetment and overlooks would be located at approximately 13.8’ NGVD29 and adjacent public access areas at about 14.3’ NGVD29, still below the end-of-century projections of wind-driven waves reaching an elevation of 14.6 feet NGVD29. If the site requires additional adaptation to projected heightened flooding conditions, the permittees state:

“For sea level rise greater than this, the ability to go even higher...with either the same or a different structural configuration is retained. Features to address this amount of sea level rise may include modifications to create a raised promenade and bay trail with retaining walls or

realign the Bay Trail and reconfigure the shoreline protection to provide flatter slopes and wave breaks. This will ensure continued protection of the bay trail and open spaces areas from flooding.”

Special Condition II.G requires that the permittees construct the revetment and public access improvements authorized herein to initial finish elevations that ensure the top of the revetment and adjacent public access areas will not be flooded with anticipated flooding conditions through 2065. Special Condition II.G also requires the permittees to prepare and implement a plan for adapting to flooding conditions at the site beyond 2065.

Furthermore, following construction, the permittees will develop a monitoring program for tracking future sea level rise at the site to understand its effect on the structures authorized herein. Through the Monitoring Program, every five years, the permittees will obtain and provide tidal data, perform a topographic survey of the revetment crest, and review the prevailing forecasts for sea level rise to obtain the information necessary to determine whether trigger criteria for implementing adaptation strategies have been met or will soon be met. The monitoring program shall be incorporated into Site Operation and Maintenance manuals. This monitoring program shall also assist in modifying future triggers as the science and understanding of sea level rise continues to develop. Special Condition II.G requires that the permittees implement a tidal data monitoring program.

As stated previously, site and hydrological conditions combined with the dilapidated nature of the shoreline require a new revetment to protect the campus and public access areas along the shoreline. The permittees considered other potential shoreline protection systems, but concluded that the revetment authorized herein will dissipate “local currents and [minimize] wave run-up as opposed to vertical revetments constructed of sheet-pile, which can deflect wave energy and cause bank erosion in adjacent, nearshore environments. Furthermore, aquatic organisms can utilize the interstitial spaces found within multi-layered, free-draining engineered revetments.” Further, the “construction of the non-structural improvements [for shoreline protection] requires a gradual slope, which, will likely [would involve]...placing [more] material in the Bay....With a 6:1 slope [for non-structural methods], the amount of excavation required to meet proposed grades would be impractical....”

The revetment will be consistent with standardized procedures used in San Francisco Bay. Special Condition II.A requires the permittees to construct the revetment authorized herein in a manner that conforms with standardized design and procedures for the Bay and also requires Commission staff review and approval (on behalf of the Commission) of revetment plans prior to project commencement.

The permittees will maintain the revetment through the life of the project. At the properties adjacent to the project site, shoreline materials consist of concrete debris and rubble and are not currently planned for removal or improvement. According to the permittees, the revetment “will not be structurally integrated into the shoreline protection at the adjacent properties. The proposed revetment will be graded to match the

existing grade at the adjacent properties to provide a gradual transition between the two.” Special Condition II.F requires that the permittees maintain and repair the revetment throughout the life of the project, while Special Condition II.A requires the permittees to construct the revetment in a manner that provides a gradual transition between the shoreline protection features at the site and adjacent properties.

The Commission finds that, as conditioned, the fill, mainly a shoreline revetment, and strategies for resilience and adaptation to site flooding conditions and sea level rise are consistent with the Commission’s laws and policies regarding shoreline protection and climate change.

- D. **Public Access and Views.** Section 66602 of the McAteer-Petris Act provides, in part, “existing public access to the shoreline and waters of the San Francisco 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, in part: “A proposed fill project should increase public access to the Bay to the maximum extent feasible...” Policy 2 states, in part: “...maximum feasible access to and along the waterfront and on any permitted fills should be provided in and through every new development in the Bay or on the shoreline, whether it be for housing, industry...” Policy 5 states, in part: “Public access should be sited, designed, managed and maintained to avoid significant adverse impacts from sea level rise and shoreline flooding.” Policy 6 states in part: “Whenever public access to the Bay is provided as a condition of development...the access should be permanently guaranteed.... Any 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.” Policy 7 states, in part: “Public access improvements...should be designed and built to encourage diverse Bay-related activities and movement to and along the shoreline, should permit barrier free access for persons with disabilities to the maximum feasible extent, should include an ongoing maintenance program, and should be identified with appropriate signs.” Policy 9 states in part: “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.” Policy 10 states in part: “Roads near the edge of the water should be designed as scenic parkways for slow-moving, principally recreational traffic. The roadway and right-of-way design should maintain and enhance visual access for the traveler, discourage through traffic, and provide for safe, separated, and improved physical access to and along the shore.” Lastly, the Bay Plan Appearance, Design and Scenic Views Policy 2 states, in part: “All bayfront development should be designed to enhance the pleasure of the user or viewer of the Bay.”

The project site currently provides limited public access. In 1997, the Commission issued administrative Permit No. M1997.018.00 authorizing the City of Burlingame to provide a five-foot-wide pedestrian path along the site’s eastern shoreline, five-foot-wide (Class III) bicycle paths on Airport Boulevard, 16 public parking spaces, and landscaping. The site’s western shoreline along Sanchez Channel is closed to the public, except where a vehicular bridge and a pedestrian bridge cross Sanchez Channel.

The office campus will be designed to provide office space for 2,475 employees and 2,344 employee vehicles. In addition to the six campus buildings, site improvements include a realigned Airport Boulevard with sidewalks, bike access, and street parking, landscaping, walkways, and utilities. These activities will occur largely outside of the Commission's jurisdiction, with the exception of the installation of stormwater outfalls and approximately 6,000-square-foot portions of the realigned Airport Boulevard that will be built within the Commission's 100-foot shoreline band jurisdiction.

Within the 100-foot shoreline band, two 100-foot-wide, 815-foot-long public areas (each 1.85 acres and totaling approximately 3.7 acres) at the eastern and western shorelines will be constructed. A variety of public access amenities, including 12-foot-wide bicycle and pedestrian paths, outdoor public dining patios with transparent wind screens, seating, lighting, trash receptacles, drinking fountains, art sculptures, telescopes, signage and interpretive panels, landscaping with stormwater treatment zones, and Bay overlooks—one at Sanchez Channel and three at eastern shoreline. Dedicated public bicycle (30 spaces) and vehicle parking (20 spaces) will also be provided. The improvements will comply with the accessibility requirements of the California Building Code. The public areas will be permanently guaranteed and maintained by the applicants or their successors in interest. Visitors to the site will be provided with a variety of viewing opportunities of the Bay and shoreline area, including along the trails, from Airport Boulevard, and through the campus. Special Condition II.B requires the permittees to permanently dedicate and maintain a public access area totaling 161,172 square feet (3.70 acres) with a variety of public-serving barrier-free amenities.

The public areas authorized and required herein will be connected to adjacent public access areas. Along the realigned Airport Boulevard, access to the shoreline will be provided at various points throughout the project site. At the southeast corner, the shoreline area will be reached via Airport Boulevard and will be connected to Fisherman's Park at the northeast corner of the project site. At the northern site boundary, a Bay Trail extension connecting the project's east and west shorelines will be constructed and remain in place until the ultimate Bay Trail connection located further north of the site along the Bay shoreline is developed. At the northwest corner of the site, the public area will be connected via Airport Boulevard and an existing bridge crossing Sanchez Channel to public access west of the project site. Where the western shoreline area dead-ends at the southwest corner, the permittees have designed the public access area to allow for a connection to any neighboring public paths that may be built in the future. Special Condition II.B requires the permittees to design and construct the dedicated public access areas in a manner that ensures the immediate and future establishment of such connections.

The finished elevations of the western shoreline will be between 10.6' and 11.8' NGVD29, elevations that are above the projected end-of-century Base Flood Elevation of 10.2' NGVD29. Within the eastern shoreline public access areas, the finished elevations will vary between 12.9' NVGD at the overlooks and 13.4' NGVD29 within the remaining shoreline public access areas. The overlooks will be above projected tidal

flooding through approximately 2065, and other public access areas above projected tidal flooding through about 2070. Beyond 2070, the permittees will adapt the site to flooding conditions projected with rising tides by raising site elevations an additional 11.0 inches, to approximately 13.8 and 14.3 feet NGVD. According to the permittees: “For sea level rise greater than this, the ability to go even higher...with either the same or a different structural configuration is retained. Features to address this amount of sea level rise may include modifications to create a raised promenade and bay trail with retaining walls or realign the Bay Trail and reconfigure the shoreline protection to provide flatter slopes and wave breaks. This will ensure continued protection of the bay trail and open spaces areas from flooding.” Special Condition II.B requires the permittees to implement adaptation strategies at the site in a manner consistent with Special Condition II.G contained herein. Further, in the event that adaptation strategies could result in a significant visual or physical impact on the dedicated public access areas required herein, Special Condition II.H requires the permittees to prepare and provide equivalent permanently dedicated public access area.

In evaluating whether a project’s public access is the maximum feasible consistent with the project, the Commission looks, in part, to its past actions on comparable projects. In 1997, the Commission considered and issued Permit Application No. 1997.009.00 for the development of an office campus located in the City of Alameda (Alameda County) in which five buildings were proposed for construction located only partly within the Commission’s jurisdiction. The project included the construction of an approximately 31,000-square-foot shoreline revetment system. The project also involved the creation of an approximately 4.0-acre dedicated public shoreline area with a variety of public access amenities. In 2008, the Commission considered and issued Permit Application No. M2008.019.00 for the development of a five-building office campus in the City of Brisbane (San Mateo County), most of which was located outside of the Commission’s jurisdiction but which included implementation of a 3.6-acre dedicated public shoreline area.

The Commission finds that, as conditioned, the public access is the maximum feasible consistent for the project and is designed and will be managed, over time, to avoid impacts from sea level rise and flooding.

- E. **Engineering Criteria Review Board.** The Commission’s Engineering Criteria Review Board did not review the project. In light of the project’s design and location, the staff determined that the project did not warrant additional input on seismic safety, flooding issues, or public access.
- F. **Design Review Board.** The Bay Plan Public Access Policy 12 states, in part, “[t]he Design Review Board should advise the Commission regarding the adequacy of the public access proposed.” The DRB reviewed the proposed project on July 11, 2011 and also on October 8, 2012. In its first review, the DRB requested that the project proponent consider the following: (1) incorporation of design options in the landscaped topography to create wind protected areas; (2) revisions to the northern alignment of the Bay Trail and the pedestrian connection from Beach Road through a corridor located between the amenities center and parking structure; (3) the preparation of more developed plans

showing the Bay overlooks, landscaping, site furniture, and lighting; (4) the illustration of proposed stormwater treatment features; and (5) the identification of public parking areas. The permittees revised the plans to incorporate the DRB's recommendations and, during its second review, the DRB fully supported the public access areas and improvements.

- G. **Compliance with the California Environmental Act/CEQA Findings.** On October 28, 2013, the California Public Utilities Commission certified the Final Mitigated Negative Declaration finding that "although the Proposed Project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent." All potentially significant impacts associated with the project can be mitigated to a level below significance. On January 16, 2014, the Notice of Determination was approved by CPUC and was filed at the State Clearing House on January 21, 2014.
- H. **Coastal Zone Management Act.** The Commission further finds, declares, and certifies that the 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.
- 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 California Environmental Quality Act, and the Commission's amended management program for the San Francisco Bay segment of the California coastal zone.

IV. Standard Conditions

- A. **Permit Execution.** This permit shall not take effect unless the permittees execute the original of this permit and return it to the Commission within ten days after the date of the issuance of the permit. No work shall be done until the acknowledgment is duly executed and returned to the Commission.
- B. **Certification of Contractor Review.** Prior to commencing construction authorized herein, the general contractor or contractors in charge of such work within the Commission's jurisdiction shall submit written certification that s/he has reviewed and understands the requirements of the permit and any final plans subject to BCDC approval.
- C. **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.
- D. **Permit Runs With the Land.** Unless otherwise provided in this permit, the terms and conditions of this permit shall bind all future owners and future possessors of any legal interest in the land and shall run with the land.

- E. **Other Government Approvals.** All required permissions from governmental bodies must be obtained before the commencement of work; these bodies include, but are not limited to, the U. S. Army Corps of Engineers, the State Lands Commission, the Regional Water Quality Control Board, and the city or county in which the work is to be performed, whenever any of these may be required. This permit does not relieve the permittees of any obligations imposed by State or Federal law, either statutory or otherwise.
- F. **Built Project Consistent with Permit Application.** Work must be performed in the precise manner and at the precise locations indicated in your application, as such may have been modified by the terms of the permit and any plans approved in writing by or on behalf of the Commission.
- G. **Life of Authorization.** Unless otherwise provided in this permit, all the terms and conditions of this permit shall remain effective for so long as the permit remains in effect or for so long as any use or construction authorized by this permit exists, whichever is longer.
- H. **Commission Jurisdiction.** Any area subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission under either the McAteer-Petris Act or the Suisun Marsh Preservation Act at the time the permit is granted or thereafter shall remain subject to that jurisdiction notwithstanding the placement of any fill or the implementation of any substantial change in use authorized by this permit. Any area not subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission that becomes, as a result of any work or project authorized in this permit, subject to tidal action shall become subject to the Commission's "bay" jurisdiction.
- I. **Changes to the Commission's Jurisdiction as a Result of Natural Processes.** This permit reflects the location of the shoreline of San Francisco Bay when the permit was issued. Over time, erosion, avulsion, accretion, subsidence, relative sea level change, and other factors may change the location of the shoreline, which may, in turn, change the extent of the Commission's regulatory jurisdiction. Therefore, the issuance of this permit does not guarantee that the Commission's jurisdiction will not change in the future.
- J. **Violation of Permit May Lead to Permit Revocation.** Except as otherwise noted, violation of any of the terms of this permit shall be grounds for revocation. The Commission may revoke any permit for such violation after a public hearing held on reasonable notice to the permittees or their assignees if the permit has been effectively assigned. If the permit is revoked, the Commission may determine, if it deems appropriate, that all or part of any fill or structure placed pursuant to this permit shall be removed by the ss or their assignees if the permit has been assigned.
- K. **Should Permit Conditions Be Found to be Illegal or Unenforceable.** Unless the Commission directs otherwise, this permit shall become null and void if any term, standard condition, or special condition of this permit shall be found illegal or unenforceable through the application of statute, administrative ruling, or court determination. If this permit becomes null and void, any fill or structures placed in reliance on this permit

shall be subject to removal by the permittees or their assignees if the permit has been assigned to the extent that the Commission determines that such removal is appropriate. Any uses authorized shall be terminated to the extent that the Commission determines that such uses should be terminated.

- L. **Permission to Conduct Site Visit.** The permittees shall grant permission to any member of the Commission's staff to conduct a site visit at the subject property during and after construction to verify that the project is being and has been constructed in compliance with the authorization and conditions contained herein. Site visits may occur during business hours without prior notice and after business hours with 24-hour notice.
- M. **Best Management Practices**
1. **Debris Removal.** All construction debris shall be removed to an authorized location outside the jurisdiction of the Commission. In the event that any such material is placed in any area within the Commission's jurisdiction, the permittees, their assigns, or successors in interest, or the owner of the improvements, shall remove such material, at their expense, within ten days after they have been notified by the Executive Director of such placement.
 2. **Construction Operations.** All construction operations shall be performed to prevent construction materials from falling, washing or blowing into the Bay. In the event that such material escapes or is placed in an area subject to tidal action of the Bay, the permittees shall immediately retrieve and remove such material at its expense.
- N. **Permit Assignment.** Prior to entering into any agreement to transfer any interest in any property subject to this permit, the permittees or any assignees of this permit or any part of it, shall provide the third party with a copy of this permit and shall call their attention to any provisions regarding public access or need to obtain further Commission approval related to any activities authorized herein. No more than ten days after transferring any interest in any property subject to this permit to another party, the transferors shall: (a) notify the Commission of the nature of the transfer, the name, address, and telephone number of the transferee, and the effective date of the transfer; and (b) shall submit an assignment of this permit for the area transferred that has been executed by the transferor and the transferee and that indicates that the transferor has transferred the permit as it applies to the property that was transferred and that the transferee has read, understood, and has agreed to be bound by the terms and conditions of this permit.
- O. **Abandonment.** If, at any time, the Commission determines that the improvements in the Bay authorized herein have been abandoned for a period of two years or more, or have deteriorated to the point that public health, safety or welfare is adversely affected, the Commission may require that the improvements be removed by the permittees, their assignees or successors in interest, or by the owner of the improvements, within 60 days or such other reasonable time as the Commission may direct.

- P. **Certificate of Occupancy or Use.** Prior to occupancy or use of any of the improvements authorized herein, the permittees shall submit the Notice of Completion and Compliance required herein and request in writing an inspection of the project site by the Commission staff. Within 30 days of receipt of the written request for an inspection, the Commission staff will: (1) review all permit conditions; (2) inspect the project site; and (3) provide the permittees with written notification of all outstanding permit compliance issues, if any. The permittees shall not occupy or make use of any improvements authorized herein until the Commission staff has confirmed that the identified permittees compliance issues have been satisfactorily resolved and has provided the permittees with a Certificate of Occupancy or Use. Failure by the Commission staff to perform such review and inspection and notify the permittees of any deficiencies of the project within this 30-day period shall not deem the project to be in compliance with the permit, but the permittees may occupy and use the improvements authorized herein.